CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

No: 500-11-036133-094

SUPERIOR COURT
(Commercial Division)
(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act,* R.S.C., c. C-36, as amended)

IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF:

ABITIBIBOWATER INC.

and

ABITIBI-CONSOLIDATED INC.,

and

BOWATER CANADIAN HOLDINGS INC.,

and

The other Debtors listed on Schedules "A", "B" and "C",

Petitioners

and

ERNST & YOUNG INC.,

Monitor

and

WELLS FARGO BANK, N.A, ADMINISTRATIVE AGENT UNDER THE *CREDIT AND GUARANTEE AGREEMENT* DATED APRIL 1, 2008

Respondent, *Ès Qualités*

AMENDED CONTESTATION BY RESPONDENT *ÈS QUALITÉS* TO PETITIONERS' *AMENDED MOTION FOR APPROVAL OF A SECOND DIP FINANCING IN RESPECT OF THE ABITIBI PETITIONERS AND FOR THE DISTRIBUTION OF CERTAIN*

PROCEEDS OF THE MPCo SALE TRANSACTION TO THE TRUSTEE FOR THE SENIOR SECURED NOTES

IN CONTESTATION OF PETITIONERS' *AMENDED MOTION FOR APPROVAL OF A SECOND DIP FINANCING IN RESPECT OF THE ABITIBI PETITIONERS AND FOR THE DISTRIBUTION OF CERTAIN PROCEEDS OF THE MPCo SALE TRANSACTION TO THE TRUSTEE FOR THE SENIOR SECURED NOTES*, RESPONDENT WELLS FARGO BANK, N.A., ÈS QUALITÉS OF ADMINISTRATIVE AGENT UNDER THE *CREDIT AND GUARANTEE AGREEMENT* DATED APRIL 1, 2008, SUBMITS THE FOLLOWING :

I. Introduction

1. The Petitioners seek orders authorizing Abitibi Consolidated Inc. ("**ACI**") to enter into a loan agreement (the "**ULC DIP Agreement**") with 3239432 Nova Scotia Company ("**ULC**"), as lender, providing for a CAD$230 million super-priority secured debtor in possession credit facility (the "**ULC DIP Facility**"), as well as an order authorizing the distribution to the Trustee of the Senior Notes of CAD$200 million upon completion of the sale of ACCC's 60% interest in the Manicouagan Power Company ("**MPCo**").

2. While described as a "facility", the ULC DIP Facility would in fact be a new DIP loan, given that the Petitioners' stated intention is to obtain an immediate advance of the entire amount of the ULC DIP Facility.

3. The Respondent contests the Petitioners' amended motion (the "**Second DIP Loan Motion**") on the following grounds:

   (a) The allegations of the Second DIP Loan Motion do not demonstrate the need for a CAD$230 million DIP facility (...) and much less for an unconditional advance of the entire amount of the ULC DIP Facility. At the most, a DIP facility of CAD$130 million would be sufficient to meet the general liquidity and working capital needs of the Abitibi Petitioners through to December 2010;

   (b) The ULC DIP Facility, and an immediate advance of CAD$230 million thereunder, would materially prejudice the Term Lenders because:

      (i) the Petitioners' assessment of the value of the Term Lenders' collateral is inaccurate and unrealistic and, among other things, does not take into account the Term Lenders' position in a liquidation scenario;

      (ii) the Term Lenders' collateral position would be seriously undermined by the creation of a further CAD$230 million super-priority charge; and

   (c) The total amount of the revised ACI DIP Charge should not exceed CAD$165 million, to cover:

      (i) the CAD$34.8 million of the net proceeds from the MPCo Transaction that would otherwise have been available to repay the debt of the Senior Secured Noteholders (the "**Secured Notes**") but will rather be used to repay in part the ACI DIP Facility, for which the Secured Notes will benefit from (…) subrogation pursuant to paragraph 61.10 of the Initial Order, as amended and restated (…); and

(ii) an amount of CAD$130 million, including the CAD$25.2 million that will be needed to repay the balance of the ACI DIP Facility and the remaining amount of CAD$104 million, to meet the general liquidity and working capital needs of the Abitibi Petitioners;

4. Capitalized terms that are not otherwise defined in this Amended Contestation have the meaning ascribed to them in the Second DIP Loan Motion and other proceedings and orders referred to therein.

