

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No. : 500-11-036133-094

SUPERIOR COURT

Commercial Division
(Sitting as a court designated pursuant
to the
Companies' Creditors Arrangement Act)

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 herein

Petitioners

And

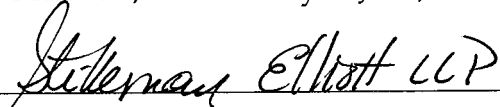
ERNST & YOUNG INC.

Monitor

LIST OF EXHIBITS OF THE PETITIONERS

DESCRIPTION		TAB
R-1:	Order approving and implementing Cross-Border Restructuring Protocol	1

Montreal, this 17th day of June, 2009



STIKEMAN ELLIOTT LLP
Attorneys for Petitioners

CROSSBORDER RESTRUCTURING PROTOCOL FOR ABITIBIBOWATER INC. AND ITS AFFILIATES

This Crossborder insolvency protocol (the “Protocol”) shall govern the conduct of all parties-in-interest in the Restructuring Proceedings (as defined below). The *Guidelines Applicable to Court-to-Court Communications in Crossborder Cases* (the “Guidelines”), attached as Exhibit A hereto, shall be incorporated by reference and form part of this Protocol. Where there is any discrepancy between the Protocol and the Guidelines, this Protocol shall prevail.

Background

1. AbitibiBowater Inc., a Delaware corporation (“AbitibiBowater”), is the ultimate parent company of a multinational enterprise that operates, through its various subsidiaries and affiliates, in the United States, Canada and other countries. AbitibiBowater and certain of its direct and indirect subsidiaries (collectively, the “Chapter 11 Debtors”)¹ each commenced cases (the “Chapter 11 Cases”) under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), in the United States Bankruptcy Court for the District of Delaware (the “U.S. Court”) on April 16, 2009 (the “Petition Date”). Certain of the Chapter 11

¹ The Chapter 11 Debtors are: AbitibiBowater Inc., AbitibiBowater US Holding 1 Corp., AbitibiBowater US Holding LLC, AbitibiBowater Canada Inc., Abitibi-Consolidated Alabama Corporation, Abitibi-Consolidated Corporation, Abitibi-Consolidated Finance LP, Abitibi Consolidated Sales Corporation, Alabama River Newsprint Company, Augusta Woodlands, LLC, Bowater Alabama LLC, Bowater America Inc., Bowater Canada Finance Corporation, Bowater Canadian Forest Products Inc., Bowater Canadian Holdings Incorporated, Bowater Canadian Limited, Bowater Finance Company Inc., Bowater Finance II LLC, Bowater Incorporated, Bowater LaHave Corporation, Bowater Maritimes Inc., Bowater Newsprint South LLC, Bowater Newsprint South Operations LLC, Bowater Nuway Inc., Bowater Nuway Mid-States Inc., Bowater South American Holdings Incorporated, Bowater Ventures Inc., Catawba Property Holdings, LLC, Coosa Pines Golf Club Holdings LLC, Donohue Corp., Lake Superior Forest Products Inc. and Tenex Data Inc.

Debtors (the "Crossborder Debtors")² and certain subsidiaries of AbitibiBowater who did not file Chapter 11 Cases and who are not Chapter 11 Debtors (the "CCAA Debtors")³ commenced a reorganization proceeding (the "Canadian Proceeding") by filing an application under the *Canadian Companies' Creditors Arrangement Act* (the "CCAA") with the Superior Court, Commercial Division, for the Judicial District of Montreal, Canada (the "Canadian Court") and an Order (as amended from time to time, the "CCAA Order") has been granted under which: (a) the CCAA Debtors and Crossborder Debtors have been determined to be entitled to relief under the CCAA; (b) Ernst & Young Inc. was appointed as monitor (the "Monitor") of the CCAA Debtors and Crossborder Debtors, with the rights, powers, duties and limitations upon liabilities set forth in the CCAA and in the CCAA Order; and (c) a stay of proceedings in respect of the CCAA Debtors and Crossborder Debtors has been granted.

2. All of the Chapter 11 Cases have been consolidated (for procedural purposes only) under Case No. 09-11296 (KJC). The Chapter 11 Debtors continue to operate their business and manage their properties as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Cases.

² The Crossborder 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.

³ 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, 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.

3. On April 28, 2009, the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed a statutory committee of unsecured creditors (the “Committee”) in the Chapter 11 Cases.

4. For convenience: (a) AbitibiBowater and its direct and indirect U.S. subsidiaries who are Chapter 11 Debtors shall be referred to as the “U.S. Debtors”⁴; (b) the CCAA Debtors, the Chapter 11 Debtors, the U.S. Debtors, and the Crossborder Debtors shall be referred to herein collectively as the “Debtors”; (c) the Chapter 11 Cases and the Canadian Proceeding shall be referred to herein collectively as the “Restructuring Proceedings”; and (d) the U.S. Court and the Canadian Court shall be referred to herein collectively as the “Courts,” and each individually as a “Court”.⁵

Purpose and Goals

5. While the Chapter 11 Cases and the Canadian Proceeding are separate proceedings pending in the United States and Canada, the implementation of administrative

⁴ The U.S. Debtors in these cases are: AbitibiBowater Inc., AbitibiBowater US Holding 1 Corp., AbitibiBowater US Holding LLC, Abitibi-Consolidated Alabama Corporation, Abitibi-Consolidated Corporation, Abitibi-Consolidated Finance LP, Abitibi Consolidated Sales Corporation, Alabama River Newsprint Company, Augusta Woodlands, LLC, Bowater Alabama LLC, Bowater America Inc., Bowater Finance Company Inc., Bowater Finance II LLC, Bowater Incorporated, Bowater Newsprint South LLC, Bowater Newsprint South Operations LLC, Bowater Nuway Inc., Bowater Nuway Mid-States Inc., Bowater South American Holdings Incorporated, Bowater Ventures Inc., Catawba Property Holdings, LLC, Coosa Pines Golf Club Holdings LLC, Donohue Corp., Lake Superior Forest Products Inc. and Tenex Data Inc.

