CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N°: 500-11-036133-094

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

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

ABITIBIBOWATER INC.
and
ABITIBI-CONSOLIDATED INC.
and
BOWATER CANADIAN HOLDINGS INC.

And the other Petitioners listed in Schedules A, B and C

Petitioners-Debtors

and

ERNST & YOUNG INC.

Monitor

and

AURELIUS CAPITAL MANAGEMENT, LP, having its head office at 535 Madison Avenue, 22nd Floor, New York, NY, 10022

Petitioner-Noteholder

and

CONTRARIAN CAPITAL MANAGEMENT, L.L.C.
having its head office at 411 West Putnam Avenue, Suite 225, Greenwich, CT 06830

Petitioner-Noteholder

PLAN OF ARGUMENT OF AURELIUS CAPITAL MANAGEMENT, LP AND CONTRARIAN CAPITAL MANAGEMENT, L.L.C.

PART I - NATURE OF THE MOTION

1. The Board of Directors of Bowater Canada Finance Corporation ("**BCFC**") suffers from disabling conflicts of interest that prevent its officers and directors from advancing the interests of BCFC and those of its constituents in the complex restructuring of the AbitibiBowater companies. Further, BCFC's counsel throughout these proceedings has been equally conflicted in as much as they represent all of the Canadian Applicants. As a result of these conflicts, BCFC's rights and interests have been ignored and sacrificed throughout these CCAA proceedings to its detriment and those of its creditors and for the benefit of creditors of other members of the AbitibiBowater Group of Companies.

2. BCFC carries on no active business. It has no business to restructure. It is a special purpose vehicle that was created for the purpose of issuing USD $600 million of 7.95% unsecured notes which mature on November 15, 2011 (the "**Notes**"). The Notes are unconditionally guaranteed by BCFC's U.S. parent company (and sole shareholder) Bowater Inc. ("**BOW**"). Aurelius Capital Management, LP ("**Aurelius**") and Contrarian Capital Management, L.L.C. ("**Contrarian**") own in excess of USD $200 million of the Notes and are in a position to vote down any plan of arrangement for BCFC, which they have stated they will do. Accordingly, there is no longer any legitimate purpose to the inclusion of BCFC as a protected entity in these CCAA proceedings.

3. The USD $600 million note proceeds were transferred to various other Canadian Debtors through a series of complicated and poorly disclosed intercompany transactions (the "**Intercompany Transactions**"). As a result of these transactions, BCFC came to own

preferred shares (the "**Preferred Shares**") in Bowater Canadian Holdings Inc. ("**BCHI**"). BCHI is a holding company for Bowater's Canadian activities.

4. Further, BCFC also has a claim against BOW under section 135 of the *Companies Act* (Nova Scotia), which requires BOW to pay all debts and liabilities of BCFC and which is triggered by, among other things, the bankruptcy of BCFC (the "**Contribution Claim**").

5. BCFC's conflicted Board of Directors and counsel have taken no steps to investigate, assert or protect the Contribution Claim, maximize the value of the Preferred Shares or investigate the Intercompany Transactions in the 14 months that it has been under CCAA protection, and have permitted a Plan of Reorganization and Compromise in Canada and a Plan of Reorganization in the companion U.S. Chapter 11 proceedings (collectively the "**Plans**") to be put forward that purport to compromise those claims and interests for no consideration. Further, there was no one representing the interests of BCFC in the negotiations leading up to the formulation of the Plans. Accordingly, it is necessary to have BCFC assigned into bankruptcy and a trustee appointed, or else have an independent third party appointed by the Court to investigate, assert and protect BCFC's claims and interests and represent its interests in plan negotiations.

6. The relief being sought in this motion and in the contestation of BCFC's motion to extend the stay of proceedings, causes no prejudice to BCFC, which is not an operating entity and holds claims and interests in other CCAA and Chapter 11 debtors. Rather, the requested relief relieves the Board of Directors of BCFC of their irreconcilable conflicts of interest. The requested relief also ensures that an independent party, owing a fiduciary

duty solely to BCFC will protect its interests, maximize the value of its assets and fairly and without conflict represent its interests in the plan negotiations and restructuring proceedings.

