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)

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 OF THE AMENDED MOTION FOR THE ISSUANCE OF AN ORDER AUTHORIZING THE SALE OF PETITIONER ABITIBI-CONSOLIDATED COMPANY OF CANADA'S INDIRECT INTEREST IN THE MCCORMICK HYDROELECTRIC FACILITY

(Section 11 of the *Companies' Creditors Arrangement Act* ("CCAA")

IN CONTESTATION OF THE AMENDED MOTION FOR THE ISSUANCE OF AN ORDER AUTHORIZING THE SALE OF THE PETITIONER ABITIBI-CONSOLIDATED COMPANY OF CANADA'S INDIRECT INTEREST IN THE MCCORMICK HYDROELECTRIC FACILITY (the "Motion"), 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") (the Senior Noteholders Committee and the Notes Trustee, collectively the "Senior Secured Noteholders") SUBMIT THE FOLLOWING:

A. OVERVIEW AND SUMMARY

1. Abitibi Consolidated Company of Canada ("**ACCC**") wants to monetize its 60% share interest in the Manicouagan Power Company ("**MPCo**") and proposes to do that through the sale of its interest to Hydro Quebec ("**HQ**"), which ACCC says is for a purchase price of C$615 million;

2. In large measure ACCC monetized its interest in MPCo in April 2008 when it borrowed US$413 million on the security of its interest in MPCo;

3. At that time the Senior Secured Noteholders advanced US$413 million to ACCC (the "**Senior Secured Loan**") on the strength of ACCC's interest in MPCo along with certain other collateral;

4. Before ACCC's CCAA filing it announced that it would sell its share interest in MPCo to Hydro Quebec for the sum of C$615 million;

5. Before ACCC's CCAA filing it said, in the context of its CBCA filing, that it would use the proceeds of the sale of its interest in MPCo to repay the Senior Secured Loan. The CBCA arrangement is produced as Exhibit **SN-1**;

6. Following the filing, ACCC sought approval of DIP financing arrangements that provided that the entire DIP loan might be repaid from the proceeds of ACCC's interest in MPCo;

7. After considerable negotiation, the Senior Secured Noteholders agreed to those arrangements provided they were protected by a priority subrogation charge, that was agreed by ACCC and ordered by the Court;

8. At the time the DIP order was made ACCC said that it would find other sources of refinancing if the sale of its interest in MPCo could not be completed by November 2009; there is no indication that ACCC has made any efforts to find other financing;

9. From at least March of 2009 ACCC has been in negotiations with HQ and Alcoa Canada, the other shareholder of MPCo ("**Alcoa**");

10. Apparently early in the CCAA proceeding started, the form of the contemplated MPCo transaction changed fundamentally;

11. What was originally a share transaction changed through negotiations amongst ACCC, MPCo, HQ and Alcoa to a complex multi-step transaction involving the disposition of assets, wind-ups, the creation of a limited partnership, stipulations for holdbacks, price reductions and a variety of indemnities;

12. At no time during these months of negotiations did ACCC notify the Senior Secured Noteholders, the Trustee or their advisors of these fundamental changes, consult with them or seek to involve them, notwithstanding Trustee's and the Senior Secured Noteholders' rights in the MPCo shares and the critical importance of the MPCo collateral to them;

13. Only after negotiating an Implementation Agreement did ACCC advise of the nature of the transaction and then less than two weeks before presenting ACCC's first motion in connection with the MPCo transaction;

14. Shockingly, ACCC's initial motion made no mention whatsoever of the Senior Secured Noteholders, the Senior Secured Loan or the security granted by ACCC in its interest in MPCo;

15. The transaction changed in other significant ways as well;

16. Where once ACCC's goal was to sell its interest in MPCo and repay the Senior Secured Loan, eliminating ongoing interest costs and making available the surplus for working capital purposes, its present goal is to deprive the Senior Secured Noteholders of as much of the proceeds of their collateral as possible and to make those proceeds available to ACCC and other Abitibi Petitioners for working capital purposes;

17. The changes to the transaction enormously increase the cost of the transaction and hence equally enormously reduce the proceeds available to the Senior Secured Noteholders, this was done without the consent of the Senior Secured Noteholders and without consultation with them;

