CANADA

PROVINCE OF QUEBEC
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 Petitioners listed on Schedules A , B and C

Petitioners

and

ERNST & YOUNG INC.

Monitor

and

AURELIUS CAPITAL MANAGEMENT, LP

and

CONTRARIAN CAPITAL MANAGEMENT, L.L.C.

Petitioner-Noteholders

AMENDED CONTESTATION OF THE MOTION FOR THE ISSUANCE OF AN ORDER DIRECTING BOWATER CANADA FINANCE CORPORATION TO FILE AN ASSIGNMENT IN BANKRUPTCY OR ALTERNATIVELY, AN ORDER SEEKING THE APPOINTMENT OF AN INDEPENDENT AND DISINTERESTED THIRD PARTY TO INVESTIGATE, ASSERT, PROTECT AND PURSUE THE CLAIMS AND REMEDIES OF BOWATER CANADA FINANCE CORPORATION

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:

I. OVERVIEW

1. Unless otherwise indicated, all capitalized terms in this amended contestation (the "**Contestation**") shall have the meaning attributed to them in the *Motion for the Issuance of an Order Directing Bowater Canada Finance Corporation to File an Assignment in Bankruptcy or Alternatively, an Order Seeking the Appointment of an Independent and Disinterested Third Party to Investigate, Assert, Protect and Pursue the Claims and Remedies of Bowater Canada Finance Corporation* (the "**Motion**") filed by Aurelius Capital Management, LP ("**Aurelius**") and by Contrarian Capital Management L.L.C. ("**Contrarian**") or in the Initial Order issued by this Court on April 17, 2009, as amended (the "**Initial Order**").

2. Aurelius and Contrarian (collectively, the "**BCFC Noteholders**") adopt the position that the Monitor, the directors of Bowater Canada Finance Corporation ("**BCFC**", together with Bowater Inc. and the Bowater Petitioners listed on Schedule "B" hereto, the "**Bowater Companies**") and counsel for the Petitioners are in a position of irreconcilable conflict of interest, the result of which is that no one is in a position to advance the interests of BCFC in the present proceedings (the "**CCAA Proceedings**") or in the proceedings undertaken by the Petitioners under Chapter 11 of the U.S. *Bankruptcy Code* before the U.S. Bankruptcy Court (the "**Chapter 11 Proceedings**").

3. In addition to requesting that the Monitor be discharged as Monitor of BCFC and seeking declaratory orders in respect of the above-described allegations of conflict of interest, the BCFC Noteholders request that this Court order the officers and directors of BCFC to file a voluntary assignment in bankruptcy under the BIA appointing a trustee (the "**Trustee**") to the estate of BCFC to be nominated by the BCFC Noteholders, or alternatively, to authorize the BCFC Noteholders to appoint an independent and disinterested third-party (the "**Auditor**") in respect of BCFC, at the Petitioners' cost, to investigate and report on the assets and liabilities of BCFC, as well as "*all intercompany transactions having taken place in the three years preceding the date of the Petition relating to BCFC*".

4. The Petitioners are proceeding in good faith and with due diligence in the context of the CCAA Proceedings and the Chapter 11 Proceedings, enjoy a good liquidity position and ~~are~~have been working to develop a restructuring plan in conjunction with all Bowater corporate entities which have filed proceedings. ~~It is currently expected that a draft restructuring plan will be communicated to all stakeholders in the coming weeks.~~[...]

4.1 In fact, the Petitioners filed on May 4 a CCAA Plan of Reorganization and Compromise (the "**CCAA Plan**") with this Court and a Debtor's Joint Plan of

Reorganization under Chapter 11 of the Bankruptcy Code (the "**U.S. Plan**" and together with the CCAA Plan, the "**Plans**") with the U.S. Court, both of which outlined a classification scheme and resultant form of recoveries for all of the Petitioners' creditors. Amended versions of the Plans were subsequently filed in the CCAA Proceedings on May 24, and most recently on June 25, 2010.

5. In the anticipation that whatever is ultimately proposed in the Plans will not satisfy them and on the basis of a series of self-serving allegations with respect to alleged conflicts of interests between certain of the Bowater Companies, the BCFC Noteholders, allegedly representing only a minority of beneficial holders of Notes (as defined below), are seeking to launch a "fishing expedition" into all intercompany transactions over the last three years. Lifting the stay of proceedings to grant the relief sought by the BCFC Noteholders at this stage ~~is~~, in addition to being unwarranted and premature, will unnecessarily distract the Petitioners' resources from their ongoing restructuring efforts ~~and may even prejudice the Petitioners' ability to develop and communicate their restructuring plan in a timely fashion.~~[...].

