

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
NO: 500-11-036133-094
(New case)

**SUPERIOR COURT
(COMMERCIAL DIVISION)**
Sitting as the "Court" designated
pursuant to the *Companies' Creditors
Arrangement Act* (1985, R.S.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 al.**

Respondents

v.

SPLIETHOFF TRANSPORT B.V., a
corporation duly incorporated under the
laws of The Netherlands, having its
principal place of business at Radarweg
36, 1042 AA Amsterdam, The
Netherlands

Petitioner

and

ERNST & YOUNG INC.

Monitor/Intervener

**MOTION TO INTRODUCE PROCEEDINGS FOR AN ORDER DECLARING
NULL AND VOID THE REPUDIATION OF CERTAIN CONTRACTS AND FOR
A SAFEGUARD ORDER (paragraph 104 of the Initial Order)**

**TO ONE OF THE HONORABLE JUDGES OF THE SUPERIOR COURT,
SITTING IN COMMERCIAL DIVISION, IN AND FOR THE DISTRICT OF
MONTREAL, THE PETITIONER SPLIETHOFF TRANSPORT B.V.
RESPECTFULLY SUBMITS THE FOLLOWING:**

INTRODUCTION

1. The Petitioner Spliethoff Transport B.V. ("Spliethoff") hereby seeks an order from this Court declaring null and void the repudiation, by Abitibi-Consolidated inc. ("ACI") and Abitibi-Consolidated Company of Canada (ACCC), of the contracts of carriage by sea (the "Spliethoff Contracts") entered into with Spliethoff, and declaring such Spliethoff Contracts still in force, under reserve of all legal objections;
2. Until such time as a final judgment is rendered on the above, Spliethoff also seeks to obtain a safeguard order granting a suspension of the repudiation of the Spliethoff Contracts;

THE PARTIES

ACI and ACCC

3. ACI is a subsidiary of AbitiBowater inc. and one of the Petitioners for the issuance of the Initial Order under Sections 4, 5 and 11 of the *Companies' Creditors Arrangement Act* R.S.C 1985, C-36 (the "CCAA") and Sections 191 and ff. of the *Canada Business Corporations Act* R.S.C. 1985, C-44 granted by the Honorable Justice Clément Gascon J.S.C. on April 17, 2009, as appears from the Court Record;
4. ACCC is a subsidiary of ACI as well as one of the Petitioners for the issuance of the aforementioned Initial Order;
5. Both ACI and ACCC operate under the registered name of AbitibiBowater, amongst others;
6. Both ACI and ACCC are parties to the Spliethoff Contracts which are more amply detailed below;
7. Therefore, for ease of reference, ACI and ACCC will hereinafter be collectively referred to as "Abitibi";

SPLIETHOFF

8. Spliethoff is a Netherlands-based company acting at all material times as Managing Agent for the owners of vessels that were being time-chartered or affreighted to Abitibi in virtue of the Spliethoff Contracts, as more fully detailed hereafter;

9. By virtue of the aforementioned Spliethoff Contracts, Spliethoff is entitled to enforce the provisions and clauses of said Spliethoff Contracts on behalf of any or all of the vessel owners¹;
10. Although the Spliethoff Contracts were entered into late 2004, the long term contractual relationship between Spliethoff and Abitibi goes back 8 years and 9 months;

THE SPLIETHOFF CONTRACTS

THE CARIBBEAN CONTRACT

11. On November 1, 2004 Spliethoff and Abitibi entered into a contract for the carriage of all of Abitibi's newsprint from Newfoundland and/or Eastern Canadian mills to the Caribbean Basin (the "Caribbean Contract"), the whole as more fully appears from a copy of said contract, which will be produced *en liasse* as **Exhibit R-1** under a sealed envelope at the hearing of the present Motion, in light of the confidentiality clause contained therein;
12. According to Section 2 of the Requirement Contract dated November 1, 2004 forming part of the Caribbean Contract, the duration of the Caribbean Contract is eight (8) consecutive years, commencing on January 1, 2005 and ending on December 31, 2012;

THE MEDITERRANEAN CONTRACT

13. On December 14, 2004, Spliethoff and Abitibi entered into a contract of affreightment for the carriage of all of the latter's newsprint cargoes from Newfoundland and/or Eastern Canadian mills to Spain, Italy, and Egypt, the whole as more fully appears from said contract (the "Mediterranean Contract"), a copy of which will be produced *en liasse* as **Exhibit R-2** under a sealed envelope at the hearing of the present Motion, by reason of the confidentiality clause contained therein;
14. Section 3 of the Rider Clauses to the Worldwide Booking Note forming part of the Mediterranean Contract stipulates that the duration of the Mediterranean Contract is eight (8) consecutive years commencing on January 1, 2005 and ending on December 31, 2012;

¹ See the respective introductory clauses of the Requirement Contract, dated November 1st, 2004 forming part of the Caribbean Contract and the Rider Clauses to Worldwide Booking Note Contract of Affreightment (COA) dated December 14, 2004 forming part of the Mediterranean Contract. (The Caribbean Contract and the Mediterranean Contract are more amply detailed at paragraphs 11 and following of the present Motion).

VOYAGE NUMBER 95 OF THE M/V STATENGRACHT

15. Section 3 of the Requirement Contract forming part of the Caribbean Contract provides that Spliethoff will supply Abitibi with a vessel for Time Charter Trips to the Caribbean, provided that for each voyage to be performed, Abitibi gives Spliethoff a prior 30 day notice stating the required laydays, with a ten day window;
16. The term "laydays" is understood as the range of dates immediately following the 30 day notice within which a vessel must be delivered, at an agreed location, to the vessel charterer;
17. Pursuant to Section 4 of the aforementioned Requirement Contract, following the receipt of the aforementioned 30 day notice, Spliethoff then has 7 days to nominate a performing vessel, failing which Abitibi is entitled to cancel the particular Time Charter Trip without penalty;
18. On August 11, 2009, Abitibi requested a booking for a Time Charter Trip with Spliethoff, for a voyage from Baie-Comeau, Québec, to the Caribbean, namely Voyage 95, with laydays spanning from September 12 to September 21, 2009, the whole as more fully appears from a copy of an email from Volker Scheidler of Trealmont Trade Lane Inc ("TTL"), acting as agents for Abitibi, to John Sveistrup of Pompeii Shipping Consultants Inc. ("Pompeii"), namely Spliethoff's agent in Montreal, produced herewith as **Exhibit R-3**;
19. On August 18, 2009, Spliethoff nominated the M/V STATENGRACHT for the Time Chartered Trip, and confirmed the laydays of September 12 to 21, the whole as more fully appears from a copy of an e-mail from John Sveistrup of Pompeii to Volker Scheidler of TTL, produced herewith as **Exhibit R-4**;
20. On August 31, 2009, Abitibi transferred the amount of money covering the charter hire for Voyage 95 of the M/V STATENGRACHT to its agent TTL, thus giving a clear indication to Spliethoff that it intended to go ahead with said Voyage, the whole as more fully appears from a copy of an email from Volker Scheidler of TTL to John Sveistrup of Pompeii dated August 31, 2009, produced herewith as **Exhibit R-5**;
21. At the time, the estimated time of delivery of the M/V STATENGRACHT was September 19, 2009, that is to say well within the window of the laydays, as more fully appears from a copy of an email dated September 11, 2009, and its enclosed sailing schedule, from Jamie Tolis of Pompeii to Regis Gama of Abitibi, produced herewith as **Exhibit R-6**;
22. The estimated time of arrival of the aforementioned vessel at the port of loading in Baie-Comeau was between September 23 and 26, 2009, as it also appears from sailing schedule that forms part of **Exhibit R-6**;

23. Without limiting the foregoing, if Abitibi would have taken an approach of collaboration, Spliethoff would have been in a position to substitute the M/V STATENGRACHT by a sister vessel, the M/V SLOTERGRACHT which was in a position to be passing Cape Race late September 17 or early September 18;

THE BOGUS NEGOTIATIONS PERTAINING TO THE REVIEW AND RENEWAL OF THE SPLIETHOFF CONTRACTS

24. In early July 2009, Abitibi sent an invitation to all of its contracting carriers, including Spliethoff ("the carrier group"), requesting that they attend a meeting on August 3, 2009, with the former's international maritime management team, the whole as more fully appears from a copy of an email from Dwyane Spence of Abitibi to Spliethoff and others, dated July 3, 2009, produced herewith as **Exhibit R-7**;
25. As appears from **Exhibit R-7**, this request was said to be the first stage in Abitibi's "contract review and renewal process" for each and every Abitibi breakbulk contract of carriage;
26. As further mentioned in **Exhibit R-7**, the "contract review and renewal process" was to comprise two phases, the first of which was negotiations between Abitibi and each incumbent carrier;
27. The second phase of the process, which was to be held only in the event that no agreement could be reached with any given incumbent carrier, consisted in tendering the contract of carriage for the specific line amongst the entire carrier group, which included Spliethoff and 4 other carriers, the whole as more fully appears from **Exhibit R-7**;
28. The August 3rd, 2009 meeting was attended by John Sveistrup of Pompeii, who was acting for and on behalf of its principal Spliethoff;
29. Three main subjects were treated during this meeting, namely the role of the Monitor Ernst & Young Inc. ("E&Y") in the matter of the arrangement of Abitibi, the forecast on Abitibi's business and the review process of each of Abitibi's contracts of carriage;
30. With respect to this last subject, Abitibi's representative, namely John Robb, basically re-stated the two phases of the "contract review and renewal process" and added that each carrier would be remitted contract proposals before the end of the meeting;
31. Hence, during the meeting, Abitibi remitted proposals with respect to the Spliethoff Contracts to John Sveistrup of Pompeii for Spliethoff's review and consideration, a copy of which proposals will be produced as **Exhibit R-8** under a sealed envelope at the hearing of the present Motion, as it contains commercially sensitive information;