II. The Respondent and the Term Loan

5. The Term Lenders are secured creditors of entities within the ABH Group, including ACCC and ACI, pursuant to a Credit and Guarantee Agreement dated as of April 1, 2008 (the "**Term Loan Agreement**"), already filed in the Court record as Exhibit **R-1** in support of their *Motion to Vary an Initial Order Rendered Pursuant to the Companies' Creditors Arrangement Act*;

6. Respondent appears herein on behalf of all lenders under the Term Loan (the "**Term Lenders**"), as Administrative Agent:

(a) Respondent succeeded to and became vested with all the rights, powers, privileges and duties of the previous Administrative Agent (Goldman Sachs Credit Partners L.P.) pursuant to section 9.7 of the Term Loan Agreement; and

(b) Pursuant to section 9 of the Term Loan Agreement, the Respondent as Administrative Agent is authorized to exercise the rights and remedies of the Terms Lenders and act on their behalf.

(…)

7. The Term Loan Agreement matured by its terms on March 31, 2009. As of the date of the Initial Order herein, there was approximately CAD$385.4 million (USD$346.9 million) in principal plus accrued and unpaid interest and fees past due and owing under the Term Loan Agreement. With the accrued interest and fees and expenses, the total amount due as of August 31, 2009 was CAD$391.8 million (USD$352.6 million).

III. The ACI DIP Charge

8. The Second DIP Loan Motion seeks an order amending the ACI DIP Order to increase the amount of the ACI DIP Charge, which currently stands at CAD$140 million, by an additional CAD$230 million, for a total of CAD$370 million, to secure:

(a) The payment of the claim of the holders of the (…) Secured Notes to the extent that they would, allegedly, be subrogated in the ACI DIP Charge for an amount equivalent to the repayment of the ACI DIP Facility; and

(b) The payment of all amounts owing to the ULC DIP Lender, including principal, interest and ULC DIP Expenses and the performance of all obligations required to be performed under or in connection with the ULC DIP Documents.

9. The ACI DIP Charge, as so amended, would enjoy a super-priority on all the property of the Abitibi Petitioners (other than assets sold pursuant to the Securitization Program Agreements) ranking subordinate only to the Abitibi Administration Charge and the Abitibi D&O First Tranche.

10. This means that the ULC DIP Facility, and a portion of the claim of the holders of the (...) Secured Notes, would be secured by the Term Lenders' collateral, in priority to the Term Lenders.

IV. There Is Insufficient Evidence to Support Petitioners' Request for the ULC DIP Facility

11. The allegations of the Second DIP Loan Motion and supporting evidence are insufficient to justify the Petitioners' request for the approval of an unconditional and immediate advance of CAD$230 million on a super-priority basis.

(a) The Amount of the ULC DIP Largely Exceeds the Petitioners' Needs

12. The Petitioners have not demonstrated their need for the substantial liquidities sought through the ULC DIP Facility.

13. As acknowledged by Mr. Allan Dea, Vice-president, Treasurer of AbitibiBowater Inc., during his examination on affidavit held November 2, 2009, the amount of the proposed ULC DIP Facility is not based on the Petitioners' specific liquidity needs. Rather, a single drawdown DIP of CAD$230 million was proposed "to simplify things" and avoid having to renegotiate a new DIP facility too often during the restructuring process.

14. In fact, the proposed ULC DIP Facility is an attempt by the Petitioners to gain access to the CAD$282 million Reserve resulting from the MPCo Transaction, limited by Alcoa's requirement that at least CAD$45 million in cash remain in the Reserve. This confirms that the amount of CAD$230 million of the ULC DIP Facility is not based on the Petitioners' liquidity needs.