18. The changes to the transaction effect transfers of proceeds of the Senior Secured Noteholders' collateral so that it is free of the Senior Secured Noteholders' security depriving the Senior Secured Noteholders security and control rights;

19. The changes to the transaction were made with the intention and have the effect of making the reduced proceeds of sale of the Senior Secured Noteholders' collateral available to ACCC either directly or through borrowings of proceeds of sale of the Senior Secured Noteholders' collateral and, in that case, with no control by the Senior Secured Noteholders over the use of their collateral;

20. In this respect, the transaction fundamentally alters the status quo and effects a confiscation of the Senior Secured Noteholders' collateral. Again, this is entirely inconsistent with the purposes and foundational principles of the CCAA;

21. In the face of this proposed transaction, ACCC argues that it must be approved otherwise any restructuring is in jeopardy because the existing DIP loan must be repaid by November 2009;

22. If that were true, it would only be true because ACCC designed and seeks to implement a transaction that is intended to take assets and value from the Senior Secured Noteholders having kept it and its details hidden from the Senior Secured Noteholders until it was in a position to say that there is no time to revisit the terms and conditions of the transaction;

23. ACCC's conduct should not be approved by the court as approval of this transaction in its present form would amount to an endorsement of such conduct and confiscation;

24. However, there is still time to allow the Senior Secured Noteholders to participate in the negotiation of an arrangement along the lines of the transaction;

25. Moreover, in this regard, it is telling that ACCC has not asked Investissement Quebec, the DIP lender, to extend, for a short time, the delay for repayment of the DIP loan, to give all those with a real interest in MPCo, including the Senior Secured Noteholders, an opportunity to reach agreement concerning the terms and conditions of a transaction that is fair and reasonable and respects the rights and interests of all;

B. THE FACTS

<u>The Senior Secured Notes</u>

26. Under the Senior Secured Loan, the Senior Secured Noteholders advanced approximately US$413 million to ACCC in April 2008 ;

27. With accrued interest, the approximate amount presently owing in respect of the Senior Secured Loan is US $450 million, and interest continues to accrue on the Notes at the rate of 14.75% per year or about US $5 million per month;

28. The second interest payment on the Senior Secured Loan was due on April 1, 2009. ACCC failed to make that payment when due and hence is in default and therefore ACCC and all guarantors under the Security Documentation are in default since then, before the issuance of the April 17, 2009 Initial Order in this case;

<u>The Senior Notes Security</u>

29. The Senior Secured Notes were issued under a Trust Indenture dated as of 1 April 2008 among ACCC, Abitibi Consolidated Inc.("**ACI**"), other guarantors including Les Explorations Terra Nova Ltée, The Jonquière Pulp Company, The International Bridge and Terminal Company, Scramble Mining Ltd., Abitibi-Consolidated Canadian Office Products Holdings Inc., 3224112 Nova Scotia Limited, Donohue Recycling Inc., Marketing Donohue Inc., 1508756 Ontario Inc., 6169678 Canada Inc., 3834328 Canada Inc. and Abitibi-Consolidated Nova Scotia Inc. (namely all the Petitionners described in Schedule "A" of the Initial Order as the "**Abitibi Petitioners**", the "**Guarantors**") and Wells Fargo Bank, National Association as Trustee. The Trust Indenture is produced as exhibit **SN-2** (the "**Trust Indenture**");

30. Wells Fargo Bank, National Association was the collateral trustee (the "**Collateral Trustee**") under the Collateral Trust Agreement dated as of April 1, 2008 among ACI and ACCC and other guarantors from time to time, Wells Fargo Bank, National Association as Indenture Trustee (the "**Notes Trustee**") and Wells Fargo Bank, National Association as Collateral Trustee. A copy of the Collateral Trust Agreement is produced as Exhibit **SN-3** (the "**Collateral Trust Agreement**");

31. Wells Fargo Bank, National Association has been replaced as Notes Trustee under the Trust Indenture and as Collateral Trustee under the Collateral Trust Agreement by U.S. Bank, National Association;

32. To secure the obligations of ACCC and the Guarantors under the Senior Secured Notes, ACCC, ACI and the Guarantors granted security Security to the Collateral Trustee which includes a Senior Secured Notes Hypothec and Issue of Debentures dated March 28, 2008 (the "**Senior Secured Notes Hypothec**"). Copies of the principal security documents (including the Senior Secured Notes' Hypothec) in respect of the Senior Secured Loan are produced *en liasse* as Exhibit **SN-4**;