⁵ Two of the CCAA Debtors – Abitibi-Consolidated Inc. and Abitibi-Consolidated Company of Canada (together, the “Chapter 15 Debtors”) have filed petitions for recognition under chapter 15 of the Bankruptcy Code (the “Chapter 15 Cases”) in the U.S. Court. AbitibiBowater and certain of the U.S. Debtors also filed for ancillary relief in Canada seeking relief in support of the Chapter 11 Cases in Canada under section 18.6 of the CCAA. The U.S. Debtors who 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 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.

procedures is both necessary and desirable to coordinate certain activities therein, to protect the rights of parties thereto, to ensure the maintenance of the Courts' respective independent jurisdiction and to give due effect to any applicable doctrines, including, without limitation, comity. Accordingly, this Protocol has been developed to establish the following mutually desirable goals and objectives in the Restructuring Proceedings:

- (a) harmonize and coordinate activities in the Restructuring Proceedings before the Courts;
- (b) promote the orderly and efficient administration of the Restructuring Proceedings to, among other things, maximize the efficiency of the Restructuring Proceedings, reduce the costs associated therewith and avoid duplication of efforts;
- (c) honor the independence and integrity of the Courts and other courts and tribunals of Canada and the United States;
- (d) promote international cooperation and respect for comity among the Courts, the Debtors, the U.S. Representatives (defined below), the Canadian Representatives (defined below) (together with the U.S. Representatives, the "Estate Representatives"), the U.S. Trustee, and other creditors and interested parties in the Restructuring Proceedings;
- (e) facilitate the fair, open, and efficient administration of the Restructuring Proceedings for the benefit of all of the Debtors' creditors and other stakeholders, wherever located; and
- (f) implement a framework of general principles to address basic administrative issues arising out of the Crossborder nature of the Restructuring Proceedings.

Comity and Independence of the Courts

6. The approval and implementation of this Protocol shall not divest or diminish the U.S. Court's and the Canadian Court's respective independent jurisdiction over the subject matter of the Chapter 11 Cases and Canadian Proceeding, respectively. By approving and implementing this Protocol, the U.S. Court, the Canadian Court, the Debtors, the Estate Representatives, and any creditor or any other interested party shall not be deemed to have approved or engaged in any infringement on the sovereignty of the United States or Canada.

7. The U.S. Court shall have sole and exclusive jurisdiction and power over the conduct of the Chapter 11 Cases and the hearing and determination of matters arising in the Chapter 11 Cases. The Canadian Court shall have sole and exclusive jurisdiction and power over the conduct of the Canadian Proceeding and the hearing and determination of matters arising in the Canadian Proceeding.

8. In accordance with the principles of comity and independence recognized herein, nothing contained herein shall be construed to:

- (a) increase, decrease or otherwise modify the independence, sovereignty or jurisdiction of the U.S. Court, the Canadian Court or any other court or tribunal in the United States or Canada, including the ability of any such court or tribunal to provide appropriate relief under applicable law on an *ex parte* or “limited notice” basis;
- (b) require the U.S. Court to take any action that is inconsistent with its obligations under the laws of the United States;
- (c) require the Canadian Court to take any action that is inconsistent with its obligations under the laws of Canada;
- (d) require the Debtors, the Estate Representatives, or the U.S. Trustee to take any action or refrain from taking any action that would result in a breach of any duty imposed on them by any applicable law;
- (e) authorize any action that requires the specific approval of one or both of the Courts under the Bankruptcy Code or the CCAA after appropriate notice and a hearing (except to the extent that such action specifically is described in this Protocol); or
- (f) preclude the Debtors, the Estate Representatives, the U.S. Trustee, or any creditor or other interested party from asserting such party’s substantive rights under the applicable laws of the United States, Canada, or any other relevant jurisdiction including, without limitation, the rights of interested parties to appeal from the decisions taken by one or both Courts.

9. The Debtors, the Estate Representatives, and their respective employees, members, agents and professionals shall respect and comply with the independent, nondelegable duties imposed upon them by the Bankruptcy Code, the CCAA, the CCAA Order and other applicable laws and court orders.

Cooperation

10. To assist in the efficient administration of the Restructuring Proceedings and recognizing that the Chapter 11 Debtors, the U.S. Debtors, the CCAA Debtors, and the Crossborder Debtors may each be creditors of the others' estates, the Debtors and the respective Estate Representatives shall, where appropriate: (a) cooperate with each other in connection with actions taken in both the U.S. Court and the Canadian Court; and (b) take any other appropriate steps to coordinate the administration of the Restructuring Proceedings for the benefit of the Debtors' respective estates.

11. To harmonize and coordinate the administration of the Restructuring Proceedings, the U.S. Court and the Canadian Court may coordinate activities and consider whether it is appropriate to defer to the judgment of the other Court. In furtherance of the foregoing:

- (a) The U.S. Court and the Canadian Court may communicate with one another, with or without counsel present, with respect to any procedural matter relating to the Restructuring Proceedings.
- (b) Where the issue of the proper jurisdiction or Court to determine an issue is raised by an interested party in either of the Restructuring Proceedings with respect to a motion or an application filed in either Court, the Court before which such motion or application was initially filed may contact the other Court and determine an appropriate process by which the issue of jurisdiction will be determined to the extent permitted by the Court. Such process shall be subject to submissions by the Debtors, the U.S. Trustee, the Estate Representatives, and any interested party prior to any determination on the issue of jurisdiction being made by either Court.
- (c) The Courts may, but are not obligated to, coordinate activities in the Restructuring Proceedings such that the subject matter of any particular action, suit, request, application, contested matter or other proceeding is determined in a single Court.
- (d) The U.S. Court and Canadian Court may conduct joint hearings (each, a "Joint Hearing") with respect to any matter relating to the conduct, administration, determination, or disposition of any aspect of the Chapter 11 Cases or the Canadian Proceeding if both Courts determine and agree that such Joint Hearings are necessary or advisable. With respect to any

such Joint Hearings, unless otherwise ordered by both Courts, the following procedures shall apply:

- (i) a telephone or video link shall be established so that each Court will be able to simultaneously hear the proceedings in the other Court;
- (ii) notices, submissions, motions or applications by any party that are or become the subject of a Joint Hearing (collectively, the “Pleadings”) shall be made or filed initially only with the Court in which such party is appearing and seeking relief. Promptly after the scheduling of any Joint Hearing, the party submitting such Pleadings to one Court will file courtesy copies with the other Court. In any event, Pleadings seeking relief from both Courts shall be filed with both Courts;
- (iii) any party intending to rely on written evidentiary materials in support of a submission to the U.S. Court or the Canadian Court in connection with any Joint Hearing (collectively, “Evidentiary Materials”) shall file or otherwise submit such Evidentiary Materials to both Courts in advance of the Joint Hearing. To the fullest extent possible, the Evidentiary Materials filed in each Court shall be identical and shall be consistent with the procedural and evidentiary rules and requirements of each Court;
- (iv) if a party that has not previously appeared in or otherwise acknowledged the jurisdiction of a Court, it shall be entitled to file Pleadings or Evidentiary Materials in connection with the Joint Hearing without, by the mere act of such filings, being deemed to have appeared in or acknowledged the jurisdiction of the Court in which such material is filed, so long as such party does not request any affirmative relief from such Court;
- (v) the Judge of the U.S. Court and Justice of the Canadian Court who will preside over any Joint Hearing may communicate with each other in advance of such Joint Hearing, with or without counsel being present, to: (a) establish guidelines for the orderly submission of Pleadings, Evidentiary Materials and any other papers and for the rendering of decisions; and (b) address any related procedural, administrative or preliminary matters; and
- (vi) the Judge of the U.S. Court and Justice of the Canadian Court who will preside over any Joint Hearing may communicate with each other during and after any Joint Hearing, with or without counsel being present, for the purposes of: (a) determining whether consistent rulings can be made by both Courts; (b) coordinating the terms of the Courts’ respective rulings; and (c) addressing any related procedural or administrative matters.

12. Notwithstanding the terms of paragraph 12 above, this Protocol recognizes that the U.S. Court and Canadian Court are independent courts. Accordingly, although the Courts will seek to cooperate and coordinate with each other in good faith, each of the Courts shall be entitled at all times to exercise its independent jurisdiction and authority with respect to: (a) matters presented to and properly before such Court; and (b) the conduct of the parties appearing in such matters.

13. Where one Court has jurisdiction over a matter which requires the application of the law of the jurisdiction of the other Court to determine an issue before it, the Court with jurisdiction over such matter may, among other things, hear expert evidence or seek the advice and direction of the other Court in respect of the foreign law to be applied, which advice will be made available to all parties in interest.

Recognition of Stays of Proceedings

14. The Canadian Court hereby recognizes the validity of the stay of proceedings and actions against or respecting the Debtors and their property under section 362 of the Bankruptcy Code (the "U.S. Stay"). In implementing the terms of this paragraph, the Canadian Court may consult with the U.S. Court regarding: (a) the interpretation, extent, scope and applicability of the U.S. Stay and any orders of the U.S. Court modifying or granting relief from the U.S. Stay; and (ii) the enforcement of the U.S. Stay in Canada.

15. The U.S. Court hereby recognizes the validity of the CCAA Order and the stay of proceedings and actions against or respecting the Debtors and their property under the CCAA and CCAA Order (the "Canadian Stay"). In implementing the terms of this paragraph, the U.S. Court may consult with the Canadian Court regarding: (a) the interpretation, extent, scope and applicability of the Canadian Stay and any orders of the Canadian Court modifying or

granting relief from the Canadian Stay; and (b) the enforcement of the Canadian Stay in the United States.

16. Nothing contained herein shall affect or limit the Debtors' or other parties' rights to assert the applicability or nonapplicability of the U.S. Stay or the Canadian Stay to any particular proceeding, property, asset, activity or other matter, wherever pending or located.

Rights to Appear and Be Heard

17. Each of the Debtors, their creditors, the Estate Representatives, the U.S. Trustee and other interested parties in the Restructuring Proceedings, shall have the right and standing to:

- (a) Appear and be heard in either the U.S. Court or the Canadian Court in the Restructuring Proceedings to the same extent as a creditor and other interested party domiciled in the forum country, subject to any local rules or regulations generally applicable to all parties appearing in the forum;
- (b) File notices of appearance or other papers with the Clerk of the U.S. Court or the Canadian Court in the Restructuring Proceedings; provided, however, that any appearance or filing may subject a creditor or interested party to the jurisdiction of the Court in which the appearance or filing occurs; provided further, however, that the appearance by the Committee or the U.S. Trustee in the Canadian Proceeding, or the Monitor in the Chapter 11 Cases, shall not form a basis for personal jurisdiction over the members of the Committee, or the Monitor Parties (as defined below) in their individual capacity, by the Canadian Court and U.S. Court respectively. Notwithstanding the foregoing, and in accordance with the policies set forth above:
 - (i) the Canadian Court shall have jurisdiction over the U.S. Representatives and the U.S. Trustee solely with respect to the particular matters as to which the U.S. Representatives or the U.S. Trustee appear before the Canadian Court; and
 - (ii) the U.S. Court shall have jurisdiction over the Canadian Representatives solely with respect to the particular matters as to which the Canadian Representatives appear before the U.S. Court.

