CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No. : 500-11-036133-094

SUPERIOR COURT

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

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

ABITIBIBOWATER INC.,

and

ABITIBI-CONSOLIDATED INC.,

and

BOWATER CANADIAN HOLDINGS INC.,

and

the other Petitioners listed herein

Petitioners

and

ERNST & YOUNG INC.

Monitor

and

AURELIUS CAPITAL MANAGEMENT, LP

Noteholder

CONTESTATION OF THE MOTION FOR THE ISSUANCE OF AN ORDER TO PROVIDE THE FINANCIAL INFORMATION ON CERTAIN PETITIONERS

TO THE HONOURABLE CLÉMENT GASCON J.S.C. OR ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF MONTRÉAL, THE DEBTORS RESPECTFULLY SUBMIT THE FOLLOWING:

*Unless otherwise indicated, all capitalized terms herein shall have the meaning attributed to them in the Motion for the Issuance of an Order to Provide the Financial Information on Certain Petitioners (the "**Aurelius Motion**") filed by Aurelius Capital Management, LP ("**Aurelius**") or in the Initial Order issued by this Court on April 17, 2009, as amended (the "**Initial Order**").*

I. OVERVIEW

1. The Bowater Petitioners are proceeding in good faith and with due diligence in the context of the present CCAA proceedings (the "**CCAA Proceedings**"), enjoy a good liquidity position and are working to develop a restructuring plan in conjunction with the other Bowater corporate entities which have filed proceedings under Chapter 11 of the U.S. *Bankruptcy Code* before the U.S. Bankruptcy Court for the District of Delaware (the "**U.S. Proceedings**").

2. On the basis of a series of self-serving allegations with respect to alleged conflicts of interests between certain of the Bowater Petitioners and certain false allegations that information requests went unanswered, Aurelius is seeking to launch a "fishing expedition" into all intercompany transactions over the last three years.

3. Granting the Aurelius Motion at this stage is premature and will unnecessarily distract the Bowater Petitioners' resources from their ongoing restructuring efforts and is likely to prejudice the Bowater Petitioners' ability to develop a restructuring plan in a timely fashion.

4. Aurelius is not being prejudiced by waiting for a plan to be proposed in due course in the context of the CCAA Proceedings and the US Bankruptcy Proceedings. Aurelius and the other holders of the Notes (the "**Noteholders**") are general unsecured creditors of the Bowater Petitioners and, along with all other general unsecured creditors, directly benefit from the Bowater Petitioners' efforts to expeditiously reorganize.

II. GROUNDS OF CONTESTATION

1. Petitioners' Good Faith

5. The U.S. Proceedings and the CCAA Proceedings are ongoing. Since filing for insolvency protection, the Petitioners have worked diligently to stabilize their operations and have acted in good faith and with due diligence.

2. Nature of Aurelius' Claim

6. Aurelius allegedly holds 7.95% senior unsecured notes due 2011 (the "**Notes**") issued by BCFC. Aurelius has provided no evidence of this allegation and no indication as the amount of Notes which it currently holds.

7. In addition to being a Petitioner in the CCAA Proceedings, BCFC is also a U.S. Debtor in the U.S. Proceedings.

8. BCFC is not an operating company and carries on no trade. It is a special purpose financing entity.

9. BCFC's sole material liability consists of the outstanding Notes. BCFC's sole material assets consist of preferred shares of BCHI, an indirect wholly-owned subsidiary of BI. BCHI holds an indirect equity interest in BCFPI the Canadian operating entity of the Bowater Group. BCFPI has substantial amounts of secured and unsecured debt owing as stated in paragraphs 204 and following of the Petition and is clearly insolvent. BCFC's equity interest in intermediate holding entities of an insolvent operating company can only be considered at best as being a speculative value at this juncture.

10. The payment of the Notes is guaranteed by BI. BCFC may also have a claim for contribution in respect of its obligations under the Notes from its shareholder BI pursuant to s.135 of the Nova Scotia *Companies* Act. The question of any recovery for the Noteholders from such claims is not before the Court at this time.