15. The Monitor himself has recognized that the Petitioners do not need such a high level of liquidities through to the end of 2010:

(a) the ACI Monthly Forecast attached as Appendix G to the Nineteeth Report of the Monitor (the "**Monitor's Report**") shows that the Petitioners' needs will be of CAD$79.6 million (US$71.6 million) through 2010, well below the CAD$230 million (US$207 million) that would be provided by the ULC DIP Facility;

(b) the "Base Case Scenario" contained in Appendix G to the Monitor's Report takes into consideration all factors that could affect the Petitioners' operations over the course of 2010, including variations in weekly receipts, in the currency exchange rate and additional working capital requirements predictable at this point if time;

16. In light of the liquidity requirements of the Petitioners through 2010 as forecasted in Appendix G of the Monitor's Report, only a smaller and more reasonable DIP Facility of CAD$130 million should be authorized by this Court. This would be sufficient to meet the CAD$79.6 million (US$71.6 million) liquidity required for the operating needs of Petitioners and the further advance of CAD$25.2 million required to repay the balance of the existing ACI DIP Facility (after a repayment of CAD$34.8 million from the available net proceeds of the MPCo Transaction). It would provide the Petitioners with a "cushion" of CAD$25 million to meet any predictable liquidity needs.

17. Moreover, it is apparent from the Second DIP Loan Motion and supporting evidence that no new circumstances can justify the approval of the extensive additional DIP financing sought by the Petitioners. The underlying factors raised in April 2009 by the Petitioners to support their request for the ACI DIP Facility have remained unchanged and no new circumstances have been put forward.

18. These circumstances justified the approval of the ACI DIP Facility of CAD$100 million, of which only CAD$60 million was required to be drawn by the Petitioners to meet their liquidity needs and obligations. Given that Appendix G to the Monitor's Report shows that a similar level of liquidities, i.e. CAD$79.6 million, will be required through the end of 2010, nothing justifies the approval of an unconditional additional advance of CAD$230 million under such circumstances.

19. In light of the foregoing, the amount of the ULC DIP Facility should be limited to a maximum amount of CAD$130 million;

(b) An Immediate and Unconditional Draw of the Full Amount of the ULC DIP Facility is Unjustified

20. Furthermore, the uncertainty as to the ability of the Petitioners to emerge successfully from the CCAA proceedings, and the time required to do so, do not justify that the Petitioners be allowed to immediately borrow in a single draw the whole proceeds of the ULC DIP Facility.

21. Presently, the Initial Order and the resulting stay have been extended until December 15, 2009 by order of this Honourable Court issued on September 4, 2009. Petitioners' request for the ULC DIP Facility purporting to cover liquidity needs until the end of 2010 is premature and presumptuous, as it relies on the assumption that this Honourable Court will grant further extensions of the Initial Order until the end of 2010.

22. Since the Petitioners have demonstrated their ability to continue their operations during the seven months since the first issuance of the Initial Order, the availability of the ULC DIP Facility will be sufficient to comfort both their suppliers and customers, without the need to draw the whole amount of the ULC DIP Facility at the first opportunity.

23. Except for the amount required to repay the balance of the ACI DIP Facility upon closing of the MPCo Transaction, the Petitioners should therefore only be allowed to draw on the ULC DIP Facility from time to time with the approval of the Monitor or this Honourable Court, after showing that they meet the representations made at the time of seeking the ULC DIP Facility or that such draws are still warranted in the circumstances where such funds will be needed.

V. Prejudice to the Term Lenders

24. The proposed ULC DIP Facility would seriously prejudice the Term Lenders by leaving them significantly under-secured, as more fully set out hereinafter.

25. As stated above, as of August 31, 2009, an amount of approximately CAD$391.8 million (USD$352.6 million) was due and owing to the Term Lenders under the Term Loan Agreement.

26. The Term Loan is primarily secured by the inventory and accounts receivable of ACCC, ACI and DCorp and their subsidiaries, the pledge of stock or other equity interest in certain subsidiaries of DCorp and the real estate relating to the mill owned by Alabama River Newsprint Company.