33. The Senior Secured Loan is secured (the "**Senior Notes Security**") by ACCC's interests in three categories of assets (the "**Senior Notes Collateral**"):

    (i) ACCC's 60% interest in MPCo (the "**MPCo Collateral**"); 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 (the "**ACH Collateral**");

    (iii) eleven pulp and paper mills and related equipment (the "**Mill Collateral**");

(iv) Equipment and intellectual property;

34. The Senior Secured Loan was made primarily on the strength of the MPCo Collateral and the ACH Collateral (the "**Hydro Assets**");

35. Through the Senior Secured Loan, ACCC monetized its interest in these assets and obtained US$413 million;

36. The Abitibi Petitioners have admitted and recognized that the Senior Notes Collateral includes ACCC's 60% share interest in MPCo at paragraph 59 of the Petitioners' motion for approval of DIP financing in respect of the Abitibi Petitioners dated 27 April 2009 ("**DIP Motion**") and paragraphs 35, 36 and 37 of the Monitor's Third Report to the Court dated 27 April 2009 (the "**Monitor's Third Report**");

The Senior Notes Collateral

37. The Abitibi Petitioners have pronounced from time to time that the Senior Secured Noteholders are over secured;

38. No valuations, appraisals or other expert evidence of value has been produced to support that statement;

39. On the strength of these pronouncements ACCC proposes to use a substantial portion of the proceeds of the MPCo transaction for operating purposes;

40. While being over secured would not be sufficient to justify the use or confiscation of the Senior Notes Collateral, the burden is and should be on the Abitibi Petitioners to show that the Senior Secured Noteholders are over secured; they have not done so, they have not attempted to do so;

41. The Court should discount unsupported claims of over collateralization by the Abitibi Petitioners, particularly where the Abitibi Petitioners say that their only source of funding is the Senior Notes Collateral or its proceeds and particularly in the Abitibi Petitioners' current circumstances;

42. The availability of value and the amount of value if any that may be available from the ACH Collateral is open to serious question;

43. Before the initial application, the Abitibi Petitioners had announced an expression of interest in respect of the possible sale of the ACH Collateral, the Abitibi Petitioners have since announced that they are not proceeding with the sale of the ACH Collateral and intend continue to hold that property;

The DIP Loan

44. In May 2009 the Petitioners sought approval of a US$100 million DIP facility. The Senior Secured Noteholders worked with the Abitibi Petitioners and ultimately supported the approval by the Court of the DIP facility notwithstanding that the DIP Loan Agreement called for the payment out of the proceeds of sale of the MPCo Collateral (among other sources) on the completion of the sale of the MPCo Collateral;

45. The Senior Secured Noteholders supported approval of the DIP facility on the strength of the subrogation provisions of the Second Amended and Restated Initial Order and on the strength of the anticipated sale of the MPCo Collateral for $615 million;

46. It appears that at the very time that the Senior Secured Noteholders' support was sought and obtained in respect of the DIP facility the proposed MPCo transaction had changed fundamentally;

47. The Abitibi Petitioners did not tell the Senior Secured Noteholders of those changes; they should have done so since the changes made the MPCo transaction materially different from the publicly announced transaction;

48. At the time that the Abitibi Petitioners sought approval of the DIP facility they advised the Senior Secured Noteholders and the Court that if the MPCo transaction could not be completed by November 2009, they would seek out and arrange a replacement DIP facility (paragraph 8 of the Petitioners' DIP Motion);

49. There is no indication that the Abitibi Petitioners have taken a single step in that regard;

C. THE PROPOSED TRANSACTION

Lack of Information

50. As appears from Hydro-Quebec Production's ("**HQP**") letter to ACCC dated February 18, 2009 (Petitioners exhibit R-3), HQP intended to purchase all of ACCC's shares of MPCo (60%) for Can $615 million subject to conditions detailed in the letter;

51. This proposed acquisition by HQP was disclosed to the public by an ACCC news release on March 13, 2009 (Petitioners Exhibit R-4);

52. In the Monitor's Third Report produced to support the Petitioners' DIP Application, the Monitor reported that:

> "(...)Management advised the Monitor that it expects that ACCC's net proceeds from the sale will be approximately Can $390 million.