32. Amongst many important changes, these contract proposals further set forth considerable modifications to an Addendum dated May 4, 2009, forming part of the Mediterranean Contract and which was signed after Abitibi had sought and obtained the Initial Order of April 19, 2009, the whole as more fully appears from said contract proposals, **Exhibit R-8**;
33. An official counter-proposal was given to Abitibi by Spliethoff on August 11, 2009, namely within the time-frame imposed by Abitibi, the whole as more fully appears from an email of John Sveistrup to, amongst others, Dwyane Spence of Abitibi dated August 11, 2009, a copy of which will be produced under a sealed envelope as **Exhibit R-9** at the hearing of the present motion, considering the fact that said email contains commercially sensitive information;
34. The abovementioned counter-proposal was elaborated with Spliethoff bearing in mind Abitibi's current situation under the CCAA on the one hand and on the other, the fact that the latter had benefited from well below-market freight rates for the past 3 to 4 years, as well as the fact that Spliethoff had already made important concessions when agreeing to the May 4, 2009 Addendum to the Mediterranean Contract;
35. On August 12, 2009, Abitibi indicated that it would study Spliethoff's counter-proposal and reply by latest August 24, 2009, the whole as more fully appears from the copy of an email dated August 12, 2009 from Dwyane Spence of Abitibi to John Sveistrup of Pompeii produced herewith as **Exhibit R-10**;
36. Dwyane Spence also indicated that once an agreement would be reached, it would be presented to the court-appointed monitor for sign-off, as it appears from **Exhibit R-10**;
37. Spliethoff heard nothing from Abitibi on August 24, 2009, and as a result, John Sveistrup of Pompeii left numerous messages to Dwyane Spence of Abitibi between that date and August 31, 2009, which were not returned;
38. On August 31, 2009, John Sveistrup had a telephone conversation with Dwyane Spence during which the latter informed the former that he would get back to him by the end of day or at the latest the next day, namely September 1, 2009;
39. John Sveistrup did not hear from Dwyane Spence as promised by the latter;
40. On September 3, 2009, John Sveistrup reminded Dwyane Spence that Spliethoff was still waiting for Abitibi's position on the counter-proposal, to which Dwyane Spence responded that said position would be made known by the end of the day on September 4, 2009, the whole as more fully appears from a copy of an exchange of emails between Pompeii and Dwyane Spence of Abitibi, produced herewith as **Exhibit R-11**;

41. However, Spliethoff did not receive a response by Abitibi on that day or thereafter, the whole as it also appears, *inter alia*, from an email from John Sveistrup of Pompeii to, amongst others, Dwyane Spence of Abitibi dated September 10, 2009 which forms part of **Exhibit R-11**;

THE REPUDIATION OF THE SPLIETHOFF CONTRACTS

42. On September 14, 2009, Spliethoff received emails from E&Y attaching a letter of Abitibi informing Spliethoff that it was repudiating the Spliethoff Contracts, effective September 11, 2009, the whole as more fully appears from a copy of said emails and the attached repudiation letter, produced herewith *en liasse* as **Exhibit R-12**;
43. At that time, two of Spliethoff's vessels, namely the M/V STATENGRACHT and the M/V ARTISGRACHT had already been committed to Abitibi;
44. Indeed, the M/V STATENGRACHT was already en route to the point of delivery i.e. 1300 nautical miles off Cape Ray, not to mention that her sister vessel was available as a substitute vessel;
45. As for the M/V ARTISGRACHT, she had already commenced her voyage from Baie-Comeau to the designated ports in the Mediterranean, including Alexandria, Egypt as the final destination;
46. Abitibi's repudiation letter was followed by an email dated September 14, 2009 from Regis Gama of Abitibi to Volker Scheidler of TTL, acting as agents for Abitibi, requesting him to inform Spliethoff, for and on behalf of Abitibi, that the booking of the M/V STATENGRACHT, Voyage 95, was cancelled, the whole as more fully appears from a copy of said email, produced herewith as **Exhibit R-13**;
47. In this email, **Exhibit R-13**, Regis Gama of Abitibi alleged that in any event, the M/V STATENGRACHT had fallen outside her laydays window;
48. On September 16, 2009, through the undersigned attorneys, Spliethoff informed Abitibi that it considered the repudiation of the Spliethoff Contracts contrary to the Initial Order as well as to the spirit of the CCAA, and further urged Abitibi to honour its obligations with respect to the MV/STATENGRACHT, the whole as more fully appears from a copy of a demand letter addressed to Abitibi and E&Y, produced herewith as **Exhibit-R-14**;
49. Spliethoff received no response from Abitibi with respect to **Exhibit R-14**;

THE REASONS WHY THE REPUDIATION OF THE SPLIETHOFF CONTRACTS BY ABITIBI SHOULD BE DECLARED NULL AND VOID BY THIS HONOURABLE COURT

THE REPUDIATION IS CONTRARY TO ABITIBI'S OWN DECLARED COMMITMENTS

50. As mentioned hereinabove, Abitibi's "contract review and renewal process" encompassed two distinct phases, as more fully set out in Dwyane Spence's email of July 3, 2009, **Exhibit R-7**;
51. For reasons unknown to Spliethoff, Abitibi did not respect the "contract review and renewal process";
52. In fact, not only did Abitibi fail to comply with the scope of the first phase of the process, but it also breached its commitment to invite Spliethoff to participate in a bid for Spliethoff's lines to the Caribbean and the Mediterranean in the event that it considered that no agreement could be reached in this first phase;
53. John Sveistrup of Pompeii was also recently informed by Kenny Peterson and Peter Doyle respectively of Transatlantic ("Transatlantic") and of Gearbulk Shipping Canada Ltd. ("Gearbulk"), namely two of the carriers forming part of the carrier group mentioned hereinabove, that both Transatlantic and Gearbulk have not been invited to participate in any tendering process with respect to the Spliethoff lines;
54. Furthermore, Pompeii has learned from Volker Scheidler of TTL that as early as September 16, 2009, that is to say two days after receiving the repudiation letter from Abitibi, Abitibi had already concluded another contract with another carrier from the carrier group, namely Wagenborg Shipping North America Inc. ("Wagenborg"), for the Spliethoff line to the Caribbean, and possibly the Spliethoff line to the Mediterranean;
55. Abitibi's negotiations with Wagenborg were and are unbeknownst to Spliethoff but were in all likelihood carried out while Spliethoff was patiently awaiting Abitibi's response to its counter-proposal;
56. Incidentally, Wagenborg's president and director, Marco Renzelli, was formerly employed in Abitibi's transportation department up until about two and a half years ago and therefore knows the terms and conditions of the Spliethoff Contracts;
57. In addition, one of the two other Wagenborg's current employees, namely Alphonso Guadagno, was at the employment of TTL, agents for Abitibi, up until about a year ago and was then solely and entirely dedicated to Abitibi's carriage needs;
58. This employee is therefore also well-informed of the terms and conditions of the Spliethoff Contracts;

ABITIBI'S ALLEGATION THAT THE M/V STATENGRACHT COULD NOT MEET THE LAYDAYS IS ENTIRELY UNFOUNDED

59. Abitibi contends that the laydays for the M/V STATENGRACHT were from September 9 to 18, 2009, rather than from September 12 to 21, 2009 and that these dates could not be met by Spliethoff, as appears from Regis Gama's email of September 14, 2009, **Exhibit R-13**;
60. This contention is clearly unfounded and a pretext to cancel a valid and binding booking;
61. As mentioned hereinabove, laydays can only start to run at the expiry of the 30 day notice;
62. In the case of Voyage 95, because the 30 day booking notice was given by Abitibi on August 11, 2009, it is clear that the laydays window could not start before September 12, 2009;
63. In addition, Abitibi replaced its booking of the M/V STATENGRACHT, with a booking on another vessel, namely Wagenborg's M/V ORANJEBORG, which vessel arrived at Baie-Comeau at 08:30 on September 23, 2009;
64. The ORANJEBORG did not herself meet Abitibi's alleged laydays of September 9 to 18, 2009;

ABITIBI TREATED SPLIETHOFF IN AN UNJUST AND INEQUITABLE MANNER AND HAS CAUSED SERIOUS PREJUDICE TO SPLIETHOFF BY REPUDIATING THE SPLIETHOFF CONTRACTS

65. Throughout all of its contractual relationship with Abitibi, Spliethoff consistently offered Abitibi very competitive rates and conditions and in view of Abitibi's current situation, it kept an open mind and was throughout very accommodating;
66. Spliethoff consistently negotiated in good faith throughout Abitibi's so-called "contract review and renewal process" and with a view to finding a mutually satisfying solution;
67. Furthermore, from the date at which the Spliethoff Contracts were entered into by Abitibi and Spliethoff, up until the date at which the repudiation letter was sent, Spliethoff was never, at any given point in time, in default of any its obligations pursuant to the Spliethoff Contracts;
68. In return, Abitibi failed to comply with its own commitments and acted in bad faith;

69. Indeed, if Abitibi did not consider Spliethoff's counter-proposal acceptable, fair and good business practice dictates that it should have at least formally informed Spliethoff accordingly;
70. Without limiting the foregoing, Abitibi should also have continued the discussions with Spliethoff and this, for the benefit of all the stakeholders;
71. If Abitibi did not wish to pursue the negotiations with Spliethoff, the latter should have been clearly informed of Abitibi's decision and Abitibi should have commenced the bidding process for the Caribbean and Mediterranean lines covered by the Spliethoff Contracts and invited Spliethoff to participate in such a process;
72. Contrary to the interest of all the stakeholders, fair and good business practice and the commitments taken by Abitibi during the meeting of August 3, 2009, as spelled out in Dwyane Spence's email of July 3, **Exhibit R-7**, Abitibi totally ignored Spliethoff in the process from the moment Abitibi received Spliethoff's counter-proposal on August 11, 2009;
73. Taking into account the interest of all the stakeholders, fair and good business practice, the commitments taken by Abitibi during the meeting of August 3, 2009 and the fact the Spliethoff Contracts were to terminate not before December 31, 2012, Spliethoff should also have been invited to participate in any bidding process for those lines of Abitibi for which no agreements were reached with the relevant carriers;
74. Considering Abitibi's behavior and attitude towards Spliethoff, it is clear that Abitibi did not have any intention whatsoever to even try to come to an agreement with Spliethoff in accordance with the first phase of the process as described by Abitibi;
75. Without limiting the foregoing, taking into account the nature and duration of the Spliethoff Contracts as well as the interests of all the stakeholders, any process used by Abitibi with respect to the review of the Spliethoff Contracts should have provided for a right of first refusal for the benefit of Spliethoff;
76. Based on past experience pursuant to the Spliethoff Contracts, Spliethoff suffers serious and important losses resulting from the repudiation of the Spliethoff Contracts by Abitibi, the whole as it appears *inter alia* from a copy of estimates of loss of revenues, which will be produced *en liasse* as **Exhibit R-15** under a sealed envelope at the hearing of the present Motion considering the fact that said email contains commercially sensitive information;
77. In addition to the volumes lost as a result of the repudiation of the Spliethoff Contracts, said repudiation also negatively impacts on Spliethoff's ability to contract for other cargoes to be carried from or to Eastern Canada;

78. Also, finding substitute cargoes will be extremely difficult for Spliethoff, all the more so in light of the prevailing economic context;

THE REPUDIATION OF THE SPLIETHOFF CONTRACTS IS CONTRARY TO THE INTERESTS OF ALL THE STAKEHOLDERS AND DOES NOT, IN ANY WAY, ENHANCE THE PROSPECT OF A VIABLE ARRANGEMENT

