CANADA
PROVINCE OF QUEBEC
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 Petitioners listed herein

Petitioners

-and-

ERNST & YOUNG INC.

Monitor

-and-

THE LAND REGISTRAR FOR THE LAND REGISTRY OFFICE FOR THE REGISTRATION DIVISION OF MONTMORENCY

-and-

THE LAND REGISTRAR FOR THE LAND REGISTRY OFFICE FOR THE

REGISTRATION DIVISION OF PORTNEUF

-and-

THE LAND REGISTRAR FOR THE RESTIGOUCHE COUNTY LAND REGISTRY OFFICE

-and-

THE LAND REGISTRAR FOR THE THUNDER BAY LAND REGISTRY OFFICE

-and-

THE REGISTRAR OF THE REGISTER OF PERSONAL AND MOVABLE REAL RIGHTS

Mis-en-cause

-and-

RECYCLAGE ARCTIC BÉLUGA, INC.

Intervenor

DECLARATION OF INTERVENTION OF RECYCLAGE ARCTIC BÉLUGA, INC.

TO THE HONOURABLE JUSTICE 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 MONTREAL, THE INTERVENOR RESPECTFULLY SUBMITS THE FOLLOWING:

1. Recyclage Arctic Béluga, Inc. ("Arctic"), hereby intervenes to the proceedings filed by Petitioner seeking the authorization to sell four closed mills situated in Beaupré, Québec, Donnaconna, Québec, Dalhousie, New Brunswick and Thunder Bay, Ontario (the "**Closed Mills**");

A. PRELIMINARY STATEMENT

2. Arctic's bid for the Closed Mills was a proposal for $22.1 million Canadian in cash ("**Arctic's Proposal**" or the "**Proposal**"), an amount more than $8.3 million Canadian greater than the amount proposed by the Petitioners in their *Motion for the issuance of an order authorizing the sale of certain assets* (the "**Sale Motion**"), the whole as appears for a copy of Arctic's Proposals communicated in support hereof *en liasse* as **Exhibit R-1**;

3. However, Arctic's Proposal was rejected by the Petitioners without explanation, the whole as appears from a letter sent to Arctic by Petitioners on March 23, 2010, copy of which is communicated in support hereof as **Exhibit R-2**;

4. Arctic is and continues to be prepared to pay $22.1 million Canadian for the Closed Mills;

5. In light of the foregoing, Arctic requests that this Honourable Court deny the Sale Motion presented by the Petitioners and find Arctic's Proposal to be the highest and best offer for the Closed Mills;

B. BACKGROUND

6. Arctic is a highly credible bidder and has proven its willingness and ability to close a transaction with the Petitioners;

7. In fact, on January 27, 2010, Arctic closed a sale for the purchase of a mill known as the Belgo Mill owned by the Petitioners;

8. The Petitioners first marketed the Closed Mills for sale in the fall of 2009 (the "**Phase I Marketing Process**"). Arctic participated in the Phase I Marketing Process, but was not selected as the winning bidder;

9. As set forth in greater detail in the Sale Motion, the Petitioners were unable to consummate the sale following the Phase I Marketing Process and therefore proceeded to re-market the Closed Mills in a second sale process (the "**Phase II Marketing Process**").

10. On February 23, 2010, the Petitioners' solicited bids for the sale of the Closed Mills from certain parties that had participated in the Phase I Marketing process, including Arctic; copy of the materials received by Arctic (the "**Bid Solicitation Package**") are communicated in support hereof as **Exhibit R-3**;

11. The procedures for bidding (the "**Bid Procedures**") had not been previously approved by either the US Court or this Honourable Court;

12. The Bid Procedures divided the Phase II Marketing Process into two stages ("**Stage I**" and "**Stage II**");

13. In Stage I, parties were requested to submit bids with the information required by the Bid Solicitation Package R-3;

14. Parties were told that if selected for Stage II, they would be asked to provide a proof of financial funding, a proposed purchase and sale agreement as well as a deposit;

15. The Bid Solicitation Package set a deadline for bid submission for March 1, 2010, which was subsequently extended to March 3, 2010;

16. By a letter dated March 3, 2010 (the "**March 3rd Proposal**"), Arctic submitted two proposals for the Closed Mills, the whole as appears from a copy of the March 3rd Proposal communicated in support hereof as **Exhibit R-4**;

17. The March 3rd Proposal contained two offers, one in the amount of 7 million Canadian dollars for three of the Closed Mills en bloc, and the other in the amount of $5 million Canadian for all Closed Mills en bloc, as requested in the Bid Solicitation Package R-3;