Retention and Compensation of Representatives and Professionals

18. The Monitor and its respective officers, directors, employees, counsel, and agents, wherever located (collectively, the “Monitor Parties”), and any other estate representatives appointed in the Canadian Proceedings (collectively, with the Monitor Parties, the “Canadian Representatives”) shall (subject to paragraph 18) be subject to the sole and exclusive jurisdiction of the Canadian Court with respect to all matters including: (a) the Canadian Representatives’ tenure in office; (b) the retention and compensation of the Canadian Representatives; (c) the Canadian Representatives’ liability, if any, to any person or entity, including the Debtors and any third parties, in connection with the Restructuring Proceedings; and (d) the hearing and determination of any other matters relating to the Canadian Representatives arising in the Canadian Proceedings under the CCAA or other applicable Canadian law. The Canadian Representatives, their counsel and any other professionals retained therefor (in all cases, whether Canadian or U.S.) shall not be required to seek approval of their retention in the U.S. Court. Additionally, the Canadian Representatives, their counsel and such other Canadian professionals (in all cases, whether Canadian or U.S.): (a) shall be compensated for their services solely in accordance with the CCAA, the CCAA Order and other applicable laws of Canada or orders of the Canadian Court; and (b) shall not be required to seek approval of their compensation in the U.S. Court.

19. The Monitor Parties shall be entitled to the same protections and immunities in the United States as those granted to them under the CCAA and the CCAA Order. In particular, except as otherwise provided in any subsequent order entered in the Canadian Proceedings, the Monitor Parties shall incur no liability or obligations as a result of the CCAA Order, the appointment of the Monitor, the carrying out of its duties or the provisions of the

CCAA and the CCAA Order by the Monitor Parties, except any such liability arising from actions of the Monitor Parties constituting gross negligence or willful misconduct.

20. Any estate representatives appointed in the Chapter 11 Cases, including the Committee and, without limitation, any examiners or trustees appointed in accordance with section 1104 of the Bankruptcy Code (collectively, the “U.S. Representatives”), shall (subject to paragraph 18) be subject to the sole and exclusive jurisdiction of the U.S. Court with respect to all matters, including: (a) the U.S. Representatives’ tenure in office; (b) the retention and compensation of the U.S. Representatives; (c) the U.S. Representatives’ liability, if any, to any person or entity, including the Debtors and any third parties, in connection with the Restructuring Proceedings; and (d) the hearing and determination of any other matters relating to the U.S. Representatives arising in the Chapter 11 Cases under the Bankruptcy Code or other applicable laws of the United States. The U.S. Representatives, their counsel and any other professionals retained therefor (in all cases, whether Canadian or U.S.) shall not be required to seek approval of their retention in the Canadian Court. Additionally, the U.S. Representatives, their counsel and such other professionals (in all cases, whether Canadian or U.S.): (a) shall be compensated for their services solely in accordance with the Bankruptcy Code and other applicable laws of the United States or orders of the U.S. Court; and (b) shall not be required to seek approval of their compensation in the Canadian Court.

21. Subject to paragraph 18, any Canadian professionals retained by any CCAA Debtors or Crossborder Debtors, including, in each case, without limitation, counsel, financial advisors, accountants, consultants and experts (collectively, the “Canadian Professionals”) shall be subject to the sole and exclusive jurisdiction of the Canadian Court. Accordingly, the Canadian Professionals: (a) shall be subject to the procedures and standards for

the retention and compensation applicable in the Canadian Court under the CCAA, the CCAA Order and any other applicable Canadian law or orders of the Canadian Court; and (b) shall not be required to seek approval of their retention or compensation in the U.S. Court.

22. Subject to paragraph 18, any United States professionals retained by any of the U.S. Debtors or Crossborder Debtors, including in each case, without limitation, counsel, financial advisors, accountants, consultants and experts (collectively, the “U.S. Professionals”) shall be subject to the sole and exclusive jurisdiction of the U.S. Court. Accordingly, the U.S. Professionals: (a) shall be subject to the procedures and standards for retention and compensation applicable in the U.S. Court under the Bankruptcy Code and any other applicable laws of the United States or orders of the U.S. Court; and (b) shall not be required to seek approval of their retention or compensation in the Canadian Court.

Notice

23. Notice of any Pleading or paper filed in one or both of the Restructuring Proceedings involving or related to matters addressed by this Protocol and notice of any related hearings or other proceedings shall be given by appropriate means (including, where circumstances warrant and if permitted by the applicable Court, by courier, facsimile and email) to the following: (a) all creditors and other interested parties, in accordance with the practice of the jurisdiction where the papers are filed or the proceedings are to occur; and (b) to the extent not otherwise entitled to receive notice under clause (a) of this paragraph, to counsel for (i) the Debtors, (ii) the Monitor, (iii) the U.S. Trustee, (iv) the Committee, (v) counsel for the agent under any debtor-in-possession financing facility approved by the Courts, (vi) counsel for the agent under the securitization facility; and (vii) such other parties as may be designated by either of the Courts from time to time. Notice in accordance with this paragraph shall be given by the

party otherwise responsible for effecting notice in the jurisdiction where the underlying papers are filed or the proceedings are to occur. In addition to the foregoing, upon request by either Court, the Monitor in the Canadian Proceedings and the Debtors in the Chapter 11 Cases shall provide to the U.S. Court or the Canadian Court, as the case may be, copies of all or any orders, decisions, opinions or similar papers issued by the other Court in the Restructuring Proceedings.

Effectiveness; Modification

24. This Protocol shall become effective only upon its approval by both the U.S. Court and the Canadian Court.

25. This Protocol may not be supplemented, modified, terminated or replaced in any manner except upon the approval of both the U.S. Court and the Canadian Court after notice and a hearing. Notice of any legal proceeding to supplement, modify, terminate or replace this Protocol shall be given in accordance with paragraph 24 above.

26. Notwithstanding anything to the contrary contained herein, nothing in this Protocol shall, or shall be deemed to, abrogate the requirements of Interim Rule 5012 (Communication of and Cooperation with Foreign Courts and Foreign Representatives) of the Federal Rules of Bankruptcy Procedure, which remain effective in the District of Delaware as provided in the General Order dated November 24, 2008 of the United States Bankruptcy Court for the District of Delaware.