79. Abitibi's behavior towards Spliethoff constitutes unacceptable commercial practice and sends out the wrong message not only to all members of the group of carriers, but also to all Abitibi stakeholders;
80. Even under the context of the proceedings under the CCAA, Abitibi's refusal to truly and effectively renegotiate the terms and conditions of the Spliethoff Contracts is unfounded and detrimental to the interests of all the stakeholders;
81. Abitibi prevented a competitive bidding process for Spliethoff's lines, not to mention that the terms and conditions offered by Wagenborg are unknown to Spliethoff at the present time;
82. Furthermore, Abitibi's repudiation letter does not give any explanation in support of the repudiation of the Spliethoff Contracts;
83. To this date, there is absolutely nothing in E&Y's monitoring reports that either recommends the repudiation of the Spliethoff Contracts or even suggests that such repudiation is necessary for the restructuring of Abitibi or that it will enhance the prospect of a viable arrangement;
84. At present, there is no indication that E&Y ever approved the repudiation of the Spliethoff Contracts by Abitibi;

WITH RESPECT TO THE SAFEGUARD ORDER

APPARENT RIGHT

85. As appears from the foregoing, the repudiation of the Spliethoff Contracts by Abitibi was made in bad faith and is in no way fair and reasonable ;
86. As such, the repudiation ought to be declared null and void by this Honourable Court;
87. This, combined with the fact that the Spliethoff Contracts provided that they were to remain in force until December 31, 2012, gives Spliethoff a clear and apparent right to the remedies sought herein;

IRREPARABLE HARM

88. In all likelihood, Spliethoff will be unable to find substitute lines and cargoes to fill up the void left behind by Abitibi;
89. As a matter of fact, the repudiation of the Spliethoff Contracts by Abitibi is already known in the Eastern Canadian market and believing that Spliethoff's position in said market is now weakened, shippers are already using the situation against Spliethoff by demanding lower rates;
90. This repudiation of the Spliethoff Contracts also causes damages to the reputation of Spliethoff in the Eastern Canadian market and these damages will never be quantifiable.
91. The losses of cargoes under the Spliethoff Contracts will also result in the continuous and repetitive losses of other cargoes coming in and out of Eastern Canada as well as business opportunities;
92. The continuous and repetitive losses of cargoes and business opportunities mentioned above are unquantifiable and consequently, Spliethoff will not be in a position to obtain a compensation for such losses;
93. Furthermore, in the event that the Court grants the present Motion and declares null and void the repudiation of the Spliethoff Contracts by Abitibi, failing a safeguard order in the interim, any claim with respect to the Spliethoff Contracts will only be considered as a claim by an ordinary creditor in the restructuring plan;

BALANCE OF CONVENIENCE

94. Neither Abitibi nor E&Y has provided Spliethoff with any information pertaining to the reasons underlying the repudiation of the Spliethoff Contracts;
95. As far as Spliethoff is concerned, nothing indicates that the Spliethoff Contracts have produced a loss for Abitibi in the past or that future losses are foreseen;
96. At present, neither Abitibi nor E&Y have provided Spliethoff with any data demonstrating that the repudiation of the Spliethoff Contracts are beneficial to Abitibi and all the stakeholders;
97. At present, there is absolutely no indication that the contracts concluded with Wagenborg are beneficial to Abitibi and all the stakeholders;
98. As mentioned hereinabove, the repudiation of the Spliethoff Contracts has a major negative financial impact on Spliethoff;
99. The balance of convenience clearly favours Spliethoff;

URGENCY

100. At the present time, Spliethoff is making all the necessary efforts in order to mitigate the damages stemming from the repudiation of the Spliethoff Contracts, including the cancellation of the M/V STATENGRACHT time charter booking;
101. Considering Spliethoff's apparent right to an order declaring null and void the repudiation of the Spliethoff Contracts by Abitibi, Spliethoff respectfully asks the Court to issue a safeguard order before any other booking is made by Abitibi for shipments with Wagenborg or any other carrier being used for the services described in the Spliethoff Contracts;
102. Based on past experience pursuant to the Spliethoff Contracts, other Abitibi shipments will most likely take place at any time during the next coming weeks and therefore, time is of the essence;

DISCLOSURE OF THE CONTRACT(S) CONCLUDED BETWEEN ABITIBI AND WAGENBORG

103. In light of the fact that Abitibi did not proceed with the tendering of Spliethoff's lines, there is a serious possibility that the terms and conditions of the new contract(s) between Abitibi and Wagenborg for the Spliethoff lines are not necessarily beneficial to Abitibi and all the stakeholders;
104. Therefore Spliethoff submits that it is in the interest of justice that this Honourable Court issue an order compelling Abitibi to disclose, under seal, the contents of the contract(s) entered into with Wagenborg in replacement of the Spliethoff Contracts;

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:

BY WAY OF A SAFEGUARD ORDER:

GRANT the safeguard order;

SUSPEND the effects of the repudiation of the Spliethoff Contracts until such time as a final judgment is rendered on the present Motion;

DECLARE that the Spliethoff Contracts remain in effect until such time as a final judgment is rendered on the present Motion, under reserve of all legal objections;

ORDER that Abitibi disclose under seal the contents of the contract(s) entered into with Wagenborg in replacement of the Spliethoff Contracts;

EXEMPT Spliethoff from having to provide security for costs;

ORDER that the judgment to be rendered on the present Motion is executory, notwithstanding appeal;

AND SUCH OTHER ORDER that this Honourable Court may deem appropriate under the circumstances;

THE WHOLE, with costs.

BY WAY OF FINAL JUDGMENT:

GRANT the present Motion to introduce proceedings for an order declaring null and void the repudiation by Abitibi of the Spliethoff Contracts;

DECLARE null and void the repudiation of the Spliethoff Contracts by Abitibi;

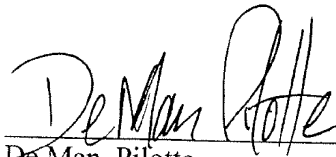
DECLARE that the Spliethoff Contracts remain in effect, under reserve of all legal objections;

EXEMPT Spliethoff from having to provide security for costs;

AND SUCH OTHER ORDER that this Honourable Court may deem appropriate under the circumstances;

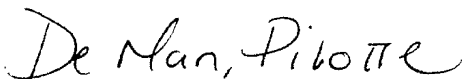
THE WHOLE, with costs.

Montréal, this 23rd day of September, 2009



De Man, Pilotte
Attorneys for the Petitioner
Spliethoff Transport B.V.

COPIE CONFORME/TRUE COPY



DE MAN, PILOTTE

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
NO: 500-11-036133-094
(New case)

**SUPERIOR COURT
(COMMERCIAL DIVISION)**
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36, 1042 AA Amsterdam, The
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Petitioner

and

ERNST & YOUNG INC.

Monitor/Intervener

DETAILED AFFIDAVIT OF MR. JOHN SVEISTRUP

I, the undersigned, John Sveistrup, president and director of Pompeii Shipping Consultants Inc., domiciled and residing at 108 Creswell Drive, Beaconsfield, H9W 1E2, do solemnly declare as follows:

1. I am president and director of Pompeii Shipping Consultants Inc. ("Pompeii") namely the Montreal agent of Petitioner Spliethoff Transport B.V. ("Spliethoff");
2. At all material times, Pompeii was acting for and on behalf of its Principal Spliethoff;
3. As such, I am very well aware of and familiar with all the facts set forth in Spliethoff's *Motion to introduce proceedings for an order declaring null and void the repudiation of certain contracts and for a safeguard order* (the "Motion");
4. I am expressly authorized by Spliethoff to execute the present detailed affidavit for and on behalf of Spliethoff;
5. Spliethoff is a Netherlands-based company acting at all material times as Managing Agent for the owners of vessels that were being time-chartered or affreighted to Abitibi in virtue of the Spliethoff Contracts, as more fully detailed hereafter;
6. By virtue of the aforementioned Spliethoff Contracts, Spliethoff is entitled to enforce the provisions and clauses of said Spliethoff Contracts on behalf of any or all of the vessel owners;
7. Although the Spliethoff Contracts were entered into late 2004, the long term contractual relationship between Spliethoff and Abitibi goes back 8 years and 9 months;

THE SPLIETHOFF CONTRACTS

THE CARIBBEAN CONTRACT

8. On November 1, 2004 Spliethoff and Abitibi entered into a contract for the carriage of all of Abitibi's newsprint from Newfoundland and/or Eastern Canadian mills to the Caribbean Basin, as appears from **Exhibit R-1** produced in support of the Motion;
9. According to Section 2 of the Requirement Contract dated November 1, 2004 forming part of the Caribbean Contract, the duration of the Caribbean Contract is eight (8) consecutive years, commencing on January 1, 2005 and ending on December 31, 2012;

THE MEDITERRANEAN CONTRACT

10. On December 14, 2004, Spliethoff and Abitibi entered into a contract of affreightment for the carriage of all of the latter's newsprint cargoes from Newfoundland and/or Eastern Canadian mills to Spain, Italy, and Egypt, the whole as more fully appears from **Exhibit R-2** produced in support of the Motion;

11. Section 3 of the Rider Clauses to the Worldwide Booking Note forming part of the Mediterranean Contract stipulates that the duration of the Mediterranean Contract is eight (8) consecutive years commencing on January 1, 2005 and ending on December 31, 2012;

VOYAGE NUMBER 95 OF THE M/V STATENGRACHT

12. Section 3 of the Requirement Contract forming part of the Caribbean Contract provides that Spliethoff will supply Abitibi with a vessel for Time Charter Trips to the Caribbean, provided that for each voyage to be performed, Abitibi gives Spliethoff a prior 30 day notice stating the required laydays, with a ten day window;
13. The term "laydays" is understood as the range of dates immediately following the 30 day notice within which a vessel must be delivered, at an agreed location, to the vessel charterer;
14. Pursuant to Section 4 of the aforementioned Requirement Contract, following the receipt of the aforementioned 30 day notice, Spliethoff then has 7 days to nominate a performing vessel, failing which Abitibi is entitled to cancel the particular Time Charter Trip without penalty;
15. On August 11, 2009, Abitibi requested a booking for a Time Charter Trip with Spliethoff, for a voyage from Baie-Comeau, Québec, to the Caribbean, namely Voyage 95, with laydays spanning from September 12 to September 21, 2009, the whole as appears from **Exhibit R-3** produced in support of the Motion;
16. On August 18, 2009, Spliethoff nominated the M/V STATENGRACHT for the Time Chartered Trip, and confirmed the laydays of September 12 to 21, as appears from **Exhibit R-4** produced in support of the Motion;
17. On August 31, 2009, Abitibi transferred the amount of money covering the charter hire for Voyage 95 of the M/V STATENGRACHT to its agent TTL, thus giving a clear indication to Spliethoff that it intended to go ahead with said Voyage, the whole as more fully appears from **Exhibit R-5** produced in support of the Motion;
18. At the time, the estimated time of delivery of the M/V STATENGRACHT was September 19, 2009, that is to say well within the window of the laydays, as more fully appears from **Exhibit R-6** produced in support of the Motion;
19. The estimated time of arrival of the aforementioned vessel at the port of loading in Baie-Comeau was between September 23 and 26, 2009, as it also appears from sailing schedule that forms part of **Exhibit R-6**;
20. Without limiting the foregoing, if Abitibi would have taken an approach of collaboration, Spliethoff would have been in a position to substitute the M/V STATENGRACHT by a sister vessel, the M/V SLOTERGRACHT which was in a position to be passing Cape Race late September 17 or early September 18;