> ACCC is continuing negotiations in connection with the MPCo sale (…)"

53. Despite requests for information, representatives of the Senior Secured Noteholders were excluded from the negotiation process and were not provided with any information concerning the proposed transaction.

Limited Information Provided Once the Transaction has been Negotiated

54. Finally, after the implementation agreement had been substantially agreed, on 20 August 2009, representatives of some of the Senior Secured Noteholders were given a presentation outlining the basic elements of the proposed transaction but were given no opportunity to participate in the process; the proposed transaction was presented as a fait accompli;

The Original Motion and the Proposed Transaction

55. On September 3, 2009 when the Motion material was served, the final nature of the transaction to be concluded with HQP (the "**Transaction**") was finally disclosed;

56. The letter of HQP of April 28, 2009 addressed to ACCC states that the parties are contemplating alternatives to the proposed initial Transaction to change the structure of same from a share sale to a sale of all of MPCo's assets to allow HQP to acquire directly or indirectly ACCC's 60% interest in MPCo;

57. Clearly the Petitioners intentionally kept the new structure of the Transaction secret from the Senior Secured Noteholders as it endangered their rights as secured creditors;

58. The purpose and intent of the MPCo transaction is most clearly revealed by the Abitibi Petitioners' motion for approval of the transaction;

59. While the transaction steps are complicated the effect and intent of the transaction may be summarized as follows:

    (a) The purchase price is said to be $615 million;

    (b) There will be a purchase price holdback of $30.75 million;

    (c) The proceeds will be used to satisfy obligations between (i) ACCC and Alcoa, (ii) ACCC and MPCo, (iii) MPCo and HQ and (iv) ACCC and HQ. These appropriations take at least $31 million from the gross purchase price for the benefit of ACCC and other Abitibi entities;

    (d) As a consequence of the changes to the transaction, Alcoa stipulated for and ACCC agreed to provide Alcoa with an indemnity for potential tax and other liability "since the Proposed Transaction cannot be carried out without triggering a disposition of Alcoa's shares in MPCo for tax purposes."

Alcoa requested and ACCC agreed that that tax indemnity would be secured by a portion of the proceeds of sale, which is to be placed in a new unlimited liability company (the "**ULC**") owned by ACCC and over which the Senior Secured Noteholders would have no charge or security. The amount of this appropriation is approximately $81 million;

(e) A question arose whether MPCo might be solidarily liable for certain pension liabilities that are the responsibility of Abitibi Petitioners. Alcoa stipulated for and ACCC agreed to provide Alcoa with an indemnity in respect of any such "Contingent Pension Liabilities";

Alcoa requested and ACCC agreed that such indemnity would be secured by a portion of the proceeds of sale, which is to be placed in the ULC. The Senior Secured Noteholders would have no charge over that money. The amount of this appropriation is approximately $202 million;

(f) Pursuant to the Implementation Agreement, the property to be held by the ULC (the approximately $283 million, referred to in (d) and (e) above) (the "**ULC Assets**") may be invested. ACCC and Alcoa have agreed on the permitted forms of investment;

According to the Abitibi Petitioners' motion, the first permitted form of investment is "DIP loans made by ULC to ACI or ACCC on terms and conditions (including security ranking) reasonably satisfactory to Alcoa". Other permitted investments include cash or cash equivalents or "such other assets as may be agreed to by ACCC and Alcoa";

Not only do the Senior Secured Noteholders not have a charge upon the proceeds of their collateral, they have no control over the use of the proceeds of that collateral. Rather the control of the ULC Assets, the proceeds of their collateral is in the discretion of ACCC and Alcoa;

Even if it were the case that this kind of security in favour of Alcoa is permissible, which is not admitted, the idea that ACCC should be entitled to borrow proceeds of the Senior Secured Noteholders' collateral without their agreement as to terms and conditions is antithetical to the most basic ideas of security and insolvency law;

(g) Up to US$100 million is to be used to repay the existing DIP facility. The amount presently drawn is approximately US$58.4 million;

(h) No mention is made in the Abitibi Petitioners original motion of the use of the balance of the proceeds (approximately $145 million). However, the Implementation Agreement suggests it will simply be retained by ACCC. No reference is made in the original motion to payment of this amount to the Senior Secured Noteholders, though it is the proceeds of their collateral;