3. Noteholders Are Represented and May Access Information

11. The interests of the holders of the Notes are already represented in the U.S. Proceedings. Specifically, Wilmington Trust Company acts as the indenture trustee for the Notes (the "**Indenture Trustee**").

12. Aurelius and the Indenture Trustee are represented in the U.S. Proceedings by the statutory committee of unsecured creditors (the "**UCC**") and the Indenture Trustee is a member of the UCC.

13. Pursuant to the Trust Indenture filed as part of Exhibit D-2 (the Note Agreements), the Indenture Trustee has the ability to pursue any available remedy to collect on the Notes, subject to the direction of a majority of Noteholders, including by filing proofs of claim.

14. Aurelius has not demonstrated compliance with the requirements of the Trust Indenture in bringing the present motion.

15. There is no evidence on the record which indicates that the Indenture Trustee, acting on behalf of all Noteholders, has been denied any requested information from BCFC or the other Bowater Petitioners or that any of its rights as a member of the UCC have not been respected.

16. Furthermore, contrary to the impression sought to be created by the Aurelius Motion, the Monitor's counsel has always responded to information requests received from Aurelius.

17. On October 6, Monitor's counsel forwarded to Aurelius' counsel a letter sent the previous day to Aurelius' Managing Director containing a response to allegations that the Monitor was burdened by "*irreconcilable duties to CCAA filers that may have adverse interests*" and stating that, in light of the Monitor's role and duties, the latter

did not "*have any unusual conflict in this CCAA proceeding*", the whole as appears from a copy of said letter communicated herewith as **Exhibit D-1**.

18. On November 12, 2009, Monitor's counsel replied to Aurelius' information requests of September 15 and October 29, 2009, stating that it had been advised that none of the information requested in respect of the Bowater Petitioners would be disclosed publically, but that Aurelius remained free to execute a non-disclosure agreement in order to access, through the electronic data room, the information which is not publically available, the whole as appears from a copy of said letter communicated herewith as **Exhibit D-2**.

4. <u>The Noteholders Assumed Structural Subordination Risk</u>

19. The Notes were issued to qualified investors under an Offering Circular, a copy of which is attached as **Exhibit D-3.**

20. As appears from the Offering Circular, investors in the Notes were specifically advised of the intentions of BCFC to utilize the proceeds thereof to make equity investments in subsidiaries and that BCFC would thus be dependent on the resources of such subsidiaries or upon BI (which guaranteed the Notes) to make payments upon the Notes.

5. <u>No Evidence of Presumed Conflict</u>

21. Apart from a series of self-serving statements in the Aurelius Motion about the beliefs of Aurelius that information requests went unanswered (addressed above), Aurelius does not submit any evidence that the Monitor or BCFC's directors have actually failed to take BCFC's interests into account during the pendency of these CCAA Proceedings.

22. In large CCAA proceedings involving corporate groups, intercompany claims or equity holdings almost always exist. Those proceedings are not conducted on the basis of presumed conflicts of interest resulting from those claims and the Petitioners' differing creditor pools. Rather, as described below, it is the Court's prerogative to consider the efforts of the group as a whole to reorganize its business and maximize the value of its estate.

23. To that end, pursuant to section 11.7 of the CCAA the Initial Order, the Monitor was appointed as an officer of the Court to, amongst other things, advise the Bowater Petitioners in the development of a plan of arrangement, assist with the holding and administering of creditors' meetings for voting on said plan, and consider and, if deemed advisable, prepare a report and assessment of the proposed plan of arrangement.

24. At this stage, there is simply no basis to allege that the Monitor, BCFC's directors and the other Petitioners are trying to do anything other than maximize the value of the Bowater Group as a whole. By contrast, there is ample evidence that the Petitioners are taking positive steps in furtherance of their restructuring, including

by analyzing and repudiating contracts and disposing of non-core assets and pursuing the development of a restructuring plan.