THE BOGUS NEGOTIATIONS PERTAINING TO THE REVIEW AND RENEWAL OF THE SPLITHOFF CONTRACTS

21. In early July 2009, Abitibi sent an invitation to all of its contracting carriers, including Spliethoff ("the carrier group"), requesting that they attend a meeting on August 3, 2009, with the former's international maritime management team, the whole as more fully appears from **Exhibit R-7** produced in support of the Motion;
22. As appears from **Exhibit R-7**, this request was said to be the first stage in Abitibi's "contract review and renewal process" for each and every Abitibi breakbulk contract of carriage;
23. As further mentioned in **Exhibit R-7**, the "contract review and renewal process" was to comprise two phases, the first of which was negotiations between Abitibi and each incumbent carrier;
24. The second phase of the process, which was to be held only in the event that no agreement could be reached with any given incumbent carrier, consisted in tendering the contract of carriage for the specific line amongst the entire carrier group, which included Spliethoff and 4 other carriers, the whole as more fully appears from **Exhibit R-7**;
25. I attended the August 3rd, 2009 meeting for and on behalf of my principal Spliethoff;
26. Three main subjects were treated during this meeting, namely the role of the Monitor Ernst & Young Inc. ("E&Y") in the matter of the arrangement of Abitibi, the forecast on Abitibi's business and the review process of each of Abitibi's contracts of carriage;
27. With respect to this last subject, Abitibi's representative, namely John Robb, basically re-stated the two phases of the "contract review and renewal process" and added that each carrier would be remitted contract proposals before the end of the meeting;
28. Hence, during the meeting, I was remitted proposals with respect to the Spliethoff Contracts by Abitibi for Spliethoff's review and consideration, namely **Exhibit R-8** produced in support of the Motion;
29. Amongst many important changes, these contract proposals further set forth considerable modifications to an Addendum dated May 4, 2009, forming part of the Mediterranean Contract and which was signed after Abitibi had sought and obtained the Initial Order of April 19, 2009, the whole as more fully appears from said contract proposals, **Exhibit R-8**;
30. An official counter-proposal was given to Abitibi by Spliethoff on August 11, 2009, namely within the time-frame imposed by Abitibi, the whole as more fully appears from **Exhibit R-9** produced in support of the Motion;

31. The abovementioned counter-proposal was elaborated with Spliethoff bearing in mind Abitibi's current situation under the CCAA on the one hand and on the other, the fact that the latter had benefited from well below-market freight rates for the past 3 to 4 years, as well as the fact that Spliethoff had already made important concessions when agreeing to the May 4, 2009 Addendum to the Mediterranean Contract;
32. On August 12, 2009, Abitibi indicated that it would study Spliethoff's counter-proposal and reply by latest August 24, 2009, the whole as more fully appears from **Exhibit R-10** produced in support of the Motion;
33. Dwyane Spence also indicated that once an agreement would be reached, it would be presented to the court-appointed monitor for sign-off, as it appears from **Exhibit R-10**;
34. Spliethoff heard nothing from Abitibi on August 24, 2009, and as a result, I left numerous messages to Dwyane Spence of Abitibi between that date and August 31, 2009, which were not returned;
35. On August 31, 2009, I had a telephone conversation with Dwyane Spence during which the latter informed me that he would get back to me by the end of day or at the latest the next day, namely September 1, 2009;
36. I did not hear from Dwyane Spence as promised by the latter;
37. On September 3, 2009, I reminded Dwyane Spence that Spliethoff was still waiting for Abitibi's position on the counter-proposal, to which Dwyane Spence responded that said position would be made known by the end of the day on September 4, 2009, the whole as more fully appears from **Exhibit R-11** produced in support of the Motion;
38. However, Spliethoff did not receive a response by Abitibi on that day or thereafter, whole as it also appears, *inter alia*, from an email from myself to, amongst others, Dwyane Spence of Abitibi dated September 10, 2009 which forms part of **Exhibit R-11**;

THE REPUDIATION OF THE SPLIETHOFF CONTRACTS

39. On September 14, 2009, Spliethoff received emails from E&Y attaching a letter of Abitibi informing Spliethoff that it was repudiating the Spliethoff Contracts, effective September 11, 2009, the whole as more fully appears from **Exhibit R-12**;
40. At that time, two of Spliethoff's vessels, namely the M/V STATENGRACHT and the M/V ARTISGRACHT had already been committed to Abitibi;
41. Indeed, the M/V STATENGRACHT was already en route to the point of delivery i.e. 1300 nautical miles off Cape Ray, not to mention that her sister vessel was available as a substitute vessel;

42. As for the M/V ARTISGRACHT, she had already commenced her voyage from Baie-Comeau to the designated ports in the Mediterranean, including Alexandria, Egypt as the final destination;
43. Abitibi's repudiation letter was followed by an email dated September 14, 2009 from Regis Gama of Abitibi to Volker Scheidler of TTL, acting as agents for Abitibi, requesting him to inform Spliethoff, for and on behalf of Abitibi, that the booking of the M/V STATENGRACHT, Voyage 95, was cancelled, the whole as more fully appears from **Exhibit R-13** produced in support of the Motion;
44. In this email, **Exhibit R-13**, Regis Gama of Abitibi alleged that in any event, the M/V STATENGRACHT had fallen outside her laydays window;
45. I am informed by Me Marc DeMan that on September 16, 2009, Spliethoff informed Abitibi that it considered the repudiation of the Spliethoff Contracts contrary to the Initial Order as well as to the spirit of the CCAA, and further urged Abitibi to honour its obligations with respect to the MV/STATENGRACHT, the whole as more fully appears from **Exhibit-R-14** produced in support of the Motion;
46. Spliethoff received no response from Abitibi with respect to **Exhibit R-14**;

THE REASONS WHY THE REPUDIATION OF THE SPLIETHOFF CONTRACTS BY ABITIBI SHOULD BE DECLARED NULL AND VOID BY THIS HONOURABLE COURT

THE REPUDIATION IS CONTRARY TO ABITIBI'S OWN DECLARED COMMITMENTS

47. As mentioned hereinabove, Abitibi's "contract review and renewal process" encompassed two distinct phases, as more fully set out in Dwyane Spence's email of July 3, 2009, **Exhibit R-7**;
48. For reasons unknown to Spliethoff, Abitibi did not respect the "contract review and renewal process";
49. In fact, not only did Abitibi fail to comply with the scope of the first phase of the process, but it also breached its commitment to invite Spliethoff to participate in a bid for Spliethoff's lines to the Caribbean and the Mediterranean in the event that it considered that no agreement could be reached in this first phase;
50. I was also recently informed by Kenny Peterson and Peter Doyle respectively of Transatlantic ("Transatlantic") and of Gearbulk Shipping Canada Ltd. ("Gearbulk"), namely two of the carriers forming part of the carrier group mentioned hereinabove, that both Transatlantic and Gearbulk have not been invited to participate in any tendering process with respect to the Spliethoff lines;

51. Furthermore, I learned from Volker Scheidler of TTL that as early as September 16, 2009, that is to say two days after receiving the repudiation letter from Abitibi, Abitibi had already concluded another contract with another carrier from the carrier group, namely Wagenborg Shipping North America Inc. ("Wagenborg"), for the Spliethoff line to the Caribbean, and possibly the Spliethoff line to the Mediterranean;
52. Abitibi's negotiations with Wagenborg were and are unbeknownst to Spliethoff but were in all likelihood carried out while Spliethoff was patiently awaiting Abitibi's response to its counter-proposal;
53. Incidentally, Wagenborg's president and director, Marco Renzelli, was formerly employed in Abitibi's transportation department up until about two and a half years ago and therefore knows the terms and conditions of the Spliethoff Contracts;
54. In addition, one of the two other Wagenborg's current employees, namely Alphonso Guadagno, was at the employment of TTL, agents for Abitibi, up until about a year ago and was then solely and entirely dedicated to Abitibi's carriage needs;
55. This employee is therefore also well-informed of the terms and conditions of the Spliethoff Contracts;

ABITIBI'S ALLEGATION THAT THE M/V STATENGRACHT COULD NOT MEET THE LAYDAYS IS ENTIRELY UNFOUNDED

56. Abitibi contends that the laydays for the M/V STATENGRACHT were from September 9 to 18, 2009, rather than from September 12 to 21, 2009 and that these dates could not be met by Spliethoff, as appears from Regis Gama's email of September 14, 2009, **Exhibit R-13**;
57. This contention is clearly unfounded and a pretext to cancel a valid and binding booking;
58. As mentioned hereinabove, laydays can only start to run at the expiry of the 30 day notice;
59. In the case of Voyage 95, because the 30 day booking notice was given by Abitibi on August 11, 2009, it is clear that the laydays window could not start before September 12, 2009;
60. In addition, I was informed by Douglas Poole of Abitibi that Abitibi replaced its booking of the M/V STATENGRACHT, with a booking on another vessel, namely Wagenborg's M/V ORANJEBORG, which vessel arrived at Baie-Comeau at 08:30 on September 23, 2009;
61. The ORANJEBORG did not herself meet Abitibi's alleged laydays of September 9 to 18, 2009;

ABITIBI TREATED SPLIETHOFF IN AN UNJUST AND INEQUITABLE MANNER AND HAS CAUSED SERIOUS PREJUDICE TO SPLIETHOFF BY REPUDIATING THE SPLIETHOFF CONTRACTS

62. Throughout all of its contractual relationship with Abitibi, Spliethoff consistently offered Abitibi very competitive rates and conditions and in view of Abitibi's current situation, it kept an open mind and was throughout very accommodating;
63. Spliethoff consistently negotiated in good faith throughout Abitibi's so-called "contract review and renewal process" and with a view to finding a mutually satisfying solution;
64. Furthermore, from the date at which the Spliethoff Contracts were entered into by Abitibi and Spliethoff, up until the date at which the repudiation letter was sent, Spliethoff was never, at any given point in time, in default of any its obligations pursuant to the Spliethoff Contracts;
65. In return, Abitibi failed to comply with its own commitments and acted in bad faith;
66. Indeed, if Abitibi did not consider Spliethoff's counter-proposal acceptable, fair and good business practice dictates that it should have at least formally informed Spliethoff accordingly;
67. Without limiting the foregoing, Abitibi should also have continued the discussions with Spliethoff and this, for the benefit of all the stakeholders;
68. If Abitibi did not wish to pursue the negotiations with Spliethoff, the latter should have been clearly informed of Abitibi's decision and Abitibi should have commenced the bidding process for the Caribbean and Mediterranean lines covered by the Spliethoff Contracts and invited Spliethoff to participate in such a process;
69. Contrary to the interest of all the stakeholders, fair and good business practice and the commitments taken by Abitibi during the meeting of August 3, 2009, as spelled out in Dwyane Spence's email of July 3, **Exhibit R-7**, Abitibi totally ignored Spliethoff in the process from the moment Abitibi received Spliethoff's counter-proposal on August 11, 2009;
70. Taking into account the interest of all the stakeholders, fair and good business practice, the commitments taken by Abitibi during the meeting of August 3, 2009 and the fact the Spliethoff Contracts were to terminate not before December 31, 2012, Spliethoff should also have been invited to participate in any bidding process for those lines of Abitibi for which no agreements were reached with the relevant carriers;
71. Considering Abitibi's behavior and attitude towards Spliethoff, it is clear that Abitibi did not have any intention whatsoever to even try to come to an agreement with Spliethoff in accordance with the first phase of the process as described by Abitibi;