7. To permit BCFC to have the benefit of the stay of proceedings in circumstances where no viable plan can be put forward, where there is no business to restructure merely allows the other CCAA applicants to continue to hold it hostage and expropriate value from it and its creditors.

8. While BCFC has appointed U.S. conflicts counsel and an independent officer pursuant to the June 25, 2010 Orders of the U.S. Bankruptcy Court, their appointment does not address the underlying conflict. Even though conflicts counsel and the independent officer may make efforts to be independent, they are prevented from being truly independent as a result of their requirement to report to and take instruction from BCFC's conflicted Board of Directors. Simply put, the appearance of independence with no ability to act independently is no independence at all.

PART II - THE FACTS

Background

9. The facts are largely not disputed.

10. On April 17, 2009, Abitibi-Consolidated Inc. and certain related parties including BCHI and BCFC (the "**Applicants**") obtained protection under the *Companies' Creditors*

Arrangement Act (Canada) (the "**CCAA Proceeding**"). The previous day, AbitibiBowater Inc., BOW and certain subsidiaries, including BCFC, filed a voluntary petition for relief under chapter 11 of title 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "**US Proceeding**"). Accordingly, BCFC is a debtor in both the Canadian and U.S. proceedings.

Motion of Aurelius and Contrarian ("Motion") at paras. 3-9.

BCFC

11. BCFC is an unlimited company incorporated under the laws of Nova Scotia. Its parent and sole shareholder is BOW. It was incorporated for the purpose of raising funds in a tax efficient manner to provide financing for BOW's Canadian activities.

Motion at paras 11-13.

12. BCFC raised USD $600 million in 2001 through the issuance of the Notes. BCFC appears to have subsequently transferred the note proceeds to BOW and its affiliates. Ultimately, through complicated and poorly disclosed Intercompany Transactions, BCFC came to own Class A preferred shares in BCHI.

Motion at para. 32.

13. The members of the Board of Directors of BCFC also serve on the Boards of numerous other CCAA and Chapter 11 debtors, including AbitibiBowater Inc., BOW and BCHI.

The Board of BCFC held no meetings prior to May 2010, but rather conducted business through resolutions of the Board of its parent.

Transcript of the cross-examination of William Harvey held on May 20, 2010, question 89, Exhibits 1-4 of the cross-examination.

14. BCFC carries on no active business. It has no employees. It has no business to restructure. Its only assets appear to be claims against and interests in other CCAA and Chapter 11 debtors. The only claims or interests that have been disclosed to date are the Contribution Claim and the Preferred Shares. BCFC's only material liability is the Notes.

Motion at para. 2.

15. The noteholders are the only arms'-length unsecured creditors of BCFC.

Motion at para. 38.

16. Given that BCFC has no ongoing business activity and its only disclosed assets are equity investments in BCHI and the Contribution Claim against BOW, maximizing recovery for BCFC requires that BCFC participate effectively as a <u>creditor</u> in the CCAA Proceeding and the US Proceeding.

Motion at para. 2.

The Restructuring Plan

17. The Applicants propose an integrated restructuring process for the AbitibiBowater Group of Companies that largely involves converting unsecured debt for new equity of AbitibiBowater Inc.

Plan of Arrangement, filed June 25, 2010.

18. The Plans contemplate that intercompany claims (of which the Contribution Claim is one) are not entitled to any distribution, and that they may be compromised, preserved or restored as the debtors see fit. Further, the Plans also provide that there will be no recovery on account of any intercompany equity interests.

Plan of Arrangement, filed June 25, 2010.