27. Each month, the Petitioners must provide the Term Lenders with a certificate stating the value of the inventory and accounts receivable securing the Term Loan. On the basis of the August Certificate (filed by the Petitioners in support of the Second DIP Loan Motion as Exhibit **R-2**), the total estimated value of the inventory and accounts receivable was CAD$509.7 million (USD$458.7 million) as at August 31, 2009, <u>but it was reduced to CAD$476.6 million (US$425.4 million) in the September 2009 Certificate,</u> as follows:

Collateral Type	**Collateral Value**			
	<u>August 2009</u>		**<u>September 2009</u>**	
	<u>CAD$ million*</u>	<u>USD$ million*</u>	<u>CAD$ million*</u>	<u>USD$ million*</u>
Accounts Receivables	299.1	269.2	<u>270.2</u>	<u>243.2</u>
Inventory	210.6	189.5	<u>202.4</u>	<u>182.2</u>
Total:	**509.7**	**458.7**	**<u>472.6</u>**	**<u>425.4</u>**

<u>* Assumes exchange rate of C$1.00 = USD$0.90.</u>

28. Contrary to what is implied by the Petitioners in the Second DIP Loan Motion, the Term Lenders' pledge of the Alabama River Mill and their unsecured claims in the Augusta Newsprint Mill Partnership interest and against the ACI Group are of no significant value and do not add to the total estimated value of the Term Lenders' collateral<u>. During his examination on affidavit on November 2, 2009, Mr. Allan Dea, Vice President, Treasurer of AbitibiBowater Inc., acknowledged that the Petitioners themselves were unable to attribute a value to this collateral</u>.

29. In the Second DIP Loan Motion, the Petitioners argue that the Term Lenders would not be prejudiced by the ULC DIP Facility because the Term Loan is allegedly over-secured by CAD$124.1 million (USD$111.7 million). This is inaccurate and misleading.

30. It is accurate that <u>as of the date of the Initial Order only</u>, the Term Loan was over-secured by approximately CAD$122.2 million (USD$110 million), given the total amount of CAD$385.4 million (USD$346.9 million) that was then owing to the Term Lenders and the value of their collateral.

31. However, this excess coverage provided by the Term Lenders' collateral was significantly reduced by the priming charges created since then, namely the Abitibi Administration Charge, the Abitibi D&O First Tranche charge and the current ACI DIP Charge. On the basis of the estimated value of the Term Lenders' collateral contained in the August Certificate, the Term Lenders' excess collateral coverage had been reduced to approximately CAD$28.6 million (USD$25.7 million) as of August 31, 2009,[1] as demonstrated below:

Current Value of Term Lenders' Collateral as per August 2009 Certificate		
	CAD$ million*	USD$ million*
ACI Receivables	86.4	77.7
ACI Inventory	160.3	144.3
Canadian Collateral Value	246.7	222.0
Administration/D&O Charges:	-28.6	-25.7
ACI DIP facility:	-60.9	-54.8
Net Canadian Collateral	**157.3**	**141.5**
Donohue Receivables	162.4	146.1
Donohue Inventory	33.8	30.4
Bridgewater Receivables	50.4	45.3
Bridgewater Inventory	16.5	14.9
Term Loan balance:	-391.8	-352.6
Coverage Surplus/Deficiency (-)	**28.5**	**25.6**

* Assumes exchange rate of C$1.00 = USD$0.90.

32. Moreover, the proposed ULC DIP Facility would have a further detrimental impact on the Term Lenders' excess collateral coverage, to the point of rendering the Term Lenders substantially under-secured.

33. The Petitioners allege no facts suggesting that the proposed ULC DIP Facility would be employed in such a way as to generate additional assets subject to the Term Lenders' security. In the absence of any such evidence, the Term Lenders must presume that the ULC DIP Facility would prime them to its full extent, rendering the Term Lenders under-secured by over CAD$120 million (USD$115 million), as demonstrated below :

Term Lenders' Collateral with ULC DIP Charge as per August 2009 Certificate		
	CAD$ million*	USD$ million*
ACI Receivables	86.4	77.7
ACI Inventory	160.3	144.3
Canadian Collateral Value	246.7	222.0

[1] The September 2009 Certificate does not provide sufficient information to allow the Term Lenders to calculate the exact coverage position as of September 30, 2009.