18. Following the March 3rd deadline, the Petitioners along with the Monitor solicited further precisions from Arctic with respect to its March 3rd Proposal;

19. Since being contacted for further precisions, Arctic has been in continuous communication with the Petitioners and the Monitor;

20. In response to these negotiations with the Petitioners and the Monitor, Arctic submitted a few increasingly generous proposals for the Closed Mills;

21. During this time, Arctic remained available and responsive to the Petitioners' and the Monitor's requests for information, and submitted several revised proposals at the request of the Monitor and Petitioners' representative;

22. Arctic was led to believe that these negotiations and the revised proposals requested by the Monitor were part of the on-going Stage I of the Phase II Marketing Process;

23. Accordingly, Arctic believed that it would receive a formal notice if it were selected for Stage II, which according to the Bid Solicitation Package and Bid Procedures was a near-final selection or run-off;

24. At no time during these continued negotiations was Arctic informed that it had been selected to be a Stage II bidder;

25. By letter dated March 22, 2010, Arctic submitted its final bid which proposed $22.1 million Canadian in cash for the Closed Mills en bloc (Arctic's Proposal), Exhibit R-1;

26. On March 23, 2010, Arctic was subsequently informed by the Petitioners that they had accepted the bid of a third party (the "**American Iron Bid**");

27. Subsequently, on March 25, 2010, Todd Calouri called Alain Gélinas of Arctic stating the Petitioners had not in fact accepted the American Iron Bid and requested evidence of Arctic's ability to fund the purchase contemplated in Arctic's Proposal;

28. On Friday, March 26, 2010, the negotiations reconvened during which the Petitioners stated evidence of Arctic's ability to fund the transaction was needed immediately, and that Arctic would not be provided the seven days granted under the Bid Solicitation Package and Bid Procedures;

29. At no time was Arctic informed that it had been selected for Stage II of the Phase II Marketing Process, Arctic was never asked to submit a proposed sale agreement or a deposit, nor was any specific type of evidence of ability to fund requested;

30. Later that day, the undersigned attorneys on behalf of Arctic, sent a letter to the Monitor stating that evidence of Arctic's ability to fund the transaction offered in Arctic's Proposal would be provided no later than April 1, 2010, a date no more than seven days from the date of the request for such evidence, and was therefore in compliance with the Bid Solicitation Package and Bid Procedures, a copy of said letter is communicated in support hereof as **Exhibit R-5**;

31. On April 1, 2010, the undersigned attorneys on behalf of Arctic sent a copy of the Agreement dated as of March 31, 2010 by and between Triple M Metal, L.P. ("**Triple M**") and Arctic (the "**Funding Agreement**"), evidencing Triple M's willingness to purchase the machinery at the Closed Mills as scrap metal, and stating that the estimated value of that metal was $30 million Canadian, copy of said Agreement is communicated in support hereof as **Exhibit R-6**;

32. Triple M affirmed that it had the financial capacity to fund Arctic's Proposal and that Triple M was committed to support Arctic through the closing of such a transaction;

33. The Funding Agreement demonstrated that Arctic would in fact have in excess of $22 million Canadian to fund a purchase of the Closed Mills;

34. Triple M is Canada's largest recycling company and unquestionably has the financial wherewithal to support its commitment;

35. Subsequently, on April 9, 2010, Arctic was again notified that its Proposal had been rejected, although no reason was given, nor was any request made for alternative evidence of Arctic's ability to fund;

36. Indeed, Arctic proposes to provide $14 million Canadian at closing of such a transaction and $8.1 million Canadian within 90 days of closing;

37. It appears that the Petitioners have improperly sought to accept a bid which does not realize the optimal value for the Petitioners' estate;

38. The American Iron Bid of $8.8 million Canadian in cash plus 40% of the proceeds from any sale of the machinery (of which only $5 million Canadian is guaranteed within 90 days of the closing of the PSA) is significantly lower than Arctic's Proposal offering over $22 million Canadian in cash;

39. The fact that Arctic's Proposal is approximately $8.3 million Canadian higher than the offer for which the Petitioners are seeking authorization to conclude demonstrates that the Monitor has acted improvidently in accepting the American Iron Bid;

40. Arctic participated in the process in good faith and responded in a timely manner each time the Monitor or the Monitor's representative requested additional information or requested that Arctic amend its Proposal;

41. Arctic was never informed that it had been selected to participate in Stage II of the Phase II Marketing Process, and therefore, was not required to submit proof of funding, an asset purchase agreement or a deposit;

42. As discussed above, when requested to provide proof of funding, Arctic timely submitted the Funding Agreement despite the fact that such was not required of Arctic because it had never been informed of its status as a Stage II bidder;