25. In the absence of concrete evidence that activities have resulted from bias, this Court should not infer a conflict or breach of duty in a cross-border insolvency on the basis that the various estates are being jointly administered. Even if it is ultimately shown that some of the Petitioners may have different economic interests, this would not prevent the group from restructuring and taking into account these different interests in the restructuring.

26. Similarly, a CCAA court should not order the removal of directors based solely on a risk of anticipated bias or misconduct.

27. In any event, as described above and in more detail below, the nature of the interest that BCFC holds in the Bowater Petitioners are speculative equity interests that have no practical value when compared to the debt claims the Petitioners are charged with resolving in this process. Accordingly, it is quite clear that BCFC's interests are actually incapable of coming into conflict with those of the other Bowater Petitioners.

6. <u>Prejudice to the Noteholders Is Speculative</u>

28. As a special purpose entity, BCFC's only assets are the preferred share of BCHI, described above. BCFC's equity interest in BCHI has been preserved and to date, no steps have been taken in these CCAA Proceedings or in the U.S. Proceedings to cancel or otherwise affect these shares.

29. Aurelius presumes prejudice, arguing that the Monitor and the officers and directors of BCFC cannot possibly represent the interests of both BCFC and the other Bowater Petitioners. However, as described above, Aurelius has provided no actual evidence or foundation to assert that the Monitor, BCFC's directors or even the other Bowater Petitioners are not working to develop a restructuring plan to maximize the value of the Bowater Group.

30. There is no evidence that BCFC's rights are being eroded or that they are being severely prejudiced by the continuation of the CCAA stay while a plan of arrangement is being developed. As a Court-appointed officer, there is nothing to prevent the Monitor from pointing out actual conflicts of interest among the Petitioners, should such a situation actually arise.

7. <u>Potential Prejudice to the Bowater Petitioners</u>

31. The orders sought in the Motion clearly demonstrate that Aurelius is seeking to conduct a fishing expedition into all intercompany transactions over the past several years. There is no foundation for such an open-ended and baseless request which could only divert time, attention and resources from the task of restructuring for the private purpose of one creditor seeking leverage to advance its own interests

to the detriment of the restructuring process and all other general unsecured creditors.

32. Aurelius' request is out of proportion with respect to the prejudice which it alleges in that it requires an extensive forensic investigation of inter-company transactions over a period of three years at great cost, without the slightest allegation of actual wrongdoing on the part of the Petitioners or the Monitor.

III. CONCLUSION

33. The Petitioners respectfully submit that the Aurelius Motion should be dismissed with costs.

34. The present contestation is well founded in fact and in law.

WHEREFORE, MAY THIS COURT:

[1] **DISMISS** the *Motion for the Issuance of an Order to Provide the Financial Information on Certain Petitioners* by Aurelius Capital Management, LP.

THE WHOLE WITH COSTS.

Montréal, December 18, 2009

Stikeman Elliott LLP

Stikeman Elliott LLP
Attorneys for the Petitioners

AFFIDAVIT

I, the undersigned, William Harvey, having my principal place of business at Suite 800, 1155 Metcalfe Street, Montréal, Quebec, H3B 5H2 solemnly declare the following:

1. I am the Executive Vice President and Chief Financial Officer of AbitibiBowater Inc.;

2. All the facts alleged in the *Contestation of the Motion for the Issuance of an Order to Provide the Financial Information on Certain Petitioners* are true.

AND I HAVE SIGNED

W S Harvey

WILLIAM HARVEY

Solemnly declared before me at Montréal, on the 18th day of December, 2009

Sherry L Simpson

Notary Public

Commission exp: 7/6/2019

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SUPERIOR COURT
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(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act*)

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PROVINCE OF QUEBEC
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- and –
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BS0350 **n/dos.:** 041053-1170

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ORIGINAL

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