Procedure for Resolving Disputes under the Protocol

27. Disputes relating to the terms, intent or application of this Protocol may be addressed by interested parties to either the U.S. Court, the Canadian Court or both Courts upon notice in accordance with paragraph 24 above. In rendering a determination in any such dispute, the Court to which the issue is addressed: (a) shall consult with the other Court; and (b) may, in

its sole and exclusive discretion, either: (i) render a binding decision after such consultation, (ii) defer to the determination of the other Court by transferring the matter, in whole or in part, to such other Court, or (iii) seek a Joint Hearing of both Courts in accordance with paragraph 12. Notwithstanding the foregoing, in making a determination under this paragraph, each Court shall give due consideration to the independence, comity and inherent jurisdiction of the other Court established under existing law.

28. In implementing the terms of the Protocol, the U.S. Court and the Canadian Court may, in their sole, respective discretion, provide advice or guidance to each other with respect to legal issues in accordance with the following procedures:

- (a) the U.S. Court or the Canadian Court, as applicable, may determine that such advice or guidance is appropriate under the circumstances;
- (b) the Court issuing such advice or guidance shall provide it to the other Court in writing;
- (c) copies of such written advice or guidance shall be served by the applicable Court in accordance with paragraph 24 above;
- (d) the Courts may jointly decide to invite the Debtors, the Committee, the Representatives, the U.S. Trustee, the Monitor and any other affected or interested party to make submissions to the appropriate Court in response to or in connection with any written advice or guidance received from the other Court; and
- (e) for clarity, the provisions of this paragraph shall not be construed to restrict the ability of either the U.S. Court or Canadian Court to confer as provided in paragraph 10 above.

29. For clarity, the provisions of this paragraph 29 shall not be construed to restrict the ability of the U.S. Court and Canadian Court to confer as provided in paragraph 12 above whenever they deem it appropriate to do so.

Preservation of Rights

30. Except as specifically provided herein, neither the terms of this Protocol nor any actions taken under this Protocol shall: (a) prejudice or affect the powers, rights, claims and defenses of the Debtors and their respective estates, the Estate Representatives, the U.S. Trustee, or any of the Debtors' creditors under applicable law, including, without limitation, the Bankruptcy Code, the CCAA and the orders of the Courts; or (b) preclude or prejudice the rights of any person to assert or pursue such person's substantive rights against any other person under the applicable laws of Canada or the United States.

Exhibit A

Guidelines Applicable to Court-to-Court Communications in Crossborder Cases

THE AMERICAN LAW INSTITUTE
in association with
THE INTERNATIONAL INSOLVENCY INSTITUTE

**Guidelines Applicable to Court-to-Court
Communications in Cross-Border Cases**

*As Adopted and Promulgated in Transnational Insolvency:
Principles of Cooperation Among the NAFTA Countries*

BY

THE AMERICAN LAW INSTITUTE
At Washington, D.C., May 16, 2000

And as Adopted by

THE INTERNATIONAL INSOLVENCY INSTITUTE
At New York, June 10, 2001



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The Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases were developed by The American Law Institute during and as part of its Transnational Insolvency Project and the use of the *Guidelines* in cross-border cases is specifically permitted and encouraged.

The text of the *Guidelines* is available in English and several other languages including Chinese, French, German, Italian, Japanese, Korean, Portuguese, Russian, Swedish, and Spanish on the website of the International Insolvency Institute at <http://www.iiglobal.org/international/guidelines.html>.

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Foreword by the Director of The American Law Institute

In May of 2000 The American Law Institute gave its final approval to the work of the ALI's Transnational Insolvency Project. This consisted of the four volumes eventually published, after a period of delay required by the need to take into account a newly enacted Mexican Bankruptcy Code, in 2003 under the title of *Transnational Insolvency: Cooperation Among the NAFTA Countries*. These volumes included both the first phase of the project, separate Statements of the bankruptcy laws of Canada, Mexico, and the United States, and the project's culminating phase, a volume comprising *Principles of Cooperation Among the NAFTA Countries*. All reflected the joint input of teams of Reporters and Advisers from each of the three NAFTA countries and a fully transnational perspective. Published by Juris Publishing, Inc., they can be ordered on the ALI website (www.ali.org).

A byproduct of our work on the Principles volume, these *Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases* appeared originally as Appendix B of that volume and were approved by the ALI in 2000 along with the rest of the volume. But the *Guidelines* have played a vital and influential role apart from the *Principles*, having been widely translated and distributed, cited and applied by courts, and independently approved by both the International Insolvency Institute and the Insolvency Institute of Canada. Although they were initially developed in the context of a project arrived at improving cooperation among bankruptcy courts within the NAFTA countries, their acceptance by the IIL, whose members include leaders

of the insolvency bar from more than 40 countries, suggests a pertinence and applicability that extends far beyond the ambit of NAFTA. Indeed, there appears to be no reason to restrict the *Guidelines* to insolvency cases; they should prove useful whenever sensible and coherent standards for cooperation among courts involved in overlapping litigation are called for. See, e.g., American Law Institute, International Jurisdiction and Judgments Project § 12(e) (Tentative Draft No. 2, 2004).

The American Law Institute expresses its gratitude to the International Insolvency Institute for its continuing efforts to publicize the *Guidelines* and to make them more widely known to judges and lawyers around the world; to III Chair E. Bruce Leonard of Toronto, who as Canadian Co-Reporter for the Transnational Insolvency Project was the principal drafter of the *Guidelines* in English and has been primarily responsible for arranging and overseeing their translation into the various other languages in which they now appear; and to the translators themselves, whose work will make the *Guidelines* much more universally accessible. We hope that this greater availability, in these new English and bilingual editions, will help to foster better communication, and thus better understanding, among the diverse courts and legal systems throughout our increasingly globalized world.