19. Based on the testimony given by William Harvey, a Director and Vice-President and Treasurer of BCFC (who also holds similar positions with AbitibiBowater Inc., BOW, BCHI and numerous other Canadian and U.S. debtors), BCFC's Board of Directors:

(a) never held any meetings prior to May 6, 2010;

(b) never met to consider or approve the Plans;

(c) have received no independent advice with respect to the effect of the Plans on BCFC;

(d) never assessed whether a bankruptcy/Chapter 7 filing as opposed to a CCAA/Chapter 11 filing was preferable for BCFC;

(e) never held a meeting to discuss whether BCFC should file under the CCAA or Chapter 11. Rather, the decision was made by the Board of Directors of BOW as reflected in a resolution of the Board of Directors of BOW dated April 16, 2009;

(f) never investigated or asserted the Contribution Claim (which is a claim in excess of USD$600 million);

(g) did not ensure that BCFC's interests were represented in Plan negotiations;

(h) have no opinion on whether walking away from the Contribution Claim and cancelling the Preferred Shares with no consideration is in the best interests of BCFC;

(i) took no steps to investigate whether BCFC has any claims arising from the Intercompany Transactions (including potential claims against officers and directors).

Transcript of the Cross-examination of William Harvey, Questions 89, 93, 94, 110, 128-130, 139-142, 147, 159-161, 164, 165, 171-173, 252, 308-309, 314, 348, 348-349, 351-352, 357.

20. Throughout the Canadian and U.S. Proceedings BCFC has been represented respectively by Stikeman Elliott and Paul Weiss (which both also represent all of the other debtors) and accordingly are unable and incapable of providing independent advice to BCFC in respect of intercompany claims and interests or protect BCFC's interests in Plan negotiations.

Motion at para. 2.

21. The debtors themselves recognized the unseemliness of the obvious conflicts of interest of their Directors, Officers and counsel when they brought motions to appoint Lisa Donahue as Vice-President Restructuring and Al Togut as U.S. independent counsel for BCFC. While Aurelius and Contrarian recognize the benefit of attempting to remedy the underlying conflicts in this manner, the fact that both Donahue and Togut are required to report to BCFC's conflicted Board and cannot take any proceedings without Board approval render their independence limited. Further, the terms of their retainer do not permit them to recommend that BCFC oppose the Plans, even if they conclude that the Plans are not in the best interests of BCFC. This is a significant restraint on their independence given that the Plans are clearly harmful to BCFC in that they appear to contemplate releasing BCFC's only disclosed assets for no consideration, and BCFC had no input into or representation in respect of the Plans.

Amended Reply at paras. 16.6-16.11.

22. Aurelius and Contrarian, which own in excess of USD$200 million of BCFC debt will not vote in favour of the Plans put forward by BCFC. Accordingly, the Plans are destined to fail in respect of BCFC. As such, the eventual bankruptcy of BCFC is a certainty. There is simply no compelling reason to delay the inevitable bankruptcy of BCFC. Other than wanting to continue to control BCFC in order to continue to subordinate its rights and interests in favour of other debtors and their creditors, there is simply no good reason for BCFC and the debtors to continue to oppose a bankruptcy of BCFC and the appointment of an independent fiduciary.

Amended Reply at para 17.

23. There is no evidence that BCFC is an important or even necessary component to the restructuring of the AbitibiBowater Group.

24. There is no evidence that the restructuring effort of the AbitibiBowater Group would suffer any prejudice if BCFC were bankrupt, or if a truly independent third party is appointed to investigate, protect and asset claims on its behalf.

25. There are no employees, landlords or other creditors that would be adversely affected by BCFC's bankruptcy.

26. There are no other stakeholders that would be adversely affected by BCFC's bankruptcy.

27. The appointment of a trustee in bankruptcy for BCFC would ensure that an independent party with a fiduciary duty to BCFC and its constituents was properly representing the interests of BCFC in the AbitibiBowater restructuring process to maximize the value of its assets.

PART III - THE ISSUES

ISSUE 1: Is a bankruptcy of BCFC or the appointment of an independent third party appropriate in the circumstances?

ISSUE 2: Should the discretion of the Court be exercised in favour of extending the stay of proceedings and the application of the CCAA in relation to BCFC?