60. The intent and effect of the proposed transaction is evident from the foregoing: to convert the Senior Secured Noteholders' most important collateral to cash, subject to a variety of huge costs and holdbacks and indemnities, so that the balance: the net proceeds ($145 million), the ULC Assets ($283.2 million) and the amount allocated to the existing DIP loan (at least US$58 million) would be available to ACCC and the other Abitibi Petitioners for use in their business despite the unmentioned security rights of the Senior Secured Noteholders;

The Amended Motion

61. Almost immediately after the Abitibi Petitioners' original motion was served, they said they would amend the motion to recognize the Senior Secured Noteholders' security rights;

62. The Abitibi Petitioners' Amended Motion overtly recognizes the force of the objections of the Senior Secured Noteholders to the proposed transaction and its treatment of the Senior Notes Collateral. However, it merely pretends to address the attempted confiscation of the Senior Notes Collateral;

63. The Abitibi Petitioners Amended Motion proposes that the net proceeds from the proposed transactions constitute and shall for all purposes be treated as proceeds of disposition of the MPCo shares pledged in favour of the Senior Secured Noteholders and shall be subject to a replacement charge in favour of the Trustee and for the benefit of the Senior Secured Noteholders;

64. However, even in the context of the proposed transactions, there are enormous exclusions from the proposed replacement charge. Those exclusions include the ULC Assets, the 30.75 million holdback in favour of HQ, and any amount used to repay the existing DIP loan;

65. In an attempt to address the Senior Secured Noteholders' legitimate complaint, ACCC proposes to provide the Trustee, for the benefit of the Senior Secured Noteholders, with a fully subordinated unsecured guarantee from the ULC and a pledge of the shares of the ULC;

66. The guarantee is said to be subordinate to any obligations of the ULC. Again, ACCC and Alcoa may invest the ULC Assets as they see fit including by making DIP loans to ACCC;

67. There is no charge in favour of the Senior Secured Noteholders; there is no control over the real proceeds of its collateral by the Senior Secured Noteholders;

68. Further, none of the proceeds of the transaction are to be paid to the Senior Secured Noteholders;

69. Instead any proceeds are to be paid to the Monitor to be held pending further order of the court;

70. It is evident that ACCC seeks to find a way to use the proceeds of the Senior Secured Noteholders collateral for its own purposes. Even in its Amended Motion, the Abitibi Petitioners have failed to set forth all of the aspects of the proposed transaction;

71. The Abitibi Petitioners have said that there are two issues: approval of the proposed transaction and use of the proceeds;

72. However, the two questions are so inextricably intertwined that there is only one question: should the proposed transactions be authorized and if so on what terms and conditions;

D. ILLEGALITY OF THE PROPOSED TRANSACTION

The order sought will cause extreme prejudice to the Senior Secured Noteholders

73. The Senior Secured Noteholders hold security over the ACCC MPCo. shares as attested by the Senior Secured Notes Hypothec;

74. The *Motion to Authorize the Sale* describes certain of the terms and conditions agreed on by ACCC with Alcoa and HQP in order to proceed with the sale of the McCormick Hydroelectric Facility, as appears from the court record;

75. None of these terms and conditions of the Implementation Agreement take into account the priority interests of the Senior Secured Noteholders in ACCC's only interest in MPCo, its 60% share interest;

76. The only reason for the transfer of MPCo's assets to ACCC and the wind-up of MPCo into ACCC results from rights derived from its holding of MPCo's shares;

77. Since ACCC's 60% equity interest in MPCo has been hypothecated in favor of the Senior Secured Noteholders and the said shares have been pledged to them, it follows that the interest, rights, fruits, proceeds and revenues of the said shares are an accessory of the shares which must be remitted to the Senior Secured Noteholders or the Trustee;

78. Furthermore, upon winding-up or dissolution of MPCo, in accordance with the Company's Act, all of its property and assets are divided rateably amongst its shareholders;

79. But for the court ordered stay of proceedings the Senior Secured Noteholders could institute legal action to intercept this transfer and would issue and register their notice of withdrawal of authorisation to collect such interest, rights, fruits. Proceeds and revenues derived from the MPCo shares;