5.1 The Petitioners note that the Monitor is currently in the process of drafting a report expected to be communicated prior to the hearing on the present proceedings in which it is expected that the Monitor will provide a detailed review of all intercompany transactions implicating BCFC in the three-year period preceding the date of the Initial Order. In so doing, it is expected that the Monitor will effectively have answered the BCFC Noteholders' extensive information requests.

5.2 In addition, the Petitioners submit that the alleged prejudice suffered by the BCFC Noteholders is all the more remote and the relief sought in the Motion all the more unnecessary in light of recent steps taken by the Petitioners to appoint independent conflicts counsel for BCFC as well as an independent fiduciary whose task it will be to investigate the BCFC claims.

6. The BCFC Noteholders are not being prejudiced by waiting for ~~a plan to be proposed in due course in the context of the CCAA Proceedings and the Chapter 11 Proceedings~~the Plans to be proposed [...] and voted upon by all the creditors of the Petitioners, including the BCFC Noteholders. The BCFC Noteholders are general unsecured creditors of the Bowater Companies and, along with all other general unsecured creditors, directly benefit from the Petitioners' efforts to expeditiously reorganize.

II. GROUNDS OF CONTESTATION

1. Petitioners' Good Faith

7. The CCAA Proceedings and Chapter 11 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, the whole as appears from the proceedings and Monitor's Reports filed in the Court record.

2. Nature of the Noteholders' Claim

8. The BCFC Noteholders allegedly hold $US200 million of 7.95% senior unsecured notes due 2011 (the "**Notes**") issued by BCFC. The BCFC Noteholders have provided no evidence to support this allegation which cannot be verified as the Notes trade and there is no central register of beneficial owners.

9. In addition to being a Petitioner in the CCAA Proceedings, BCFC is also a U.S. Debtor in the Chapter 11 Proceedings. BCFC is not an operating company and carries on no trade. It is a special purpose financing entity.

10. BCFC's sole material liability consists of the outstanding Notes. BCFC's sole material assets consist of preferred shares of Bowater ~~Canada~~Canadian Holdings ~~Inc.~~Incorporated ("**BCHI**"), ~~an indirecta~~a [...] wholly-owned subsidiary of Bowater Inc. ("**BI**"). BCHI holds an indirect equity interest in Bowater Canadian Forest Products Inc. ("**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 for the Issuance of an Initial Order* 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 of speculative value at this juncture.

11. The payment of the Notes is guaranteed by BI and BCFC ~~may also have~~allegedly has 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 juncture, although it is being raised by the BCFC Noteholders as an example of the alleged conflict of interest between BCFC and other Bowater Companies, including BI.~~

3. Noteholders Are Represented and May Access Information

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

13. The BCFC Noteholders and the Indenture Trustee are represented in the Chapter 11 Proceedings by the statutory committee of unsecured creditors (the "**UCC**") and the Indenture Trustee is a member of the UCC.

14. Pursuant to sections 503 and following of the *Indenture Agreement* dated as of October 31, 2001 and filed as part of the *Purchase Agreement* (Exhibit R-1 to the Motion), 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.

15. The BCFC Noteholders have not demonstrated compliance with the requirements of the Trust Indenture in bringing the present motion. They have neither alleged

nor proved a legal holding of any Notes in their own name, nor filed a proof of claim with the Monitor in the context of the Petitioner's claim process.

16. 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 Companies or that any of its rights as a member of the UCC have been suppressed.

17. The Motion speaks of "serious concerns" and "serious apprehension" that the Petitioners have a hidden agenda in seeking to deny the BCFC Noteholders access to information. However, the Monitor's counsel responded to information requests received from Aurelius as appears from the letters filed as Exhibits R-11 and R-14 to the Motion. On November 12, 2009, the Monitor advised Aurelius that the information it requested was not ~~publically~~ publicly available and that Aurelius would need to sign a non-disclosure agreement before accessing any non-public information.

18. The BCFC Noteholders have refused to sign non-disclosure agreements for reasons of their own and have not used their alleged ownership interest in the Notes to cause the Indenture Trustee to do so. Given the applicable securities legislation and regulations in respect of the disclosure of information, the BCFC Noteholders cannot, in turn, accuse the Petitioners and the Monitor of unfairly denying access to information which is not ~~publically~~ publicly available in respect of BCFC.