LANCE LIEBMAN
Director
The American Law Institute

January 2004

Foreword by the Chair of the International Insolvency Institute

The International Insolvency Institute, a world-wide association of leading insolvency professionals, judges, academics, and regulators, is pleased to recommend the adoption and the application in cross-border and multinational cases of The American Law Institute's *Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases*. The *Guidelines* were reviewed and studied by a Committee of the III and were unanimously approved by its membership at the III's Annual General Meeting and Conference in New York in June 2001.

Since their approval by the III, the *Guidelines* have been applied in several cross-border cases with considerable success in achieving the coordination that is so necessary to preserve values for all of the creditors that are involved in international cases. The III recommends without qualification that insolvency professionals and judges adopt the *Guidelines* at the earliest possible stage of a cross-border case so that they will be in place whenever there is a need for the courts involved to communicate with each other, e.g., whenever the actions of one court could impact on issues that are before the other court.

Although the *Guidelines* were developed in an insolvency context, it has been noted by litigation professionals and judges that the *Guidelines* would be equally valuable and constructive in any international case where two or more courts are involved. In fact, in multijurisdictional litigation, the positive effect of the *Guidelines* would be even greater in cases where several courts are involved. It

is important to appreciate that the *Guidelines* require that all domestic practices and procedures be complied with and that the *Guidelines* do not alter or affect the substantive rights of the parties or give any advantage to any party over any other party.

The International Insolvency Institute expresses appreciation to its members who have arranged for the translation of the *Guidelines* into French, German, Italian, Korean, Japanese, Chinese, Portuguese, Russian, and Swedish and extends its appreciation to The American Law Institute for the translation into Spanish. The III also expresses its appreciation to The American Law Institute, the American College of Bankruptcy, and the Ontario Superior Court of Justice Commercial List Committee for their kind and generous financial support in enabling the publication and dissemination of the *Guidelines* in bilingual versions in major countries around the world.

Readers who become aware of cases in which the *Guidelines* have been applied are highly encouraged to provide the details of those cases to the III (fax: 416-360-8877; e-mail: info@iiiglobal.org) so that everyone can benefit from the experience and positive results that flow from the adoption and application of the *Guidelines*. The continuing progress of the *Guidelines* and the cases in which the *Guidelines* have been applied will be maintained on the III's website at www.iiiglobal.org.

The III and all of its members are very pleased to have been a part of the development and success of the *Guidelines* and commend The American Law Institute for its vision in developing the *Guidelines* and in supporting

their worldwide circulation to insolvency professionals, judges, academics, and regulators. The use of the *Guidelines* in international cases will change international insolvencies and reorganizations for the better forever, and the insolvency community owes a considerable debt to The American Law Institute for the inspiration and vision that has made this possible.

E. BRUCE LEONARD

Chairman

The International Insolvency Institute

Toronto, Ontario

March 2004

Judicial Preface

We believe that the advantages of co-operation and co-ordination between Courts is clearly advantageous to all of the stakeholders who are involved in insolvency and reorganization cases that extend beyond the boundaries of one country. The benefit of communications between Courts in international proceedings has been recognized by the United Nations through the *Model Law on Cross-Border Insolvency* developed by the United Nations Commission on International Trade Law and approved by the General Assembly of the United Nations in 1997. The advantages of communications have also been recognized in the European Union Regulation on Insolvency Proceedings which became effective for the Member States of the European Union in 2002.

The *Guidelines for Court-to-Court Communications in Cross-Border Cases* were developed in the American Law Institute's Transnational Insolvency Project involving the NAFTA countries of Mexico, the United States and Canada. The *Guidelines* have been approved by the membership of the ALI and by the International Insolvency Institute whose membership covers over 40 countries from around the world. We appreciate that every country is unique and distinctive and that every country has its own proud legal traditions and concepts. The *Guidelines* are not intended to alter or change the domestic rules or procedures that are applicable in any country and are not intended to affect or curtail the substantive rights of any party in proceedings before the Courts. The *Guidelines* are intended to encourage and facilitate co-operation in international cases while observing all applicable rules and procedures of the Courts that are respectively involved.

The *Guidelines* may be modified to meet either the procedural law of the jurisdiction in question or the particular circumstances in individual cases so as to achieve the greatest level of co-operation possible between the Courts in dealing with a multinational insolvency or liquidation. The *Guidelines*, however, are not restricted to insolvency cases and may be of assistance in dealing with non-insolvency cases that involve more than one country. Several of us have already used the *Guidelines* in cross-border cases and would encourage stakeholders and counsel in international cases to consider the advantages that could be achieved in their cases from the application and implementation of the *Guidelines*.

Mr. Justice David Baragwanath
High Court of New Zealand
Auckland, New Zealand

Hon. Sidney B. Brooks
United States Bankruptcy Court
District of Colorado
Denver

Chief Justice Donald I. Brenner
Supreme Court of British Columbia
Vancouver

Hon. Charles G. Case, II
United States Bankruptcy Court
District of Arizona
Phoenix

Mr. Justice Miodrag Dordević
Supreme Court of Slovenia
Ljubljana

Hon. James L. Garrity, Jr.
United States Bankruptcy Court
Southern District of New York (Ret'd)
Shearman & Sterling
New York

Mr. Justice Paul R. Heath
High Court of New Zealand
Auckland, New Zealand

Chief Judge Burton R. Lifland
United States Bankruptcy Appellate
Panel for the Second Circuit
New York

Hon. George Paine II
United States Bankruptcy Court
District of Tennessee
Nashville

Mr. Justice Adolfo A.N. Rouillon
Court of Appeal
Rosario, Argentina

Mr. Justice Wisit Wisitsora – At
Business Reorganization Office
Government of Thailand
Bangkok

Mr. Justice J.M. Farley
Ontario Superior Court of Justice
Toronto

Hon. Allan L. Gropper
Southern District of New York
United States Bankruptcy Court
New York

Hon. Hyungdu Kim
Supreme Court of Korea
Seoul

Mr. Justice Gavin Lightman
Royal Courts of Justice
London

Hon. Chiyong Rim
District Court
Western District of Seoul
Seoul, Korea

Hon. Shinjiro Takagi
Supreme Court of Japan (Ret'd)
Industrial Revitalization Corporation of Japan
Tokyo

Mr. Justice R.H. Zulman
Supreme Court of Appeal of South Africa
Parklands

Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases

Introduction:

One of the most essential elements of cooperation in cross-border cases is communication among the administering authorities of the countries involved. Because of the importance of the courts in insolvency and reorganization proceedings, it is even more essential that the supervising courts be able to coordinate their activities to assure the maximum available benefit for the stakeholders of financially troubled enterprises.