PART IV - THE LAW

A Bankruptcy of BCFC, or the Appointment of an Independent Third Party is Appropriate in the Circumstances

28. The purpose of the CCAA is to facilitate the making of a compromise or arrangement between an insolvent debtor company and its creditors in order to restructure the business. The ability of the court to grant or continue a stay under s. 11 is not a free standing remedy that the court may grant whenever an insolvent company wishes to undertake a "restructuring", a term with a broad meaning including such things as refinancing, capital injections and asset sales and other downsizing. Rather, s. 11 is ancillary to the fundamental purpose of the CCAA, and a stay of proceedings freezing the rights of creditors should only be granted in furtherance of the CCAA's fundamental purpose.

***Cliffs Over Maple Bay Investments Ltd. v. Figaro Capital Corp.* (2008), 46 C.O.B. (5th) 7, 2008 Carswell 1758 at paras. 26 and 29 (B.C.C.A.).**

29. The existence or possible continuation of an ongoing business is a factor to consider when determining whether it is appropriate to make an order lifting a CCAA stay to permit creditors to enforce their rights and remedies. It is not that protection might not, in appropriate circumstances, be extended to companies with few unsecured creditors and no real ongoing business, but the relative absence of these things are factors to consider in determining whether to continue an Order involving a company.

***Redekop Properties Inc., Re* (2001), 40 C.O.B. (5th) 62, 2001 CarswellBC 3560 at paras. 56 and 63 (B.C. S.C. [In Chambers]).**

30. BCFC has no operating business and is a creditor of BOW and owner of the Preferred Shares. The noteholders constitute BCFC's largest creditor and Aurelius and Contrarian, which hold over one third of the Notes, seek to have BCFC become bankrupt, which is one way (but not the only way) to crystallize BCFC's valuable Contribution Claim against BOW. In these circumstances, BCFC should become bankrupt where it has no ongoing business, has no going concern value to preserve and there are no other affected stakeholders such as employees. In these circumstances, the balancing of interests should favour the creditors, in the enforcement of their legal remedies as they see fit.

31. Furthermore, given that BCFC has no operating business, its bankruptcy would not impair the ability of the remaining AbitibiBowater Group to establish a viable restructuring plan.

32. In exercising discretion to lift the stay to allow enforcement of remedies versus refusing to do so, the court should balance the interests of the creditors and debtors and consider the prejudice that may be suffered by each.

> ***Re Canadian Airlines Corp.*** **(2000), 19 C.B.R. (4th) 1, 2000 CarswellAlta 622 at paras. 15 and 20 (Alta Q.B.) ("*Canadian Airlines*").**

33. In circumstances where:

    (a) the debtor has no business to restructure and likely will be wound up or dissolved as part of the overall restructuring of the AbitibiBowater Group;

(b) there are no stakeholders of the subject company (BCFC) that are adversely affected;

(c) there is no value, such as going concern value, lost as a result of a bankruptcy;

(d) the holders of the economic interest in the debtor believe that it is in the best interests of BCFC for it to make an assignment in bankruptcy;

(e) BCFC has no independent management or counsel;

(f) its management has neglected its duties to BCFC and has subordinated BCFC's interests to the interests of other debtors and their creditors;

(g) an independent Court officer can protect the interests of BCFC and its stakeholders; and

(h) the remedy sought has no material effect upon (i) the business or operations of the organization being restructured; or (ii) the ability of the remaining organisation to restructure;

then the balance of interests dictates that the Court should favour either the appointment of a trustee in bankruptcy or a truly independent third party to ensure that the rights and interests of BCFC are appropriately investigated, preserved, protected and asserted.

34. There is no evidence that a bankruptcy of BCFC, or the appointment of an independent third party would cause BCFC or the AbitibiBowater Group to suffer any prejudice. On

the other hand, it is clear that BCFC and its creditors are suffering prejudice as a result of the attempt to compromise for no consideration BCFC's valuable claims and interests.

35. The Directors of BCFC owe a fiduciary duty to BCFC. Their duty requires them to avoid conflicts of interest with BCFC.