72. Without limiting the foregoing, taking into account the nature and duration of the Spliethoff Contracts as well as the interests of all the stakeholders, any process used by Abitibi with respect to the review of the Spliethoff Contracts should have provided for a right of first refusal for the benefit of Spliethoff;
 73. Based on past experience pursuant to the Spliethoff Contracts, Spliethoff suffers serious and important losses resulting from the repudiation of the Spliethoff Contracts by Abitibi, the whole as it appears *inter alia* from **Exhibit R-15** produced in support of the Motion;
 74. In addition to the volumes lost as a result of the repudiation of the Spliethoff Contracts, said repudiation also negatively impacts on Spliethoff's ability to contract for other cargoes to be carried from or to Eastern Canada;
 75. Also, finding substitute cargoes will be extremely difficult for Spliethoff, all the more so in light of the prevailing economic context;
- THE REPUDIATION OF THE SPLIETHOFF CONTRACTS IS CONTRARY TO THE INTERESTS OF ALL THE STAKEHOLDERS AND DOES NOT, IN ANY WAY, ENHANCE THE PROSPECT OF A VIABLE ARRANGEMENT**
76. Abitibi's behavior towards Spliethoff constitutes unacceptable commercial practice and sends out the wrong message not only to all members of the group of carriers, but also to all Abitibi stakeholders;
 77. Even under the context of the proceedings under the CCAA, Abitibi's refusal to truly and effectively renegotiate the terms and conditions of the Spliethoff Contracts is unfounded and detrimental to the interests of all the stakeholders;
 78. Abitibi prevented a competitive bidding process for Spliethoff's lines, not to mention that the terms and conditions offered by Wagenborg are unknown to Spliethoff at the present time;
 79. Furthermore, Abitibi's repudiation letter does not give any explanation in support of the repudiation of the Spliethoff Contracts;
 80. To this date, there is absolutely nothing in E&Y's monitoring reports that either recommends the repudiation of the Spliethoff Contracts or even suggests that such repudiation is necessary for the restructuring of Abitibi or that it will enhance the prospect of a viable arrangement;
 81. At present, there is no indication that E&Y ever approved the repudiation of the Spliethoff Contracts by Abitibi;

WITH RESPECT TO THE SAFEGUARD ORDER

APPARENT RIGHT

82. As appears from the foregoing, the repudiation of the Spliethoff Contracts by Abitibi was made in bad faith and is in no way fair and reasonable ;
83. As such, the repudiation ought to be declared null and void by this Honourable Court;
84. This, combined with the fact that the Spliethoff Contracts provided that they were to remain in force until December 31, 2012, gives Spliethoff a clear and apparent right to the remedies sought herein;

IRREPARABLE HARM

85. In all likelihood, Spliethoff will be unable to find substitute lines and cargoes to fill up the void left behind by Abitibi;
86. As a matter of fact, the repudiation of the Spliethoff Contracts by Abitibi is already known in the Eastern Canadian market and believing that Spliethoff's position in said market is now weakened, shippers are already using the situation against Spliethoff by demanding lower rates;
87. This repudiation of the Spliethoff Contracts also causes damages to the reputation of Spliethoff in the Eastern Canadian market and these damages will never be quantifiable.
88. The losses of cargoes under the Spliethoff Contracts will also result in the continuous and repetitive losses of other cargoes coming in and out of Eastern Canada as well as business opportunities;
89. The continuous and repetitive losses of cargoes and business opportunities mentioned above are unquantifiable and consequently, Spliethoff will not be in a position to obtain a compensation for such losses;
90. Furthermore, in the event that the Court grants the present Motion and declares null and void the repudiation of the Spliethoff Contracts by Abitibi, failing a safeguard order in the interim, any claim with respect to the Spliethoff Contracts will only be considered as a claim by an ordinary creditor in the restructuring plan;

BALANCE OF CONVENIENCE

91. Neither Abitibi nor E&Y has provided Spliethoff with any information pertaining to the reasons underlying the repudiation of the Spliethoff Contracts;
92. As far as Spliethoff is concerned, nothing indicates that the Spliethoff Contracts have produced a loss for Abitibi in the past or that future losses are foreseen;

93. At present, neither Abitibi nor E&Y have provided Spliethoff with any data demonstrating that the repudiation of the Spliethoff Contracts are beneficial to Abitibi and all the stakeholders;
94. At present, there is absolutely no indication that the contracts concluded with Wagenborg are beneficial to Abitibi and all the stakeholders;
95. As mentioned hereinabove, the repudiation of the Spliethoff Contracts has a major negative financial impact on Spliethoff;
96. The balance of convenience clearly favours Spliethoff;

URGENCY

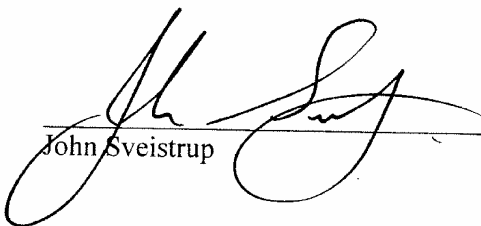
97. At the present time, Spliethoff is making all the necessary efforts in order to mitigate the damages stemming from the repudiation of the Spliethoff Contracts, including the cancellation of the M/V STATENGRACHT time charter booking;
98. Considering Spliethoff's apparent right to an order declaring null and void the repudiation of the Spliethoff Contracts by Abitibi, Spliethoff respectfully asks the Court to issue a safeguard order before any other booking is made by Abitibi for shipments with Wagenborg or any other carrier being used for the services described in the Spliethoff Contracts;
99. Based on past experience pursuant to the Spliethoff Contracts, other Abitibi shipments will most likely take place at any time during the next coming weeks and therefore, time is of the essence;

DISCLOSURE OF THE CONTRACT(S) CONCLUDED BETWEEN ABITIBI AND WAGENBORG

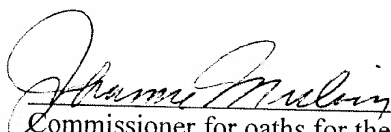
100. In light of the fact that Abitibi did not proceed with the tendering of Spliethoff's lines, there is a serious possibility that the terms and conditions of the new contract(s) between Abitibi and Wagenborg for the Spliethoff lines are not necessarily beneficial to Abitibi and all the stakeholders;
101. Therefore Spliethoff submits that it is in the interest of justice that this Honourable Court issue an order compelling Abitibi to disclose, under seal, the contents of the contract(s) entered into with Wagenborg in replacement of the Spliethoff Contracts;

102. All the facts alleged in the present affidavit are true.

AND I HAVE SIGNED,

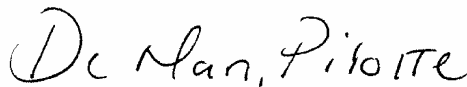

John Sveistrup

Solemnly declared before me in Montreal,
this 23rd day of September 2009


Commissioner for oaths for the district
Of Montreal



COPIE CONFORME/TRUE COPY


DE MAN, PILOTTE

NOTICE OF PRESENTATION

- TO: Abitibi-Consolidated inc.**
1155 Metcalfe Street, suite 800
Montreal (Quebec) H3B 5H2
- TO: Abitibi-Consolidated Company of Canada**
1155 Metcalfe Street, suite 800
Montreal (Quebec) H3B 5H2
- TO: Me Guy Martel**
Stikeman, Elliott S.E.N.C.R.L./s.r.l.
1155 René-Lévesque Blvd. West, 40th Floor
Montreal (Quebec) H3B 3V2
- TO: Alex Morrison**
Ernst & Young
800, René-Lévesque Blvd. West, suite 1900
Montreal (Quebec) H3B 1X9

TAKE NOTICE that the foregoing Motion for a safeguard order will be presentable for adjudication before this Honourable Court sitting at Montreal at a date and time to be determined by this Honourable Court.

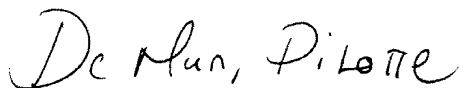
GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, September 23rd, 2009



DE MAN, PILOTTE
Attorneys for Petitioner
Spliethoff Transport B.V.

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DE MAN, PILOTTE

NOTICE TO RESPONDENTS

(Article 119 C.C.P.)

TAKE NOTICE that the Petitioner has filed this action in the office of the Superior Court, Commercial division of the judicial district of Montreal.

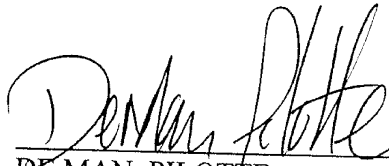
To file an answer to this action, you must first file an appearance, personally or by advocate, at the Court House located in Montreal at 1 Notre-Dame Street East, Montreal, Quebec H2Y 1B6, within **ten (10) days** of the service of the present motion.

If you fail to file an appearance within the time limit indicated, a judgment in default may be rendered against you without any further notice upon expiry of the ten (10) day delay.

If you file an appearance, the present action will be presented before the Court on **November 2, 2009 at 9:00 A.M.**, in room **16.10** of the Court House. On that date, the court may exercise such powers as are necessary to ensure the orderly progress of the proceeding or the Court may hear the case, unless you make a written agreement with the Petitioner or the Petitioner's advocate on a timetable for the orderly progress of the proceeding. The timetable must be filed in the office of the Court.

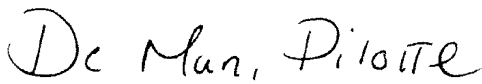
GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, September 23rd, 2009



DE MAN, PILOTTE
Attorneys for Petitioner
Spliethoff Transport B.V.

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DE MAN, PILOTTE

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CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
NO: 500-11-036133-094
(New case)

**SUPERIOR COURT
(COMMERCIAL DIVISION)**

Sitting as the "Court" designated
pursuant to the *Companies' Creditors
Arrangement Act* (1985, R.S.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 al.**

Respondents

v.

SPLIETHOFF TRANSPORT B.V., a
corporation duly incorporated under the
laws of The Netherlands, having its
principal place of business at Radarweg
36, 1042 AA Amsterdam, The
Netherlands

Petitioner

and

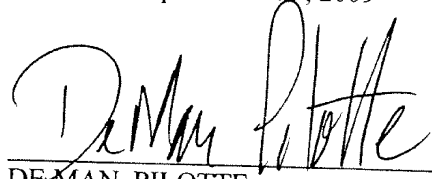
ERNST & YOUNG INC.