80. The Senior Secured Noteholders were purposely excluded from participation in or knowledge of the proposed transaction. In proceeding in this way, ACCC failed to act in good faith contrary to its obligations to the Trustee and the Senior Secured Noteholders;

81. The Abitibi Petioners have refused to take into account the interests of the Senior Secured Noteholders and want now to take advantage of the proceedings before this court to deprive them of their contractual and proprietary rights; rights granted by ACCC pursuant to, among other things, the Senior Secured Notes Hypothec;

82. In other words, the Petitioners are asking this honorable Court to terminate the Senior Secured Notes Hypothec with respect to the MPCo shares, without proper compensation to the Senior Secured Notes, depriving them of their collateral and the source of repayment of the Senior Secured Loan;

83. In addition, by taking advantage of the Stay Order issued on May 6, 2009, by this Court, the Petioners are committing an abuse of rights towards the Senior Secured Notes;

84. Should this Court grant the authorization sought, the Senior Secured Notes will be deprived of the main source of reimbursement of the Senior Secured Loan that they have made in good faith to Petitioners less than 17 months ago;

<u>Confiscation and Fundamental Change of the Status Quo</u>

85. The approval of the transaction sought by the Abitibi Petitioners would work a confiscation of rights and value from the Senior Secured Noteholders and would unalterably change the status quo;

86. Both of these effects, intended by the Abitibi Petitioners, are entirely inconsistent with the basic tenets of restructuring law in Canada;

<u>Senior Secured Noteholders' Approval is Required</u>

87. Consistent with the CCAA, if ACCC, a CCAA debtor, seeks to fundamentally alter the rights of the Senior Secured Noteholders it must either obtain the consent of the Senior Secured Noteholders or, in the alternative, use the provisions of the CCAA to seek to compromise those rights;

88. In this case, ACCC and the Abitibi Petitioners have steadfastly declined to proceed in this way;

89. In addition, creditor's rights can only be compromised through a plan of arrangement fully approved by the required vote of such creditor's class;

90. Moreover, as stated below, the Senior Secured Noteholders hold the voting rights to ACCC's MPCo shares;

Implications of the Motion

91. The order sought by the Abitibi Petitioners is extraordinary;

92. Through a public offering of secured notes, ACCC and other Abitibi Petitioners began a process pursuant to which they offered, agreed and entered into a series of security documentation which consisted of the basis upon which the Senior Secured Notes have agreed to lend US $413 million less than a year before the issuance of the Initial Order;

93. While it is acknowledged that CCAA courts in other cases have authorized sales of assets in advance of the presentation of a plan, in no case has the court authorized the sale of assets out of the ordinary course of business without either (a) the consent, participation and support of affected secured creditors or (b) in an exceedingly limited number of cases, an order stipulating that all proceeds of the transaction stand in the place of the assets sold and subject to the security rights of such secured creditors. Neither is the case in respect of the original motion or the amended motion;

94. Accordingly, if the Abitibi Petitioners' Motion was granted it would fundamentally change the law with respect to asset dispositions in insolvency proceedings in Canada and should have wide repercussions for the debt markets throughout Canada;

95. Approving the proposed transaction would be against all principles of secured lending in Canada and would most likely have a direct negative impact on the access to finals for Canadian corporations as potential lenders will be reluctant to lend money if there is a risk that they may be deprived of their security without compensation;

Approval of the transaction is equivalent to approving a transaction which would be subject to a Paulian Recourse(art. 1631 and following ccq) which cannot receive court approval

96. The Senior Secured Noteholders are secured creditors of ACCC and their claims predate the proposed transaction;

97. The Transaction is being driven by ACCC, an insolvent corporation, who is directly structuring a transaction that will transfer outside the normal course of

business all of MPCo's assets, a private company of which it holds 60% of the shares and controls the board of Directors, to a third party, rendering the shares of MPCo pledged in favour of the Senior Secured Noteholders worthless to avoid paying the secured claim of the Senior Secured Noteholders, a copy of the MCO Shareholders' Agreement is produced as Exhibit **SN-5**;

98. As part of the steps of the Proposed Transaction and ACCC will control 100% of the shares of MPCo and as such will definitively become MPCo' *alter ego*;