36. While interlocking directorships are common, they do not permit disregard for a director's fiduciary duty. A director in this situation still owes a fiduciary duty to each company of which he is a director. Similarly, in a group insolvency, a director cannot prefer the interests of one member of the group over the interests of other members. Doing so necessarily results in a preference of the creditors and other stakeholders of one member over those of the other, which involves just the type of jockeying for position that the court-supervised process is supposed to avoid.

37. The duty of loyalty <u>cannot</u> be complied with when two companies have overlapping directors and are in adverse positions. For example, in *Scottish Co-Operative*, *supra*, Lord Denning wrote:

> So long as the interests of all concerned were in harmony, there was no difficulty. The nominee directors could do their duty by both companies without embarrassment. But, **so soon as the interests of the two companies were in conflict, the nominee directors were placed in an <u>impossible position</u>.** Thus, when the realignment of shareholding was under discussion, the duty of the three directors to the textile company was to get the best possible price for any new issue of its shares, whereas the duty of the cooperative society was to obtain the new shares at the lowest possible price [...] It is plain that in the circumstances, **these three [directors] <u>could not</u> do their duty by both companies** and they did not do so. They put their duty to [the parent company] above their duty to the [subsidiary] in this sense, at least, that they did nothing to defend the interests of the company against the conduct

> of the society. They probably thought that "as nominees" of the [parent], their first duty was to the [parent]. **In this they were wrong.**

***Scottish Cooperative Wholesale Society Ltd. v. Meyer,* [1959] A.C. 324 at 366-7.**

38. Further, the directors' fiduciary duty cannot be fulfilled by looking after the benefit of the group of companies as a whole:

> Mr. Bagnall for the bank contended that it is sufficient that the directors of [the subsidiary] looked to the benefit of the group as a whole. **Equally I reject that contention.** Each company in the group is a separate legal entity and the directors of a particular company are not entitled to sacrifice the interest of that company. **This becomes apparent when one considers the case where the particular company has separate creditors.**

***Charterbridge Corporation, Ltd. v. Lloyds Bank, Ltd.* ,[1969] 2 Lloyd's Rep. 24 (Ch.)**

39. It is inconceivable that the Directors of BCFC can discharge their fiduciary duties to BCFC and other AbitibiBowater companies against which they hold significant claims, such as BOW, where those claims need to be properly investigated and aggressively asserted in order to maximize recoveries for BCFC and its creditors, as opposed to being ignored and released, as is proposed in the Plans. Accordingly, given BCFC's conflicted directors there is no one who can independently and single-mindedly advance the interests of BCFC.

40. The complex issues surrounding conflicts of interest in the insolvency of enterprise groups (such as those raised in this motion) has been the subject of recent international debate and comment. In September 2006, the treatment of enterprise groups in insolvency was referred to UNCITRAL Working Group V (Insolvency Law) ("Working

Group V") for consideration. Working Group V meets bi-annually and is composed of the 50 countries, including the United States, the United Kingdom and Canada.

41. In consideration of the treatment of enterprise groups in insolvency, Working Group V has recognized that while it is important to have coordinated insolvency proceedings, conflicts of interest between members of a corporate group may arise which need to be addressed. Specifically, paragraph 144 of the draft commentary and recommendations of part three of the UNCITRAL Legislative Guide on Insolvency Law dated February 10, 2010, which is based on the Report of Working Group V from its thirty-seventh session in November 2009, states the following:

> Where a single or the same insolvency representative is appointed to administer several members of a group with complex financial and business relationships and different groups of creditors, there is the potential for loss of neutrality and independence. Conflicts of interest may arise, for example, with respect to cross guarantees, intra-group claims and debts, post-commencement finance, lodging and verification of claims; or the wrongdoing by one group member with respect to another group member. The obligation to disclose potential or existing conflicts of interest contained in recommendations 116 and 117 would be relevant to the group context. As a safeguard against possible conflicts, the insolvency representative could be required to provide an undertaking or be subject to a practice rule or statutory obligation to seek direction from the court. Additionally, the insolvency law could provide for the appointment of one or more further insolvency representatives to administer the entities in conflict. That appointment might relate to the specific area of conflict, with the appointment being limited to its resolution, or be more general and for the duration of the proceedings.