Administration/D&O Charges:	-28.6	-25.7
ACI DIP facility:	-60.9	-54.8
ULC DIP Facility:	-230.0	-207.0
Priming charge in excess of Canadian Collateral	**-72.7**	**-65.5**
Donohue Receivables	162.4	146.1
Donohue Inventory	33.8	30.4
Bridgewater Receivables	50.4	45.3
Bridgewater Inventory	16.5	14.9
Total remaining collateral	263.0	236.7
Term Loan balance:	-391.8	-352.6
Coverage Surplus/Deficiency (-)	**-128.8**	**-115.9**

* Assumes exchange rate of C$1.00 = USD$0.90.

34. It is clear from the above that the proposed ULC DIP Facility would seriously prejudice the Term Lenders' position.

35. Given the structural crisis experienced by the pulp and paper industry, the Petitioners cannot demonstrate that they will be able to repay their debt to the Terms Lenders out of: (i) unsecured interests in distressed D Corp Group entities; (ii) idle paper manufacturing installations in a market with excessive production capacity; (iii) hydro power assets in Quebec's highly regulated and monopolistic market; (iv) unprofitable lumber facilities; and (v) an unliquidated expropriation claim, none of which consist in market grade borrowing base assets.

36. If the Petitioners cannot emerge from CCAA protection, the effect of any priming charge securing the proposed ULC DIP Facility becomes even more egregious for the Term Lenders as on any realistic liquidation scenario, the value of the Term Lenders' collateral would be significantly impacted.

37. The Petitioners have now been operating under the protection of this Honourable Court for almost seven (7) months. Notwithstanding representations to the contrary at the time of the approval of the ACI DIP Facility, the Petitioners have yet to propose a business plan and are unable to indicate how and when they will be able to propose a feasible restructuring plan acceptable to their creditors.

38. The Petitioners are asking the Term Lenders to put their faith in their ability to repay the Term Loan within their restructuring plan at some indeterminate future point in time, while: (i) they failed to repay the Terms Loan at its maturity on March 31, 2009; and (ii) they failed to reorganize themselves pursuant to the CBCA in accordance with their representations in the spring of 2009.

39. Finally, the suggestion contained in the Second DIP Loan Motion and the Monitor's Report that the Term Lenders would be subrogated in the ACI DIP Charge if their secured assets are used to repay the ULC DIP Facility or the Secured Notes is not accurate.

40. When the ACI DIP Facility was approved in April 2009, the subrogation provision found at paragraph 61.10 of the Initial Order, as amended and restated, was intended to address the situation then at hand, namely the protection of the rights of secured creditors of the Petitioners should assets hypothecated in their favour be used to repay the ACI DIP Facility.

41. However, in order to make paragraph 61.10 of the Initial Order, as amended and restated, equitable, it must also provide for the same subrogation rights where a secured creditor who has been subrogated in the ACI DIP Charge is later repaid from the proceeds of assets hypothecated in favour of another secured creditor.

42. As an illustration, it would be inequitable for the Secured Notes, or any other creditor that is an Impaired Secured Creditor within the meaning of Section 61.10 of the ACI DIP Order, to be subrogated in the ACI DIP Charge priming the contractual security of the Term Lenders, unless the Term Lenders are in turn to be subrogated in the ACI DIP Charge to the extent that the proceeds of assets hypothecated in their favour are used to repay the Secured Notes or, as the case may be, any other creditor subrogated in the ACI DIP Charge.

43. Even assuming that the Term Lenders would be fully subrogated in the ACI DIP Charge on account of the use of its security to repay the ULC DIP Facility and the Secured Notes, the realizable value of the assets that are encumbered by the CCAA charges only is indeterminable given their nature and the crisis affecting the pulp and paper industry.