18.1 In any event, the Monitor is expected to communicate, prior to the hearing on the BCFC Noteholders' Motion, a detailed report containing a review of all intercompany transactions implicating BCFC in the three-year period preceding the date of the Initial Order. The issuance of said report will render the BCFC Noteholders' arguments centered on lack of information moot.

4. The Noteholders Assumed Structural Subordination Risk

19. The Motion discusses certain transactions in detail, the full particulars of which, according to the BCFC Noteholders, were not disclosed "*either prior to or in the course of these proceedings*" (Motion, paragraph 33).

20. The Notes were issued to the BCFC Noteholders and to other qualified investors under an Offering Circular, a copy of which is attached as **Exhibit D-1.**

21. 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.

22. It should be noted that Aurelius and Contrarian are sophisticated investors that specialize, *inter alia*, in investing in distressed companies. Contrarian's website states in no uncertain terms that distressed investing is the cornerstone of its

investment philosophy, as appears from extracts of the Contrarian website communicated as **Exhibit D-2**.

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

23. Apart from a series of self-serving statements in the Motion about the beliefs of the BCFC Noteholders, the latter do not submit any tangible 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.

24. 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.

25. 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 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.

26. 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 Companies 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 comprehensive restructuring plan.

27. 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 should not prevent the group from restructuring and taking into account these different interests in the restructuring.

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

<u>29.1 In fact, the relief sought by the BCFC Noteholders is all the more unwarranted and unnecessary in light of the positive steps which the Petitioners have been taking to address any potential conflict of interest in connection with the resolution of the claims advanced by the BCFC Noteholders.</u>

<u>29.2 On June 25, 2010, the Petitioners obtained the authorization of the U.S. Bankruptcy Court over the objection of the BCFC Noteholders in respect of, *inter alia*, (a) the</u>

retention and employment of Togut, Segal & Segal LLP as conflict counsel to BCFC; and (b) the appointment of an independent officer, Lisa J. Donohue, to investigate claims in connection with BCFC and make recommendations to the BCFC Board of Directors in respect of said claims. The order of the U.S. Bankruptcy Court in connection with these authorizations is communicated as **Exhibit D-4**.

29.3 It is submitted that such measures will facilitate a process whereby the BCFC Noteholders' claims will be investigated by wholly independent professionals and fiduciaries, thereby ensuring the integrity of the Petitioners' claims resolution process and facilitating an expeditious resolution of these intercompany issues.

29. ~~The BCFC Noteholders have pointed to no particular evidence of prejudice or harm, preferring instead to suggest by inference and inuendo that a fishing expedition into pre-filing transactions (of the nature specifically contemplated in the Offering Circular) should be conducted effectively at the expense of *other creditors* of the Petitioners. Such a disruptive and baseless fishing expedition would be of neither relevance nor value in proceeding to restructure the Petitioners, particularly where, as here, the Petitioners are in the final stages of moving towards the development and presentation of a comprehensive restructuring plan of their entire group of companies for the benefit of all of their stakeholders and not merely one segment thereof.~~[...]

6. Prejudice to the BCFC Noteholders Is Speculative

30. As a special purpose entity, BCFC's only assets are the preferred shares 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 Chapter 11 Proceedings to cancel or otherwise affect these shares.

31. The BCFC Noteholders presume prejudice, arguing that the Monitor and the officers and directors of BCFC cannot possibly represent the interests of both BCFC and the other Bowater Companies. However, as described above, the BCFC Noteholders have provided no actual evidence or foundation to assert that the Monitor, BCFC's directors or the Petitioners are not working to develop a restructuring plan to maximize the value of the Bowater Companies.

32. 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. To the contrary, the Petitioners' efforts to date to stabilize their operations and establish a framework for a consensual cross-border restructuring inure to the benefit of all creditors, including the BCFC Noteholders. Moreover, 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. Prejudice to the Petitioners is Real

33. The orders sought in the Motion clearly demonstrate that the BCFC Noteholders, by the appointment of a Trustee or an Auditor, seek 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.

33.1 In any event, this is not a case where it is appropriate for the Court to order the appointment of a trustee in bankruptcy.

34. ~~The BCFC Noteholders' request is out of proportion with respect to the prejudice which they allege in that it requires a costly and 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.~~[...]

35. Moreover, granting the relief sought by the BCFC Noteholders could potentially trigger an Event of Default under the *Senior Secured Superpriority Debtor in Possession Credit Agreement* dated April 21, 2009 (the "**BI DIP Agreement**"), a copy of which is communicated as **Exhibit D-3**. ~~Should this occur, the amounts outstanding under the BI DIP Facility would become due and payable forthwith, a scenario that could jeopardize the entire restructuring.~~[...]