42. The appointment of either a trustee in bankruptcy or an independent third party to represent the interests of BCFC is entirely consistent with the foregoing recommendations and is warranted on the facts of this case.

The Stay of Proceedings Should Not be Extended for BCFC

43. The onus is on BCFC in seeking an extension of the initial stay of proceedings to establish that:

(a) Circumstances exist to make the order appropriate;

(b) BCFC has acted and continues to act in good faith; and

(c) BCFC has acted and continues to act with due diligence

***Companies' Creditors Arrangement Act,* R.S.C. 1985, c.C-36, as amended, section 11.02(2), (3).**

44. The Court should not extend the stay of proceedings and continue the application of the CCAA where it is unrealistic to expect that a viable plan can be put forward and where the debtor has no active business. Similarly, a stay will be denied where it is obvious that no plan will be approved by its creditors.

***Re: Dura Automotive Systems, 2010 ONSC 1102 (Ont. SCJ [Commercial List], Bargain Harold's Discount Ltd. V. Paribas Bank of Canada* (1992), 7 O.R. (3d) 362 (Ont. Gen. Div.).**

45. Once it is determined that there is no viable restructuring possible, the CCAA proceedings are spent and no further extension of the stay of proceedings should be ordered.

***Ted LeRoy Trucking Ltd.* (2009) BCCA 205.**

46. Aurelius and Contrarian do not oppose the extension of the stay of proceedings for the Canadian petitioners, other than BCFC. With respect to BCFC, a further extension of the stay of proceedings is inappropriate as BCFC cannot be said to be acting in good faith in these proceedings where it is a proponent of Plans which purport to compromise valuable assets for no consideration and without any consideration by its Board of Directors as to whether such compromise is in its best interests. Extending the stay of proceedings in circumstances where BCFC's plan is doomed to failure and its eventual bankruptcy is a certainty serves no purpose other than to permit the debtors to continue to compromise the interests of BCFC. BCFC has not met its burden to establish that yet another extension of the stay of proceedings is appropriate.

PART V - RELIEF REQUESTED

47. Aurelius and Contrarian seek an Order:

(a) directing the officers and directors of BCFC to file an assignment in bankruptcy under the BIA appointing a trustee nominated by Aurelius and Contrarian as trustee of the estate of BCFC;

(b) discharging Ernst & Young Inc. as court-appointed monitor of BCFC;

(c) declaring that the interests of the officers and directors of BCFC and its counsel conflict irreconcilably with the interests of the other petitioners;

(d) alternatively, authorizing the Petitioner-Noteholders to appoint an Peter Wedlake as an independent and disinterested third party at Petitioners-Debtors' cost to investigate, assert, protect and pursue all claims and remedies of BCFC, with the authority to cause BCFC to make an assignment in bankruptcy.

48. Aurelius and Contrarian also respectfully request that the Court dismiss BCFC's motion to extend the stay of proceedings.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 5th day of July, 2010.

Fraser Milner Casgrain

Fraser Milner Casgrain LLP
Attorneys for Petitioner Noteholders
Aurelius Capital Management, LP and
Contrarian Capital Management, L.L.C.

SCHEDULE "A"

LIST OF AUTHORITIES

Cliffs Over Maple Bay Investments Ltd. v. Fisgard Capital Corp. (2008), 46 C.B.R. (5th) 7, 2008 CarswellBC 1758 (B.C.C.A.)

Re Canadian Airlines Corp. (2000), 19 C.B.R. (4th) 1, 2000 CarswellAlta 622 (Alta Q.B.)

Redekop Properties Inc., Re (2001), 40 C.B.R. (5th) 62, 2001 CarswellBC 3560 (B.C. S.C. [In Chambers])

*Scottish Cooperative Wholesale Society Ltd. v. Meyer, [*1959] A.C. 324

Charterbridge Corporation, Ltd. v. Lloyds Bank, Ltd. ,[1969] 2 Lloyd's Rep. 24 (Ch.)