99. Furthermore, all proceeds of the proposed transaction namely Can $615 million are paid to ACCC who then transfers the sum of Can $283.3 million to a newly formed special purpose subsidiary, (the ULC), pays the tax reimbursement to Alcoa (Can $25 million), pays to HQ the unpaid electricity consumption invoices owed by other related corporations (not MPCo), pays the ACI DIP, and keeps the surplus of approximately Can $145 million for its own use and transfers the right to receive the HQE Holdback of Can $30.75 million to the ULC;

100. ACCC controls this process as three out of five board members of MPCo are named by the Petitioners and are employees of one of the companies in the Abitibi group of companies, as appears form MPCo's CIDREQ summary, copy of which is produced as Exhibit **SN-6**;

101. The MPCo Directors knew or should have known that if completed, the proposed transaction will strip MPCo of its assets and profit ACCC at the expense of the Senior Secured Noteholders;

102. As a matter of fact Alcoa and the Directors of MPCo are aware of the right of the Senior Secured Noteholders to attack the proposed transaction as they have requested and obtained an indemnification to protect them from such claims, as appears from Section 2.3.1 of the Implementation Agreement and are asking the Court to bless this indemnity;

103. Moreover, the two (2) other MPCo directors are appointed by Alcoa, which also benefits greatly from the proposed transaction;

104. Indeed, as appears from the Implementation Agreement, Alcoa derives the following benefits from the proposed transaction:

(i) ACCC being the holder of 60% of MPCo will assume 100% of the potential pension fund liability of over Can $200 million;

(ii) ACCC will assume all liabilities and cost of the proposed transaction;

(iii) All tax consequences related to the proposed transaction shall be borne by ACCC;

(iv) As a result of the proposed transaction, Alcoa's derives an important tax advantage as the "cost amount" of the McCormick Hydroelectric Facility, as defined in subsection 248 (1) of the Income Tax Act (Canada) will be increased to 2009 values, at no cost whatsoever to Alcoa;

(v) Alcoa will now own a participation in a newly formed LP with a solvent and resourceful partner, Hydro-Quebec;

105. It is therefore apparent that the two parties who are to derive the greatest benefit from the proposed transaction are the driving forces behind the proposed transaction and exercise absolute control over MPCo;

106. HQE also has knowledge of the rights of the Senior Secured Notes and their rights as secured creditor of ACCC on 60% of MPCo's shares in light of the due diligence that they have performed;

107. All parties to the Implementation Agreement (R-1) knew or should have known that their contracting party, ACCC is insolvent as it is under protection under the *CCAA*;

108. The claims of the Senior Secured Noteholders are liquid and exigible;

109. The Senior Secured Notes suffer a great prejudice from the Transaction as it completely strips MPCo of its assets;

110. Therefore, Petitioners are seeking the approval by this Honourable Court of the Proposed Transaction, which transaction, if concluded, is subject to review and cannot receive court approval;

The Transaction to the Knowledge and Participation of the MPCo Board of Directors Causes Prejudice to the Senior Secured Notes

111. Alcoa through its execution of a resolution of Directors by its employees who are Directors of MPCo have knowledge of the existence of the Senior Secured Notes security on ACCC's 60% of the MPCo shares, copy of this resolution is produced as Exhibit **SN-7**;

112. The Directors on the Board of MPCo appointed by ACCC being employees of one of the Abitibi group of companies also knew of the existence of the Senior Secured Notes Security having executed the MPCo resolution,[SN-7];

113. As such the MPCo Directors know or should have known that concluding the Transaction as contemplated by the Implementation Agreement (R-6) will strip MPCo of its assets and profit ACCC at the expense of the Senior Secures Noteholders;

114. As stated above the Directors of MPCo are aware of the rights of the Senior Secured Noteholders to attack the proposed transaction as they have requested and obtained an indemnification to protect them from such claims, as appears

from Section 2.3.1 of the Implementation Agreement and are asking the Court to bless this indemnity;

115. By approving the transfer of all of MPCo's assets without proper consideration for MPCo and allowing ACCC to effectively confiscate, for its own purposes, the McCormick Hydroelectric Facility, the Board of Directors of MPCo have either:

    a) failed to act in accordance with their corporate duties in the best interest of MPCo and of its stakeholders, including the Senior Secured Noteholders, or

    b) failed to fulfill their obligation to act in good faith towards the Senior Secured Noteholders;

116. But for the Court ordered stay, the Senior Secured Noteholders would be entitled to institute legal proceedings to stop this transaction and avoid the irreparable harm being caused to them;