Monitor/Intervener

LIST OF EXHIBITS

- EXHIBIT R-1:** *En liasse*, copy of the Caribbean Contract dated November 1, 2004 **(will be produced under a sealed envelope at the hearing of the Motion);**
- EXHIBIT R-2:** *En liasse*, copy of the Mediterranean Contract dated December 14, 2004 **(will be produced under a sealed envelope at the hearing of the Motion);**
- EXHIBIT R-3:** Copy of an email dated August 11, 2009 from Volker Scheidler of TTL to John Svestrup of Pompeii;
- EXHIBIT R-4:** Copy of an email dated August 18, 2009 from John Svestrup of Pompeii to Volker Scheidler of TTL;
- EXHIBIT R-5:** Copy of an email dated August 31, 2009 from Volker Scheidler of TTL to John Svestrup of Pompeii;
- EXHIBIT R-6:** Copy of an email dated September 11, 2009 from Jamie Tolis of Pompeii to Volker Scheidler of TTL and its enclosed sailing schedule;
- EXHIBIT R-7:** Copy of an email dated July 6, 2009 from Aernaut Meijer of Spliethoff to John Svestrup of Pompeii enclosing an email of July 3, 2009 from Dwyane Spence of Abitibi to Spliethoff and others;
- EXHIBIT R-8:** *En liasse*, copy of Abitibi's contract proposals with respect to the Spliethoff lines **(will be produced under a sealed envelope at the hearing of the Motion);**
- EXHIBIT R-9:** Copy of an email dated August 11, 2009 from John Svestrup of Pompeii to Dwyane Spence of Abitibi containing Spliethoff's counter-proposal to Exhibit R-8 **(will be produced under a sealed envelope at the hearing of the Motion);**
- EXHIBIT R-10:** Copy of an email dated August 12 from Dwyane Spence of Abitibi to John Svestrup of Pompeii;
- EXHIBIT R-11:** Copy of an exchange of emails between Pompeii and Dwyane Spence of Abitibi between September 3 and 10, 2009;
- EXHIBIT R-12:** *En liasse*, copy of the September 14, 2009 emails from Monitor E&Y attaching the letter of repudiation of the Spliethoff Contracts by Abitibi;
- EXHIBIT R-13:** Copy of an email dated September 14, 2009 from Regis Gama of Abitibi to Volker Scheidler of TTL;
- EXHIBIT R-14:** Copy of a demand letter dated September 16, 2009 from the undersigned attorneys to Abitibi and Monitor E&Y;
- EXHIBIT R-15:** *En liasse*, copy of estimates of loss of revenues **(will be produced under a sealed envelope at the hearing of the Motion).**

Montréal, September 23rd, 2009

A handwritten signature in black ink, appearing to read "De Man, Pilotte", written over a horizontal line.

DE-MAN, PILOTTE
Attorneys for the Petitioner
Spliethoff Transport B.V.

COPIE CONFORME/TRUE COPY

A handwritten signature in black ink, appearing to read "De Man, Pilotte", written over a horizontal line.
DE-MAN, PILOTTE

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johnsveistrup

From: Scheidler, Volker [vscheidler@ttlogistics.ca]
Sent: August 11, 2009 2:26 PM
To: pompeii@pompeiishipping.com; namerica
Cc: Longo, Pina
Subject: S-type vessel requirement V.95 - 2nd half September 2009

John,

Below please find Charterer's T/C requirement for the month of September for the Caribbeans:

Laydays: Sept.12-21, 2009, based on vessel passing into T/C at Cape Ray, Nfld. with the applicable ballast bonus payable as per contract.

Above laycan window is calculated targeting ETA Baie Comeau Sept.15th being the date we should aim for on this voyage.

Should Owners elect to deliver vessel passing into T/C 1300 nmiles from Cape Ray (without ballast bonus) we would appreciate it if Owners could inform us asap. Such change, if applicable, must maintain focus on vessel's ETA Baie Comeau Sept.15th and the laydays will be amended accordingly.

Tonnage: abt. 8700 MT

San Juan 3200 MT – La Guaira 3300 MT – Cartagena 2200 MT

Charterers expect Owners nomination and 7-day laycan narrowing asap, within the 7 day deadline, i.e. by Aug. 18th, 2009.

Looking forward to hearing from you at your earliest convenience.

Thanks/best regards,

23/09/2009

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johnsveistrup

From: john sveistrup [pompeii@pompeiishipping.com]
Sent: August 18, 2009 11:51 AM
To: 'Scheidler, Volker'
Cc: 'pompeii@pompeiishipping.com'
Subject: AbitibiBowater September t/c requirement - M/V Statengracht/sub nomination
Attachments: 2095_001.pdf

Dear Volker,

Please find below a response received from Spliethoff in regards to your message(s) copied below. I suggest you provide Abitibi with a copy this response as well as the attached departure message.

We await your news,

Regards

John

From: Suasso, Peter [mailto:P.Suasso@spliethoff.com]
Sent: August 18, 2009 11:11 AM
To: Sveistrup, John (Pompeii Shipping); Namerica
Subject: RE: M/V Statengracht/sub nomination

Dear John,

Please find attached a copy of vessel's departure message from Singapore showing eta Warri. Spoke to the guys at BigLift who are handling the operations and they estimate 3 days work in Warri. Cargo is not weather sensitive. Warri to 1,300nm from Cape Ray is abt 3,292 miles at 17 knots that is 8 days sailing. In ballast our ships usually are 1-2 knots faster, so the crossing to the delivery point could be shorter.

We would like to point out that in case Abitibi had wanted laydays to start the 9th they should have nominated earlier, the laydays are Sept 12-21 as far as we are concerned and therefore we are well within laydays with this vessel nomination. Furthermore we also would like to advise that the ALIDA GORTHON as we originally nominated is as close to their preferred date of the 15th as you can get. We fail to understand why they do not even want to consider her.

Best regards

Peter

From: john sveistrup [mailto:pompeii@pompeiishipping.com]
Sent: Tuesday, August 18, 2009 4:48 PM
To: Namerica
Cc: Sveistrup, John (Pompeii Shipping)

23/09/2009

Subject: FW: M/V Statengracht/sub nomination

Peter/John

Await your response....

Rgds

From: Scheidler, Volker [mailto:vscheidler@ttlogistics.ca]

Sent: August 18, 2009 10:40 AM

To: pompeii@pompeiishipping.com

Subject: M/V Statengracht/sub nomination

Jamie,

Charterers advised that prior to responding to Owner's nomination they require "ironclad" proof in documented form of vessel's current position as well as documentation showing details of vessel's onward itinerary etc. until ETA B.Comeau.
Please also see Charterer's message below.

Looking forward th hearing from you asap.

Thanks/best regards,

QUOTE

Volker,

The Statengracht is very late and she will hardly be within our laycan Sept 9-18. Today is Aug 18 is she is already showing passing T/C on her last day, ie. Sept 18. Please ask for an earlier s-type ASAP, targeting ETA Baie-Comeau Sept 15, as requested.

In the meantime, we also need to receive **TODAY:**

- a) a document proving today's position of MV Statengracht;
- b) another document showing MV Statengracht's detailed itinerary from today until her potential ETA Baie-Comeau, as follows:
=> name of the port / ETA / ETS / is the cargo weather sensitive or not ?

thanks,

Regis Gama
AbitibiBowater
International Logistics, Ops
regis.gama@abitibibowater.com
Tel. 514 394 2108

UNQUOTE

From: STATENGRACHT [master.PHAQ@globeemail.com]
Sent: maandag 17 augustus 2009 16:31
To: splmall@spliethoff.com
CC: operations@bigliftshipping.com
Subject: BLS DEPARTURE MSG

Ver=01

AA) STATENGRACHT
BB) SINGAPORE
CC) 17/08/19:30
DD) 17/08/19:30
EE) WARRI/NGWAR/P06/09/10:07 B06/09/18:00
FF) 2
GG) 8162R
HH) 2
II) 1007.70/0.00/0.00
JJ) 0/0/0
KK) 1179.00/15.00/144.00
MM) 640/750/600
NN) RCVD
OO) DISCH/0/0/0
OO) LOAD/0/0/0
RR) BUNKERED IFO AT SINGAPORE ROADS

Received: from GCC at Globe Wireless;
Mon, 17 Aug 2009 15:04 UTC
Message-id: 281177625

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johnsveistrup

From: Scheidler, Volker [vscheidler@ttlogistics.ca]

Sent: August 31, 2009 1:48 PM

To: pompeii@pompeiishipping.com

Subject: M/V Statengracht V.95

John,

Pls note we received our cheque from Abitibi today therefore we a good to finance voyage No.95.

Best regards,

23/09/2009

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johnsveistrup

From: Pompeii Shipping [pompeii@pompeiishipping.com]
Sent: September 11, 2009 3:00 PM
To: Regis Gama
Cc: Scheidler, Volker; 'Longo, Pina'; pompeii@pompeiishipping.com
Subject: Sailing Schedule Sept 11th
Attachments: ACI schedules-Sept 11-09.xls

Good afternoon, Regis.

Please find enclosed the sailing schedule as at today, September 11th/2009.

Wishing you a nice weekend.

Thank you.

Jamie

(business/visiting address)

Pompeii Shipping Inc.
4465 Boul des Sources, Suite 202
Roxboro, QU

(mailing address)

Pompeii Shipping Inc.
108 Creswell
Beaconsfield, QC
H9W 1E2
Canada

tel : (514) 822 1115
fax: 011 31 20 44 88 509
cell: (514) 449 1527

general: pompeii@pompeiishipping.com
private: jamietolis@pompeiishipping.com

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we act as Agents only.

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ABITIBIBOWATER

Artisgracht / sub

Sailed
Arrived
ETA / ETS
ETA

Baie Comeau
Sorel
Piombino
Alexandria

September 9/2009
September 11/2009
September 26-28/2009
October 1-3/2009

Statengracht / sub

ETA / ETS
ETA / ETS

Delivery into T/C
Baie Comeau

abt September 19/2009
September 23-26/2009

Awaiting berth ets Sept 13/09

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Pompeii Shipping

From: Meijer, Aernaut [A.Meijer@spliethoff.com]
Sent: July 6, 2009 4:51 AM
To: pompeii@pompeiishipping.com
Cc: Namerica Chartering
Subject: FW: AbitibiBowater CCAA/Chapter BreakBulk Review & Nomination Process

-----Original Message-----

From: Dwyane.Spence@abitibibowater.com [mailto:Dwyane.Spence@abitibibowater.com]
Sent: Friday, July 03, 2009 21:06
To: kenny.pettersson@rabt.se; mrenzelli@wagenborgna.ca; pde@gearbulk.com;
grethe.hoyvik@starshipping.com; Namerica; lbrown@montreal.protos.ca
Cc: John.Robb@abitibibowater.com; Dwyane.Spence@abitibibowater.com
Subject: AbitibiBowater CCAA/Chapter BreakBulk Review & Nomination Process

Good morning ladies and gentlemen,

This is a formal request that you join AbitibiBowater's international marine management team at the corporate headquarters on August 3, 2009. This special request is the first stage in the contract review and renewal process for all of AbitibiBowater break-bulk contracts. Due to the Companies Creditor Arrangement Act (CCAA)/Chapter 11 of the United States of America Bankruptcy act for creditors' protection, AbitibiBowater must embark on an extensive review and renegotiation of all contracts held by the company.