Re: Dura Automotive Systems, 2010 ONSC 1102 (Ont. SCJ [Commercial List], Bargain

Harold's Discount Ltd. V. Paribas Bank of Canada (1992), 7 O.R. (3d) 362 (Ont. Gen. Div.)

Ted LeRoy Trucking Ltd. (2009) BCCA 205

SCHEDULE "B"

RELEVANT STATUTES

Section 77 of the *Bankruptcy and Insolvency Act* (Canada)

Contributory shareholders

77. (1) Every shareholder or member of a bankrupt corporation is liable to contribute the amount unpaid on his shares of the capital or on his liability to the corporation, its members or creditors, as the case may be, under the Act, charter or instrument of incorporation of the company or otherwise.

Liability of contributory an asset

(2) The amount that the contributory is liable to contribute under subsection (1) shall be deemed an asset of the corporation and a debt payable to the trustee forthwith on the bankruptcy of the corporation.

R.S., 1985, c. B-3, s. 77; 1999, c. 31, s. 22(F).

Section 135 of the *Companies' Act* (Nova Scotia)

LIABILITY OF MEMBERS

Limits of liability

135 In the event of a company being wound up, every present and past member shall, subject to this Section, be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges, and expenses of the winding up and for the adjustments of the rights of the contributories among themselves, with the qualifications following:

(a) a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up;

(b) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;

(c) a past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act;

(d) in the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member;

(e) in the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;

(ea) in the case of an unlimited company, no contribution exceeding the amount, if any, unpaid on the shares in respect of which the member is liable as a past member, shall be required from a past member who was not a member of the company at any time on or after the time the company became unlimited;

(f) nothing in this Act shall invalidate any provision contained in any contract whereby the liability of the individual members of the contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract;

(g) a sum due to any member of a company, in his character of a member, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves. *R.S., c. 81, s. 135; 2007, c. 34, s. 40.*

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

Powers of court

11. (1) Notwithstanding anything in the *Bankruptcy and Insolvency Act* or the *Winding-up Act*, where an application is made under this Act in respect of a company, the court, on the application of any person interested in the matter, may, subject to this Act, on notice to any other person or without notice as it may see fit, make an order under this section.

Initial application

(2) An application made for the first time under this section in respect of a company, in this section referred to as an "initial application", shall be accompanied by a statement indicating the projected cash flow of the company and copies of all financial statements, audited or unaudited, prepared during the year prior to the application, or where no such statements were prepared in the prior year, a copy of the most recent such statement.

Initial application court orders

(3) A court may, on an initial application in respect of a company, make an order on such terms as it may impose, effective for such period as the court deems necessary not exceeding thirty days,

(*a*) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under an Act referred to in subsection (1);

(*b*) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(*c*) prohibiting, until otherwise ordered by the court, the commencement of or proceeding with any other action, suit or proceeding against the company.

Other than initial application court orders

(4) A court may, on an application in respect of a company other than an initial application, make an order on such terms as it may impose,

(*a*) staying, until otherwise ordered by the court, for such period as the court deems necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in subsection (1);

(*b*) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(*c*) prohibiting, until otherwise ordered by the court, the commencement of or proceeding with any other action, suit or proceeding against the company.

Notice of orders

(5) Except as otherwise ordered by the court, the monitor appointed under section 11.7 shall send a copy of any order made under subsection (3), within ten days after the order is made, to every known creditor who has a claim against the company of more than two hundred and fifty dollars.

Burden of proof on application

(6) The court shall not make an order under subsection (3) or (4) unless

(*a*) the applicant satisfies the court that circumstances exist that make such an order appropriate; and

(*b*) in the case of an order under subsection (4), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

No. 500-11-036133-094

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CONTRARIAN CAPITAL MANAGEMENT, L.L.C.

Petitioner-Noteholders

Me Louis Dumont (N/d : 541555-2)

PLAN OF ARGUMENT OF
AURELIUS CAPITAL MANAGEMENT, L.P
AND CONTRARIAN CAPITAL
MANAGEMENT, L.L.C.

ORIGINAL

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