These Guidelines are intended to enhance coordination and harmonization of insolvency proceedings that involve more than one country through communications among the jurisdictions involved. Communications by judges directly with judges or administrators in a foreign country, however, raise issues of credibility and proper procedures. The context alone is likely to create concern in litigants unless the process is transparent and clearly fair. Thus, communication among courts in cross-border cases is both more important and more sensitive than in domestic cases. These Guidelines encourage such communications while channeling them through transparent procedures. The Guidelines are meant to permit rapid cooperation in a developing insolvency case while ensuring due process to all concerned.

A Court intending to employ the Guidelines — in whole or part, with or without modifications — should adopt them formally before applying them. A Court may wish to make its adoption of the Guidelines contingent upon, or temporary until, their adoption by other courts concerned in the matter. The adopting

Court may want to make adoption or continuance conditional upon adoption of the Guidelines by the other Court in a substantially similar form, to ensure that judges, counsel, and parties are not subject to different standards of conduct.

The Guidelines should be adopted following such notice to the parties and counsel as would be given under local procedures with regard to any important procedural decision under similar circumstances. If communication with other courts is urgently needed, the local procedures, including notice requirements, that are used in urgent or emergency situations should be employed, including, if appropriate, an initial period of effectiveness, followed by further consideration of the Guidelines at a later time. Questions about the parties entitled to such notice (for example, all parties or representative parties or representative counsel) and the nature of the court's consideration of any objections (for example, with or without a hearing) are governed by the Rules of Procedure in each jurisdiction and are not addressed in the Guidelines.

The Guidelines are not meant to be static, but are meant to be adapted and modified to fit the circumstances of individual cases and to change and evolve as the international insolvency community gains experience from working with them. They are to apply only in a manner that is consistent with local procedures and local ethical requirements. They do not address the details of notice and procedure that depend upon the law and practice in each jurisdiction. However, the Guidelines represent approaches that are likely to be highly useful in achieving efficient and just resolutions of cross-border insolvency issues. Their use, with such modifications and under such circumstances as may be appropriate in a particular case, is therefore recommended.

Guideline 1

Except in circumstances of urgency, prior to a communication with another Court, the Court should be satisfied that such a communication is consistent with all applicable Rules of Procedure in its country. Where a Court intends to apply these Guidelines (in whole or in part and with or without modifications), the Guidelines to be employed should, wherever possible, be formally adopted before they are applied. Coordination of Guidelines between courts is desirable and officials of both courts may communicate in accordance with Guideline 8(d) with regard to the application and implementation of the Guidelines.

Guideline 2

A Court may communicate with another Court in connection with matters relating to proceedings before it for the purposes of coordinating and harmonizing proceedings before it with those in the other jurisdiction.

Guideline 3

A Court may communicate with an Insolvency Administrator in another jurisdiction or an authorized Representative of the Court in that jurisdiction in connection with the coordination and harmonization of the proceedings before it with the proceedings in the other jurisdiction.

Guideline 4

A Court may permit a duly authorized Insolvency Administrator to communicate with a foreign Court directly, subject to the approval of the foreign Court, or through an Insolvency Administrator in the other jurisdiction or through an autho-

rized Representative of the foreign Court on such terms as the Court considers appropriate.

Guideline 5

A Court may receive communications from a foreign Court or from an authorized Representative of the foreign Court or from a foreign Insolvency Administrator and should respond directly if the communication is from a foreign Court (subject to Guideline 7 in the case of two-way communications) and may respond directly or through an authorized Representative of the Court or through a duly authorized Insolvency Administrator if the communication is from a foreign Insolvency Administrator, subject to local rules concerning ex parte communications.

Guideline 6

Communications from a Court to another Court may take place by or through the Court:

- (a) Sending or transmitting copies of formal orders, judgments, opinions, reasons for decision, endorsements, transcripts of proceedings, or other documents directly to the other Court and providing advance notice to counsel for affected parties in such manner as the Court considers appropriate;
- (b) Directing counsel or a foreign or domestic Insolvency Administrator to transmit or deliver copies of documents, pleadings, affidavits, factums, briefs, or other documents that are filed or to be filed with the Court to the other Court in such fashion as may be appropriate and providing advance notice to counsel for affect-

ed parties in such manner as the Court considers appropriate;

- (c) Participating in two-way communications with the other Court by telephone or video conference call or other electronic means, in which case Guideline 7 should apply.