As it is known within AbitibiBowater, the strategic break-bulk carrier group is an important part of AbitibiBowaters' eventually departure from CCAA/Chapter 11. With the co-operation and willingness of our partners, AbitibiBowater feels they will be able to achieve the required cost efficiencies need to help the company exit creditor protection. This

invitation has been extended to all of AbitibiBowaters' current partners with the end goal of continuing and growing our longstanding relationships.

As this is a very important step for AbitibiBowater to successfully emerge from creditor protection AbitibiBowater has decided to provide our carriers a comprehensive presentation explaining the new international landscape, the mechanism of CCAA & Chapter 11 and what AbitibiBowaters' expectation will be out of this process. Following this presentation, there will be limited time available for negotiations with each incumbent carrier (Phase 1). If an agreement cannot be reached with the incumbent carrier, Phase 1, then the lane in question will be tendered amongst the carrier group (Phase 2). Phase 2 will provide an opportunity for any members of AbitibiBowaters carrier group to win new business and further strengthen the on going partnership.

The 3 presentations on August 3, 2009 starting at 13h00 will be:

- 1) International Marketing - Future Landscape of AbitibiBowater presented by Carlos De Cordoba, V.P. Sales Latin America & Asia
- 2) CCAA/Chapter 11 - Overview of creditor protection presented by Martin Daigneault of Ernst & Young
- 3) Procurement Procedure - Mandate and process utilized for determining AbitibiBowater launch point presented by John Robb, Director Procurement

Due to the difficulty of gathering all parties involved and the urgency of the situation, AbitibiBowater will be requiring that all new contracted rates be retroactive back until July 1, 2009.

If you have question or comments on any of the above points please contact me and if not, I look forward to greeting all of you on August 3, 2009.

Dwyane Spence
International Logistics Specialist
AbitibiBowater
1155 rue Metcalfe, # 800
Montréal, QC, H3B 5H2
tél: 514-394-3268
cell: 514-219-4398
email: dwyanespence@abitibibowater.com
fax: 514-394-2244

Checked by AVG - www.avg.com

Version: 8.5.375 / Virus Database: 270.13.5/2220 - Release Date: 07/05/09 17:54:00

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johnsveistrup

From: Dwyane.Spence@abitibibowater.com
Sent: August 12, 2009 9:29 AM
To: pompeii@pompeiishipping.com
Cc: John.Robb@abitibibowater.com; Thomas.Nevins@abitibibowater.com;
Regis.Gama@abitibibowater.com; namerica@spliethoff.com
Subject: Fw: Abitibi / Spliethoff BV Caribbean & Egypt Proposal - CCAA contract proposal response

Good morning John,

Firstly, I thank you for submitting Spliethoff's counter proposal for the Abitibi-Consolidated Company of Canada Break bulk Contract for St. Lawrence Basin to Caribbean and Egypt. Your official counter was well received. The proposed counter will reviewed by John Robb, Thomas Nevins and Regis Gama while I am away from the office. Once this has been reviewed and an agreement has been reached this will be presented to the court appointed monitor for sign-off.

As the counter was receive on August 11, 2009 and no final agreement has been reached between AbitibiBowater and , the review and counter time frame will be extended until week 35. I will be away from the office starting today, August 12, 2009 to August 24, 2009.

If you have any question please direct them to John Robb, Thomas Nevins or Regis Gama.

Best Regards,

Dwyane Spence

Dwyane Spence
International Logistics Specialist
AbitibiBowater
1155 rue Metcalfe, # 800
Montréal, QC, H3B 5H2
tél: 514-394-3268
cell: 514-219-4398
email: dwyane.spence@abitibibowater.com
fax: 514-394-2244

23/09/2009

johnsveistrup

From: john sveistrup [pompeii@pompeiishipping.com]
Sent: September 10, 2009 9:31 AM
To: Dwyane.Spence@abitibibowater.com
Cc: pompeii@pompeiishipping.com; namerica
Subject: RE: Spliethoff - Abitibi

Hello Dwayne,

We have not received your official response even though it was first promised for week 35 and then again last Friday September 4th. Please advise status.

Regards

John

From: Dwyane.Spence@abitibibowater.com [mailto:Dwyane.Spence@abitibibowater.com]
Sent: September 4, 2009 8:15 AM
To: pompeii@pompeiishipping.com
Cc: pompeii@pompeiishipping.com
Subject: Re: Spliethoff - Abitibi

Hi John,

You will have the official response by the end of the day.

Dwyane Spence
International Logistics Specialist
AbitibiBowater
1155 rue Metcalfe, # 800
Montréal, QC, H3B 5H2
tél: 514-394-3268
cell: 514-219-4398
email: dwyane.spence@abitibibowater.com
fax: 514-394-2244

From: "Pompeii Shipping" <pompeii@pompeiishipping.com>
To: <Dwyane.Spence@abitibibowater.com>
Cc: <pompeii@pompeiishipping.com>
Date: 09/03/2009 03:36 PM
Subject: Spliethoff - Abitibi

Good afternoon Dwyane / Jamie

23/09/2009

Further to your telephone conversation with John this past Monday, August 31st, we are still waiting for your official response to the proposal given to you on Tuesday, August 11th.

Thank you.

(business/visiting address)

Pompeii Shipping Inc.
4465 Boul des Sources, Suite 202
Roxboro, QU

(mailing address)

Pompeii Shipping Inc.
108 Creswell
Beaconsfield, QC
H9W 1E2
Canada

tel : (514) 822 1115

fax: 011 31 20 44 88 509

cell: (514) 449 1527

general: pompeii@pompeiishipping.com

private: jamietolis@pompeiishipping.com

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johnsveistrup

From: Jean-Philippe.Grou@ca.ey.com
Sent: September 14, 2009 1:52 PM
To: namerica@spliethoff.com
Cc: pompeii@pompeiishipping.com; dwyane.spence@abitibibowater.com;
john.rob@abitibibowater.com; Martin.Daigneault@ca.ey.com
Subject: Abitibi Consolidated Company of Canada - Spliethoff Transport BV
Attachments: Spliethoff Transport BV.pdf.zip

Dear Mr. Meijer

Here attach a repudiation letter of the contract signed between Abitibi Consolidated Company of Canada and Spliethoff Transport BV on November 1 2004.

Yours truly



Jean-Philippe Grou | Services consultatifs transactionnels /
Transaction Advisory Services

Ernst & Young Inc.

800, boul. René-Lévesque O., Bureau 1900,, Montréal, QC, Canada H3B 1X9, Canada

Office: +1 514 394 2316 | Fax: +1 514 879 8078 | jean-philippe.grou@ca.ey.com

Website: www.ey.com

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23/09/2009

1155, rue Metcalfe, bureau 800
Montréal (Québec) H3B 5H2 Canada
Tél. 514 875-2160 abitibibowater.com



Sept 11, 2009

Spliethoff Transport, B.V.
Radarweg 36
1042 AA Amsterdam
The Netherlands

Re: AbitibiBowater Inc., Abitibi-Consolidated Inc., Bowater Canadian Holdings Inc. and their affiliates listed in the Order (the "Petitioners")

Spliethoff Transport, B.V. for Requirements Contract, dated Amsterdam November 1st 2004 and all subsequent appendixes, Addendums and amendments; NYPE 93 Charter Party dated Amsterdam November 1 2004 and all subsequent appendixes, Addendums and amendments, Appendix II to Mediterranean Contract of Affreightment, dated Amsterdam December 14th, 2004 and all subsequent appendixes, Addendums and amendments.

Dear , Aernaut Meijer

On April 17, 2009, the Petitioners sought and obtained protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), pursuant to the Initial Order of Mr. Justice Gascon of the Québec Superior Court (the "Initial Order"). A copy of the Initial Order as amended is available at www.ey.com/ca/abibibowater.

Pursuant to paragraph 46(f) of the Initial Order, the Petitioners have the right, subject to the approval of Ernst & Young Inc., the Court Appointed Monitor, to repudiate such of their agreements, contracts or arrangements of any nature whatsoever, whether oral or written, as they deem appropriate, in order to facilitate the orderly restructuring of their business and financial affairs.

Abitibi-Consolidated Company of Canada hereby gives you notice that it is repudiating all above referenced Contracts effective September 11, 2009. It is understood and required that concurrent shipment; M.V. Artisgracht, voyage Baie Comeau QC to Alexandria Egypt, will be completed without disruption. The standard payment terms as per the original governing contract will be honoured by Abitibi-Consolidated Company of Canada.

The consequences of this repudiation will be dealt with in the plan to be submitted to the creditors in accordance with the CCAA and the Initial Order.

Yours truly,

A handwritten signature in black ink, appearing to be 'J. Robb', written over a horizontal line.

c.c.: Ernst & Young Inc.

John Robb
Director International Transport & Indirect Sourcing
AbitibiBowater Inc.

johnsveistrup

From: Jean-Philippe.Grou@ca.ey.com
Sent: September 14, 2009 2:32 PM
To: namerica@spliethoff.com
Cc: pompeii@pompeiishipping.com; dwyane.spence@abitibibowater.com
Subject: Abitibi Consolidated Company of Canada - Spliethoff Transport BV
Attachments: Spliethoff Transport BV.pdf.zip

Dear Mr. Meijer

Here attach a repudiation letter of the contracts signed between Abitibi Consolidated Company of Canada and Spliethoff Transport BV on November 1st, 2004 named Amsterdam November 1st 2004 and all subsequent appendixes, Addendums and Amendments and NYPE 93 Charter Party dated Amsterdam November 1st, 2004 and all subsequent appendixes, Addendums and Amendments, Appendix II to Mediterranean Contract of Affreightment, date Amsterdam December 14th, 2004 and all subsequent appendixes, Addendums and Amendments.

Yours truly



Jean-Philippe Grou | Services consultatifs transactionnels /
Transaction Advisory Services

Ernst&Young Inc.