III. CONCLUSION

36. The Petitioners respectfully submit that the Motion of the BCFC Noteholders should be dismissed with costs.

37. 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 Directing Bowater Canada Finance Corporation to File an Assignment in Bankruptcy or Alternatively, an Order Seeking the Appointment of an Independent and Disinterested Third Party to Investigate, Assert, Protect and Pursue the Claims and Remedies of Bowater Canada Finance Corporation* by Aurelius Capital Management, LP. and Contrarian Capital Management L.L.C.

THE WHOLE WITH COSTS.

Montréal, ~~April 7,~~July 6, 2010

Stikeman Elliott LLP
Attorneys for the Petitioners

SCHEDULE "A"

ABITIBI PETITIONERS

1. ABITIBI-CONSOLIDATED INC.
2. ABITIBI-CONSOLIDATED COMPANY OF CANADA
3. 3224112 NOVA SCOTIA LIMITED
4. MARKETING DONOHUE INC.
5. ABITIBI-CONSOLIDATED CANADIAN OFFICE PRODUCTS HOLDINGS INC.
6. 3834328 CANADA INC.
7. 6169678 CANADA INC.
8. 4042140 CANADA INC.
9. DONOHUE RECYCLING INC.
10. 1508756 ONTARIO INC.
11. 3217925 NOVA SCOTIA COMPANY
12. LA TUQUE FOREST PRODUCTS INC.
13. ABITIBI-CONSOLIDATED NOVA SCOTIA INCORPORATED
14. SAGUENAY FOREST PRODUCTS INC.
15. TERRA NOVA EXPLORATIONS LTD.
16. THE JONQUIERE PULP COMPANY
17. THE INTERNATIONAL BRIDGE AND TERMINAL COMPANY,
18. SCRAMBLE MINING LTD.
19. 9150-3383 QUÉBEC INC.
20. ABITIBI-CONSOLIDATED (U.K.) INC.

SCHEDULE "B"

BOWATER PETITIONERS

1. BOWATER CANADIAN HOLDINGS INC.
2. BOWATER CANADA FINANCE CORPORATION
3. BOWATER CANADIAN LIMITED
4. 3231378 NOVA SCOTIA COMPANY
5. ABITIBIBOWATER CANADA INC.
6. BOWATER CANADA TREASURY CORPORATION
7. BOWATER CANADIAN FOREST PRODUCTS INC.
8. BOWATER SHELBURNE CORPORATION
9. BOWATER LAHAVE CORPORATION
10. ST-MAURICE RIVER DRIVE COMPANY LIMITED
11. BOWATER TREATED WOOD INC.
12. CANEXEL HARDBOARD INC.
13. 9068-9050 QUÉBEC INC.
14. ALLIANCE FOREST PRODUCTS (2001) INC.
15. BOWATER BELLEDUNE SAWMILL INC.
16. BOWATER MARITIMES INC.
17. BOWATER MITIS INC.
18. BOWATER GUÉRETTE INC.
19. BOWATER COUTURIER INC.

SCHEDULE "C"

18.6 CCAA PETITIONERS

1. ABITIBIBOWATER INC.
2. ABITIBIBOWATER US HOLDING 1 CORP.
3. BOWATER VENTURES INC.
4. BOWATER INCORPORATED
5. BOWATER NUWAY INC.
6. BOWATER NUWAY MID-STATES INC.
7. CATAWBA PROPERTY HOLDINGS LLC
8. BOWATER FINANCE COMPANY INC.
9. BOWATER SOUTH AMERICAN HOLDINGS INCORPORATED
10. BOWATER AMERICA INC.
11. LAKE SUPERIOR FOREST PRODUCTS INC.
12. BOWATER NEWSPRINT SOUTH LLC
13. BOWATER NEWSPRINT SOUTH OPERATIONS LLC
14. BOWATER FINANCE II, LLC
15. BOWATER ALABAMA LLC
16. COOSA PINES GOLF CLUB HOLDINGS LLC

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 *Amended Contestation of the Motion for the Issuance of an Order Directing Bowater Canada Finance Corporation to File an Assignment in Bankruptcy or Alternatively, an Order Seeking the Appointment of an Independent and Disinterested Third Party to Investigate, Assert, Protect and Pursue the Claims and Remedies of Bowater Canada Finance Corporation* are true.

AND I HAVE SIGNED

____

WILLIAM HARVEY

Solemnly declared before me at Montréal,
on the ~~7~~6th day of ~~April~~July, 2010

____

~~Notary Public~~ Commissioner for oaths for all the judicial districts of Quebec

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