44. Therefore, in the absence of protection for the Term Lenders, approval of the ULC DIP Facility will seriously undermine the Term Lenders' security. It is difficult to imagine any benefit to the stakeholders in this CCAA process that would outweigh such material and irreparable prejudice. Even if such a benefit could be imagined, the Petitioners have offered no cogent evidence to demonstrate that the ULC DIP Facility will produce any such benefit.

(b) Repayment of the holders of the Senior Secured Notes

45. The Term Lenders expect that, as is customarily the case, all proceeds of disposal of hypothecated assets outside the normal course of business should be collocated among the hypothecary creditors according to their respective rank.

46. To the extent that the Second DIP Loan Motion alleges that the MPCo Transaction will generate net proceeds after holdbacks of CAD$234.8 million, which will be immediately available to the Abitibi Petitioners upon closing, such proceeds should be applied in payment of the Senior Secured Notes, without triggering any subrogation in the ACI DIP Charge in their favour. The repayment of the ACI DIP Facility should come from the proceeds of the ULC DIP Facility, which is amply sufficient for such purpose.

47. To the extent that the holders of the Senior Secured Notes have agreed to accept less than the full amount of the net proceeds of the MPCo Transaction available to repay them, the amount of CAD$34.8 million left on the table is not required to repay the ACI DIP Facility, given the ULC DIP Facility, and should therefore not result in subrogating the holders of the Senior Secured Notes in the ACI DIP Charge for that amount under subsection 61.10 of the Initial Order. Subsidiarily, and to the extent only that the Abitibi

Petitioners effectively use these funds to repay the ACI DIP Facility, the holders of the Senior Secured Notes should not be subrogated in the ACI DIP Charge for more than CAD$34.8 million.

48. It would be unprecedented for this Court to authorize a DIP loan in order to repay an existing secured creditor at the expense of other secured creditors. To the extent that the ~~Abitibi~~ Petitioners wish to use the ULC DIP Facility to make any payment to the ~~Senior~~ Secured ~~Noteholders~~Notes, this Court should not grant its approval.

(…)

VI. Conclusion

49. The allegations of the New DIP Motion, therefore, do not justify approving the ULC DIP Facility as requested by the Petitioners.

50. It is unwarranted for the Abitibi Petitioners to borrow on the UCL DIP Facility in a single draw, without any control over the use of the funds by this Court, the Monitor and the major stakeholders in light of the actual evolution of the financial situation of the Abitibi Petitioners compared to the representations that have been made in this regard.

51. Should this Court approve the ULC DIP Facility being sought by the Abitibi Petitioners, the total amount of this new facility should not exceed CAD$130.2 million, to be used as follows:

   (a) CAD$20 million shall be used to repay the balance of the ACI DIP Facility; and

   (b) the balance of CAD$110.2 million shall be used for the general liquidity and working capital purposes of the Abitibi Petitioners, subject to and in accordance with the DIP draw conditions set forth in Schedule A attached to this Contestation.

52. Other than for the purposes and in the manner spelled out in the preceding paragraph and Schedule "A", the Abitibi Petitioners do not meet the conditions for approval of a CAD$230 million super-priority senior secured debtor-in-possession credit facility as developed by case law and recently codified in Subsection 11.2a) of the CCAA, more particularly in that:

   (a) The Abitibi Petitioners have not shown that the benefits of the ULC DIP Facility to all stakeholders clearly outweigh the potential prejudice to some creditors;

   (b) The Abitibi Petitioners have not shown if and when they will ever be able to propose an arrangement acceptable to their creditors and in which way the approval of the ULC DIP Facility will improve their chance to achieve such an arrangement; and

   (c) The Abitibi Petitioners have not shown that such a DIP Facility will not cause undue prejudice to their secured creditors in general and the Term Lenders in particular.