800, boul. René-Lévesque O., Bureau 1900,, Montréal, QC, Canada H3B 1X9, Canada

Office: +1 514 394 2316 | Fax: +1 514 879 8078 | jean-philippe.grou@ca.ey.com

Website: www.ey.com

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23/09/2009

1155, rue Metcalfe, bureau 800
Montreal (Québec) H3B 5H2 Canada
Tél. 514 875-2160 abitibibowater.com



Sept 11, 2009

Spliethoff Transport, B.V.
Radarweg 36
1042 AA Amsterdam
The Netherlands

Re: AbitibiBowater Inc., Abitibi-Consolidated Inc., Bowater Canadian Holdings Inc. and their affiliates listed in the Order (the "Petitioners")

Spliethoff Transport, B.V. for Requirements Contract, dated Amsterdam November 1st 2004 and all subsequent appendixes, Addendums and amendments; NYPE 93 Charter Party dated Amsterdam November 1 2004 and all subsequent appendixes, Addendums and amendments, Appendix II to Mediterranean Contract of Affreightment, dated Amsterdam December 14th, 2004 and all subsequent appendixes, Addendums and amendments.

Dear , Aernaut Meijer

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Abitibi-Consolidated Company of Canada hereby gives you notice that it is repudiating all above referenced Contracts effective September 11, 2009. It is understood and required that concurrent shipment; M.V. Artisgracht, voyage Baie Comeau QC to Alexandria Egypt, will be completed without disruption. The standard payment terms as per the original governing contract will be honoured by Abitibi-Consolidated Company of Canada.

The consequences of this repudiation will be dealt with in the plan to be submitted to the creditors in accordance with the CCAA and the Initial Order.

Yours truly,

A handwritten signature in black ink, appearing to be 'J. Robb', written over a horizontal line.

c.c.: Ernst & Young Inc.

John Robb
Director International Transport & Indirect Sourcing
AbitibiBowater Inc.

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johnsveistrup

From: Scheidler, Volker [vscheidler@ttlogistics.ca]
Sent: September 14, 2009 2:52 PM
To: pompeii@pompeiishipping.com; Namerica
Subject: FW: Statengracht v95 / voyage cancellation and contract repudiation
Importance: High

Gents,

FYG. please note message below just received from Regis.

Will speak with you later.

Best regards,

From: Regis.Gama@Abitibibowater.com [mailto:Regis.Gama@Abitibibowater.com]
Sent: Monday, September 14, 2009 2:39 PM
To: Scheidler, Volker
Subject: Statengracht v95 / voyage cancellation and contract repudiation
Importance: High

Good afternoon Volker,

As I briefly explained on our phonecall today, AbitibiBowater has just officially informed Spliethoff that our contract has now been repudiated.

Based on this decision, our previously existing Statengracht v.95 booking is hereby cancelled. I would also like to add that, as we learnt today (attached e-mails), this voyage is now outside of the laycan anyway.

As clearly written on the attached e-mails, after she sailed from Warri (Nigeria) last Sat Sept 12th, MV Statengracht was then expected to pass on T/C on Sept 20th, but the laycan for passing T/C 1.300 Nm from Cape Ray was Sept 9-18, 2009, as per my attached e-mail of Aug 11th.

Please inform Owners accordingly, including the fact that the ship has now fallen outside of her laycan. Kindly send me a copy of your official notification, once you have sent it.

brgds,

Regis Gama
AbitibiBowater
International Logistics, Ops
regis.gama@abitibibowater.com
Tel. 514 394 2108

From: "Pompeii Shipping" <pompeii@pompeiishipping.com>
To: "Regis Gama" <Regis.Gama@Abitibibowater.com>, "Scheidler, Volker" <Volker.Scheidler@Montship.ca>, "Longo, Pina" <plongo@ttlogistics.ca>
Cc: <pompeii@pompeiishipping.com>
Date: 09/14/2009 10:09 AM

23/09/2009

Subject: AbitibiBowater- Statengracht caribbean t/c

Gentlemen,,

Updated schedule for mv Statengracht,

Please inform all concerned

ETA	ETS	Status	Distance	Port	Type	REMARK	Code		
06-09-09 07:00	12-09-09 09:55	sld	8148	Warri	Disch	(open) ops biglift	0907		
17-09-09 09:30	17-09-09 14:00	next	2093	Mindelo	Bunker		0908		
20-09-09 14:00	20-09-09 14:01	next	1207	Equidistance 1300nm fr Cape Race NF	Delivery	(t/c) aci	0908		
24-09-09 14:00	28-09-09	next	1692	Baie Comeau QU	Load		0908		
03-10-09	05-10-09	next	2143	San Juan	Disch		0908		
07-10-09	09-10-09	open	542	La Guaira	Redelivery	(open) ops nam	0908		

Kind regards

John

From: "Scheidler, Volker" <vscheidler@ttlogistics.ca>
 To: <Regis.Gama@Abitibibowater.com>
 Cc: <doug.poole@Abitibibowater.com>, "Longo, Pina" <plongo@ttlogistics.ca>
 Date: 09/14/2009 09:07 AM
 Subject: M/V Statengracht V.95

Regis,

Above vessel dropped outbound pilot Warri 09:55 hrs Sept.12th.

On this basis we estimate delivery into T/C Sept.20th - ETA B.Comeau Sept.24 AGW WP>

23/09/2009

Best regards,

QUOTE

From: STATENGRACHT [<mailto:master.PHAQ@globeemail.com>]
Sent: Saturday, September 12, 2009 10:56 AM
To: Edwin Useh
Cc: namerica@spliethoff.com; s.eekhof@bigliftshipping.com; Sandra Dietrich;
eric.below@kbr.com; Ikechukwu Isang; John Eru; timothy.root@kbr.com
Subject: Statengracht 12/9 re. departure from Escravos anchorage.

Good day.

This morning 09:55 12/9 we disembarked pilot at Escravos breakwater.

Brgds,
Capt. B.J. Steensma.

UNQUOTE

From: Regis Gama/TRANS/MTL/CSC
To: "Scheidler, Volker" <vscheidler@ttlogistics.ca>
Date: 08/11/2009 05:22 PM
Subject: RE S-type T/C requirement Voy.95

Hi Volker,

Correct. Laydays Sept 9-18 based on passing T/C 1300 Nm from Cape Ray.

thanks,

Regis Gama
AbitibiBowater
International Logistics, Ops
regis.gama@abitibibowater.com
Tel. 514 394 2108

"Scheidler, Volker" <vscheidler@ttlogistics.ca>

A <Regis.Gama@Abitibibowater.com>

cc

08/11/2009 04:14 PM

Objet S-type T/C requirement Voy.95

23/09/2009

Regis,

Following received from Amsterdam, i.e. Spliethoff will deliver 1300 nmiles off Cape Ray.

Based on this info laycan window should be brought forward, i.e.

Sept. 9 – 18th ??

Kindly opine.

Thanks/best regards,

P.S. seems Amsterdam has more confidence in Pina's abilities than mine !

-----Original Message-----

From: Suasso, Peter [<mailto:P.Suasso@spliethoff.com>]

Sent: August 11, 2009 3:59 PM

To: pompeii@pompeiishipping.com; namerica

Cc: Longo, Pina

Subject: RE: S-type vessel requirement V.95 - 2nd half September 2009

John/Peter

Confirm receipt. It would indeed be our intention to deliver without bb, so please advise revised laydays.

Sent from my HTC Touch Diamond

23/09/2009

DE MAN, PILOTTE

AVOCATS ET PROCUREURS
BARRISTERS AND SOLICITORS

MARC DE MAN
ALAIN R. PILOTTE
ISABELLE PILLET
MALVINA APOSTOLATOS
CATHERINE LAFONTAINE

360 ST. JACQUES, SUITE 1700
MONTRÉAL, QUÉBEC, CANADA H2Y 1P5
TELEPHONE: (514) 985-2262
FAX: (514) 281-6922
e-mail: lawfirm@deman-pilote.qc.ca

Marc de Man
Direct Fax: (514) 844-0371
e-mail: mdeman@deman-pilote.qc.ca

September 16, 2009

BY E-MAIL & BY BAILIFF
WITHOUT PREJUDICE

AbitibiBowater Inc.
Abitibi-Consolidated Inc.
Bowater Canadian Holdings Inc. and their affiliates
1155, rue Metcalfe, bureau 800
Montréal (Québec) H3B 5H2

Attention: Mr. John Robb (john.robbs@abitibibowater.com)
Director International Transport & Indirect Sourcing
Abitibi Bowater Inc.

Ernst & Young Inc.
800 René-Lévesque Boulevard West
Suite 1900
Montreal, Quebec H3B 1X9

Attention: Mr. Jean-Philippe Grou (jean-philippe.grou@ca.ey.com)
Transaction Advisory Services

RE: Spliethoff Transport B.V.
Our File: 1466-001

Dear Sirs,

We represent Spliethoff Transport B.V. who has submitted to us the repudiation letter of all the contracts between Spliethoff Transport B.V. ("Spliethoff") and Abitibi Consolidated Company of Canada ("ACCC").

First, we are instructed to inform you that Spliethoff considers that the repudiation of all these contracts is contrary to the Initial Order, as amended, as well as the Companies' Creditors Arrangement Act.

Secondly, the position of Spliethoff is that ACCC's allegation that the M.V. "STATENGRACHT" cannot meet the applicable laycan days is totally unfounded. In this regard, suffice it to state, at this stage, that the ACCC did not respect the minimum 30 day notice. More specifically, in accordance with the applicable Time Charter, on August 11,

AbitibiBowater Inc.
Abitibi-Consolidated Inc.
Bowater Canadian Holdings and their affiliates
Ernst & Young Inc.

- 2 -

September 16, 2009

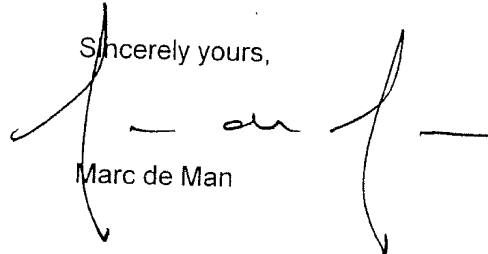
ACCC provided laycan September 12-21 Cape Race. On the same day, Spliethoff replied that the vessel would be delivered into Time Charter 1,300 NM off Cape Race. On the same day, ACCC replied that it wanted an earlier laycan September 9-18 basis delivery into Time Charter 1,300 NM off Cape Race. This clearly means that ACCC did not comply with the 30 day advance notice as provided in the Time Charter. The original laycan of September 12-21, basis delivery into Time Charter 1,300 NM off Cape Race is the valid one.

Thirdly, we understand that ACCC has taken the M.V. "ORANJEBORG" on charter to carry the cargo for the M.V. "STATENGRACHT" without any prior consultation with Spliethoff.

In these circumstances, Spliethoff urges upon ACCC and Ernst & Young to reconsider the repudiation of the contracts and, pending a resolution of this dispute, to honour your obligations with respect to the "STATENGRACHT" V. 95. The vessel is ready to sail to its point of delivery. Your confirmation is required by 10:00 a.m. on September 17, 2009.

PLEASE GOVERN YOURSELVES ACCORDINGLY.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Marc de Man', with a long horizontal stroke extending to the right.

Marc de Man

MdM:bcf