ACCC having lost the right to vote the 60% shares it holds in MPCo prior to the Initial Order, it cannot vote to implement the Transaction

117. Section 5.6 of the Senior Secured Notes Hypothec (Exhibit SN-3) provides that:

> "*Each Grantor hereby grants to the Attorney, for the benefit of the Debentureholders, an irrevocable proxy to, upon the occurrence of an Event of Default which is continuing and at the discretion of the Attorney, exercise all voting rights and corporate rights relating to the Securities.*"

118. ACCC and the Guarantors are in default of making the April 1, 2009 interest payment and as of this date have no longer the right to exercise voting rights and corporate rights relating to the shares of MPCo;

119. One of the critical steps to the Transaction is the winding up of MPCo into ACCC and the transfer of all of MPCo's assets to ACCC;

120. MPCo is a Quebec corporation governed by the *Companies Act, Quebec* and as such it can only be wound up under the *Winding-Up Act, Quebec* or further to an administrative wind-up under rules and forms adopted by the Inspector General for Financial Institutions which are produced en liasse as Exhibit **SN-8**;

121. In either case, no wind-up can be effected without the unanimous consent of MPCo's shareholders, which cannot be achieved as, since April 1, 2009, those rights have accrued to the Trustee for the benefit of the Senior Secured Noteholders;

<u>Voting of the MPCo shares by ACCC to conclude the Transaction is prohibited by the Senior Secured Notes Hypothec</u>

122. Also under Section 5.5 of the Senior Secured Notes Hypothec (Exhibit SN-3), it is provided that even if there was no event of default (but there is here), each Grantor which includes ACCC, may not vote in favor of any matter which would:

> " (i) be prejudicial to the hypothec created under this deed;(...)"

123. Even if ACCC was not in default (but it is), it could not vote the MPCo shares in a fashion which is detrimental to the Senior Secured Noteholders' rights under their security;

124. Hence, approving the wind-up of MPCo into ACCC as well as the transfer outside the normal course of business of all of its assets to ACCC and its effect upon the Senior Secured Noteholders' security upon the MPCo shares is clearly prohibited under the security documentation;

<u>Jurisdiction</u>

125. MPCo is not a debtor in the CCAA proceedings;

126. Certain of the relief sought by the Abitibi Petitioners seeks to dispense with the requirements applicable to MPCo in connection with the proposed transaction;

127. It is respectfully submitted that the Court in this proceeding does not have the power to change or dispense with those requirements;

128. Given the terms of article 547 of the *Code of Civil Procedure*, Petitioners are not entitled to the provisional execution notwithstanding appeal;"

129. The present Contestation is well founded in fact and in law;

130. The Amended Motion for the Issuance of an Order Authorizing the Sale of the Petitioner Abitibi-Consolidated Company of Canada's Indirect Interest in the McCormick Hydroelectric Facility is ill founded in fact and in law;

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:

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

[2] **ORDER** that the Amended Motion for the Issuance of an Order Authorizing the Sale of the Petitioner Abitibi-Consolidated Company of Canada's Indirect Interest in the McCormick Hydroelectric Facility is dismissed with liberty to the Abitibi Petitioners to reapply for approval of the proposed transaction as it may be amended following good faith negotiations with the Ad Hoc Committee of Senior Secured Noteholders and the Trustee.

[3] **ORDER** the lift of the stay to allow the Trustee and Senior Secured Noteholders to exercise the following rights:

a) issue a notice of withdrawal of its authorization to collect;

b) exercise voting rights attached to the MPCo shares including receiving or giving notice of shareholders' meeting and voting such shares at such meetings;

[4] **THE WHOLE WITH COSTS**

Montreal, September 17, 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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SUPERIOR COURT
(Commercial Division)
DISTRICT OF MONTRÉAL
No.: 500-11-036133-094

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"
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 OF THE AMENDED MOTION FOR THE ISSUANCE OF AN ORDER AUTHORIZING THE SALE OF PETITIONER ABITIBI-CONSOLIDATED COMPANY OF CANADA'S INDIRECT INTEREST IN THE MCCORMICK HYDROELECTRIC FACILITY
(Section 11 of the Companies' Creditors Arrangement Act ("CCAA")

ORIGINAL

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