53. The Term Lenders intend to file the expert report of Jefferies & Company, Inc., their financial advisors, in support of their Amended Contestation and to have Mr. Thomas C. Carlson appear as an expert witness at the hearing of the Second DIP Loan Motion. The Term Lenders request from the Court the authorization to file Appendices 3 (Weekly Receipts and Disbursements) and 4 (13 Week Cash Flow Forecast Ended January 17, 2010) to said expert report under seal, as the filing thereof without such restriction could constitute a violation by Jefferies & Company, Inc. of its obligations of confidentiality towards AbitibiBowater Inc.;

WHEREFORE, MAY THIS COURT:

RECEIVE the amended contestation of the Term Lenders;

AUTHORIZE the Term Lenders to file under seal Appendices 3 (Weekly Receipts and Disbursements) and 4 (13 Week Cash Flow Forecast Ended January 17, 2010) to said expert report of Jefferies & Company, Inc.;

GRANT in part only the motion of the Petitioners, as follows;

ORDER that the net proceeds of the MPCo Transaction be applied by the Abitibi Petitioners to the payment of the Senior Secured Notes to the extent of CAD$200 million or such lesser amount equivalent to the net proceeds of the MPCo Transaction after holdbacks and before repayment of the ACI DIP Facility;

ORDER that the Abitibi Petitioners be authorized and empowered to enter into, obtain and borrow under the ULC DIP Agreement an aggregate principal amount outstanding at any time not exceeding CAD$130.2 million, subject to and in accordance with the DIP draw conditions set forth in Schedule A attached to this Contestation;

AMEND the Initial Order issued by this Court in this matter on April 17, 2009, as since amended and restated, by adding the following at the end of paragraph 61.3:

> "ORDERS further that from and after the date of Closing of the MPCo Transaction (as said term is defined in the Petitioners' Motion dated October 16, 2009), the ACI DIP Charge shall be increased to CAD$165 million (subject to the same limitations provided in the first sentence hereof in relation to the Replacement Securitization Facility) and shall extend the charge by a movable and immovable hypothec, mortgage, lien and security interest on all property of the Abitibi Petitioners in favour of the ULC DIP Lender for all amounts owing, including principal, interest and ULC DIP Expenses and all obligations required to be performed under or in connection with the ULC DIP Documents. The terms "ULC DIP Lender", "ULC DIP Documents" and "ULC DIP Expenses" shall be as defined in the order of this Court dated ***[date of the Court order on the Second DIP Loan Motion]***;"

ORDER that the Abitibi Petitioners are authorized and instructed to draw from the ULC DIP Facility the amount remaining due to the ACI DIP Lender after the application of CAD$38.4 million of the Net Proceeds of the MPCo Transaction before Holdbacks to the repayment of such ACI DIP Facility, and apply this draw to the full and final repayment of the ACI DIP Facility;

ORDER that, irrespective of the provisions of paragraph 61.10 of the Initial Order, as amended and restated, and any previous order of this Court, (i) the holders of Senior Secured Notes shall not be subrogated to the ACI DIP Charge as a result of any funds advanced by the ULC DIP Lender being used, directly or indirectly, to pay the ACI DIP Lender, or IQ as guarantor, or the holders of Senior Secured Notes, on account of principal, interest or costs and (ii) the holders of Senior Secured Notes shall not be subrogated to the ACI DIP Charge to the extent that net proceeds from the Existing Security of the holders of Senior Secured Notes received by the ULC DIP Lender (including as a result of the enforcement of the ACI DIP Charge by the ULC DIP Lender or any person claiming through it) are used, directly or indirectly, to pay the holders of Senior Secured Notes on account of principal, interest or costs;

ORDER that the Abitibi Petitioners are only allowed to draw in due time any further amounts from the ULC DIP Facility to the extent and in the manner spelled out in the DIP Draw Conditions attached to the Contestation of Respondent as Schedule “A” and Subsection 61.11 of the Initial Order, as amended and restated;

ORDER that Subsection 61.10 of the Initial Order, as amended and restated is replaced by the following:

> “**Subrogation to ACI DIP Charge**
>
> [61.10] **ORDERS** that the holders of Secured Notes, the Lenders under the Term Loan Facility (collectively, the "**Secured Creditors**") and McBurney Corporation, McBurney Power Limited and MBB Power Services Inc. (collectively, the "**Lien Holder**") that hold security over assets that are subject to the ACI DIP Charge and that, as of the Effective Time, was opposable to third parties (including a trustee in bankruptcy) in accordance with the law applicable to such security (an "**Impaired Secured Creditor**" and "**Existing Security**", respectively) shall be subrogated to the ACI DIP Charge to the extent of the lesser of **(i)** any net proceeds from the Existing Security including from the sale or other disposition of assets, resulting from the collection of accounts receivable or other claims (other than Property subject to the Securitization Program Agreements and for greater certainty, but without limiting the generality of the foregoing, the ACI DIP Charge shall in no circumstances extend to any assets sold pursuant to the Securitization Program Agreements, any Replacement Securitization Facility or any assets of ACUSFC, the term "Replacement Securitization Facility" having the meaning ascribed to same in Schedule A of the ACI DIP Agreement) and/or cash that is subject to the Existing Security of such Impaired Secured Creditor that is used directly to pay **(a)** the ACI DIP Lender or **(b)** another Impaired Secured Creditor (including by any means of realization) on account of principal, interest or costs, in whole or in part, as determined by the Monitor (subject to

adjudication by the Court in the event of any dispute) and **(ii)** the unpaid amounts due and/or becoming due and/or owing to such Impaired Secured Creditor that are secured by its Existing Security. For this purpose "ACI DIP Lender" shall be read to include Bank of Montreal, IQ, the ULC DIP Lender and their successors and assigns, including any lender or lenders providing replacement DIP financing should same be approved by subsequent order of this Court. No Impaired Secured Creditor shall be able to enforce its right of subrogation to the ACI DIP Charge until all obligations to the ACI DIP Lender have been paid in full and providing that all rights of subrogation hereunder shall be postponed to the right of subrogation of IQ under the IQ Guarantee Offer, and, for greater certainty, no subrogee shall have any rights over or in respect of the IQ Guarantee Offer. In the event that, following the repayment in full of the ACI DIP Lender in circumstances where that payment is made, wholly or in part, from net proceeds of the Existing Security of an Impaired Secured Creditor (the "**First Impaired Secured Creditor**"), such Impaired Secured Creditor enforces its right of subrogation to the ACI DIP Charge and realizes net proceeds from the Existing Security of another Impaired Secured Creditor (the "**Second Impaired Secured Creditor**"), the Second Impaired Secured Creditor shall not be able to enforce its right of subrogation to the ACI DIP Charge until all obligations to the First Impaired Secured Creditor have been paid in full. In the event that more than one Impaired Secured Creditor is subrogated to the ACI DIP Charge as a result of a payment to the ACI DIP Lender, such Impaired Secured Creditors shall rank *pari passu* as subrogees, rateably in accordance with the extent to which each of them is subrogated to the ACI DIP Charge. The allocation of the burden of the ACI DIP Charge amongst the assets and creditors shall be determined by subsequent application to the Court if necessary.

THE WHOLE WITH COSTS in favour of Respondent Wells Fargo Bank, N.A. *ès qualité*, inclusive of experts costs.

Montréal, this November 5, 2009

Fasken Martineau DuMoulin

Fasken Martineau DuMoulin LLP
Attorneys for Respondent

No : 500-11-036133-094

PROVINCE OF QUÉBEC
SUPERIOR COURT (Commercial Division)
DISTRICT OF MONTREAL

IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF:

ABITIBIBOWATER INC. ET AL.,

Petitioners

and

ERNST & YOUNG INC.,

Monitor

and

WELLS FARGO BANK, N.A.,

Respondent, *Ès Qualités*

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AMENDED CONTESTATION BY RESPONDENT *ES QUALITÉ* TO PETITIONERS' *AMENDED MOTION FOR APPROVAL OF A SECOND DIP FINANCING IN RESPECT OF THE ABITIBI PETITIONERS AND FOR THE DISTRIBUTION OF CERTAIN PROCEEDS OF THE MPCo SALE TRANSACTION TO THE TRUSTEE FOR THE SENIOR SECURED NOTES* AND SCHEDULE "A"

ORIGINAL

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