Guideline 7

In the event of communications between the Courts in accordance with Guidelines 2 and 5 by means of telephone or video conference call or other electronic means, unless otherwise directed by either of the two Courts:

- (a) Counsel for all affected parties should be entitled to participate in person during the communication and advance notice of the communication should be given to all parties in accordance with the Rules of Procedure applicable in each Court;
- (b) The communication between the Courts should be recorded and may be transcribed. A written transcript may be prepared from a recording of the communication which, with the approval of both Courts, should be treated as an official transcript of the communication;
- (c) Copies of any recording of the communication, of any transcript of the communication prepared pursuant to any Direction of either Court, and of any official transcript prepared from a recording should be filed as part of the record in the proceedings and made available to counsel for all parties in both

Courts subject to such Directions as to confidentiality as the Courts may consider appropriate; and

- (d) The time and place for communications between the Courts should be to the satisfaction of both Courts. Personnel other than Judges in each Court may communicate fully with each other to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by either of the Courts.**

Guideline 8

In the event of communications between the Court and an authorized Representative of the foreign Court or a foreign Insolvency Administrator in accordance with Guidelines 3 and 5 by means of telephone or video conference call or other electronic means, unless otherwise directed by the Court:

- (a) Counsel for all affected parties should be entitled to participate in person during the communication and advance notice of the communication should be given to all parties in accordance with the Rules of Procedure applicable in each Court;**
- (b) The communication should be recorded and may be transcribed. A written transcript may be prepared from a recording of the communication which, with the approval of the Court, can be treated as an official transcript of the communication;**
- (c) Copies of any recording of the communication, of any transcript of the communication prepared pursuant to any Direction of the Court, and of any official tran-**

script prepared from a recording should be filed as part of the record in the proceedings and made available to the other Court and to counsel for all parties in both Courts subject to such Directions as to confidentiality as the Court may consider appropriate; and

- (d) The time and place for the communication should be to the satisfaction of the Court. Personnel of the Court other than Judges may communicate fully with the authorized Representative of the foreign Court or the foreign Insolvency Administrator to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by the Court.

Guideline 9

A Court may conduct a joint hearing with another Court. In connection with any such joint hearing, the following should apply, unless otherwise ordered or unless otherwise provided in any previously approved Protocol applicable to such joint hearing:

- (a) Each Court should be able to simultaneously hear the proceedings in the other Court.
- (b) Evidentiary or written materials filed or to be filed in one Court should, in accordance with the Directions of that Court, be transmitted to the other Court or made available electronically in a publicly accessible system in advance of the hearing. Transmittal of such material to the other Court or its public availability in an electronic system should not subject the party filing the material in one Court to the jurisdiction of the other Court.

- (c) Submissions or applications by the representative of any party should be made only to the Court in which the representative making the submissions is appearing unless the representative is specifically given permission by the other Court to make submissions to it.
- (d) Subject to Guideline 7(b), the Court should be entitled to communicate with the other Court in advance of a joint hearing, with or without counsel being present, to establish Guidelines for the orderly making of submissions and rendering of decisions by the Courts, and to coordinate and resolve any procedural, administrative, or preliminary matters relating to the joint hearing.
- (e) Subject to Guideline 7(b), the Court, subsequent to the joint hearing, should be entitled to communicate with the other Court, with or without counsel present, for the purpose of determining whether coordinated orders could be made by both Courts and to coordinate and resolve any procedural or nonsubstantive matters relating to the joint hearing.

Guideline 10

The Court should, except upon proper objection on valid grounds and then only to the extent of such objection, recognize and accept as authentic the provisions of statutes, statutory or administrative regulations, and rules of court of general application applicable to the proceedings in the other jurisdiction without the need for further proof or exemplification thereof.

Guideline 11

The Court should, except upon proper objection on valid grounds and then only to the extent of such objection, accept that Orders made in the proceedings in the other jurisdiction were duly and properly made or entered on or about their respective dates and accept that such Orders require no further proof or exemplification for purposes of the proceedings before it, subject to all such proper reservations as in the opinion of the Court are appropriate regarding proceedings by way of appeal or review that are actually pending in respect of any such Orders.

Guideline 12

The Court may coordinate proceedings before it with proceedings in another jurisdiction by establishing a Service List that may include parties that are entitled to receive notice of proceedings before the Court in the other jurisdiction ("Non-Resident Parties"). All notices, applications, motions, and other materials served for purposes of the proceedings before the Court may be ordered to also be provided to or served on the Non-Resident Parties by making such materials available electronically in a publicly accessible system or by facsimile transmission, certified or registered mail or delivery by courier, or in such other manner as may be directed by the Court in accordance with the procedures applicable in the Court.

Guideline 13

The Court may issue an Order or issue Directions permitting the foreign Insolvency Administrator or a representative of creditors in the proceedings in the other jurisdiction or an authorized

Representative of the Court in the other jurisdiction to appear and be heard by the Court without thereby becoming subject to the jurisdiction of the Court.

Guideline 14

The Court may direct that any stay of proceedings affecting the parties before it shall, subject to further order of the Court, not apply to applications or motions brought by such parties before the other Court or that relief be granted to permit such parties to bring such applications or motions before the other Court on such terms and conditions as it considers appropriate. Court-to-Court communications in accordance with Guidelines 6 and 7 hereof may take place if an application or motion brought before the Court affects or might affect issues or proceedings in the Court in the other jurisdiction.

Guideline 15

A Court may communicate with a Court in another jurisdiction or with an authorized Representative of such Court in the manner prescribed by these Guidelines for purposes of coordinating and harmonizing proceedings before it with proceedings in the other jurisdiction regardless of the form of the proceedings before it or before the other Court wherever there is commonality among the issues and/or the parties in the proceedings. The Court should, absent compelling reasons to the contrary, so communicate with the Court in the other jurisdiction where the interests of justice so require.

Guideline 16

Directions issued by the Court under these Guidelines are subject to such amendments, modifications, and extensions as

may be considered appropriate by the Court for the purposes described above and to reflect the changes and developments from time to time in the proceedings before it and before the other Court. Any Directions may be supplemented, modified, and restated from time to time and such modifications, amendments, and restatements should become effective upon being accepted by both Courts. If either Court intends to supplement, change, or abrogate Directions issued under these Guidelines in the absence of joint approval by both Courts, the Court should give the other Courts involved reasonable notice of its intention to do so.

Guideline 17

Arrangements contemplated under these Guidelines do not constitute a compromise or waiver by the Court of any powers, responsibilities, or authority and do not constitute a substantive determination of any matter in controversy before the Court or before the other Court nor a waiver by any of the parties of any of their substantive rights and claims or a diminution of the effect of any of the Orders made by the Court or the other Court.

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