43. Arctic is able to close the sale of the Closed Mills;

44. There is no doubt, based on sheer economics, that Arctic's offer is higher than the American Iron Bid and, as demonstrated below, it is also better;

45. Arctic's proposal is substantially similar to the Purchase and Sale Agreement for which the Petitioners are seeking permission to enter into with American Iron;

46. It provides for bringing all land associated with the Closed Mills (the "**Land**") into conformity with environmental regulations and will indemnify and save the Petitioners harmless for all liabilities arising in relation to environmental hazards on the Land, the whole as appears from Arctic's Proposal R-1;

47. Moreover, because Arctic has closed a transaction with the Petitioner previously, the Petitioners can have confidence that Arctic can consummate the transaction as proposed;

48. Arctic lost the ability to purchase the Closed Mills due to unfairness in the bidding process;

49. While the Bid Solicitation Package and the Bid Procedures stated that any a bidder would have seven days to produce evidence of adequate financing upon notification that the bidder had been selected for Stage II of the Phase II Marketing Process, Arctic, which was never informed that it had been selected for Stage II, was denied consideration of its Proposal when Arctic was unable to produce such evidence upon an instant demand for it;

50. Arctic produced such evidence within the seven day timeframe contemplated in the Bid Solicitation Package and the Bid Procedures;

51. It has been well established by Canadian Courts, notably by the Ontario Supreme Court in the matter of *Re: Selkirk*[1], and reaffirmed by the Ontario Court of Appeal in *Royal Bank v. Soundair Corp.*[2], that the Court has the discretion to withhold approval of a sale by the Monitor in cases where there has been unfairness in the sale process or where there are substantially higher offers;

52. Wherefore, for the reasons set forth above, Arctic respectfully requests that the Court:

    a) dismiss the Sale Motion so that the Petitioners may consider Arctic's Proposal for the Closed Mills;

    b) refuse to authorize the Petitioners to enter into the proposed Purchase Agreement and Land Swap Agreement; and,

    c) declare that Arctic's Proposal is the highest and best offer for the Closed Mills.

53. Simultaneously with the filing of these proceedings, Arctic has filed an objection before the United States Bankruptcy Court for the District of Delaware.

WHEREFORE, MAY IT PLEASE THE COURT TO:

GRANT the present Intervention;

DECLARE that Arctic's Proposal is the highest and best offer for the Closed Mills;

DISMISS the Petitioners' Motion;

THE WHOLE with costs.

MONTREAL, April 21, 2010

BCF LLP

BCF LLP
Attorneys for the Intervenor

[1] (1987), 64 C.B.R. (N.S.) 140, pg. 142;

[2] 1991 CanLII 2727;

CANADA
PROVINCE OF QUEBEC
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 Petitioners listed herein

Petitioners

-and-

ERNST & YOUNG INC.

Monitor

-and-

THE LAND REGISTRAR FOR THE LAND REGISTRY OFFICE FOR THE REGISTRATION DIVISION OF MONTMORENCY

-and-

THE LAND REGISTRAR FOR THE

LAND REGISTRY OFFICE FOR THE REGISTRATION DIVISION OF PORTNEUF

-and-

THE LAND REGISTRAR FOR THE RESTIGOUCHE COUNTY LAND REGISTRY OFFICE

-and-

THE LAND REGISTRAR FOR THE THUNDER BAY LAND REGISTRY OFFICE

-and-

THE REGISTRAR OF THE REGISTER OF PERSONAL AND MOVABLE REAL RIGHTS

Mis-en-cause

-and-

RECYCLAGE ARCTIC BÉLUGA, INC.

Intervenor

INTERVENOR'S NOTICE OF DISCLOSURE OF EXHIBITS (ART. 331.2 C.C.P.)

TO : **Me Guy P. Martel**
Stikeman Elliott
1155 René-Lévesque Blvd
Suite 4000
Montréal, Québec H3B 3V2

PLEASE BE ADVISED that during the hearing, the Intervenor intends to disclose the following exhibits in support of its Declaration of Intervention:

EXHIBIT R-1: *En liasse,* Arctic's Proposals for $22.1 million Canadian in cash;

EXHIBIT R-2: Letter sent to Arctic by Petitioners on March 23, 2010;

EXHIBIT R-3: Bid Solicitation Package;

EXHIBIT R-4: March 3rd Proposal by Artic;

EXHIBIT R-5: Letter sent to the Monitor by BCF LLP;

EXHIBIT R-6: Agreement dated as of March 31, 2010 by and between Triple M Metal, L.P. ("Triple M") and Arctic (the "Funding Agreement"),

PLEASE DO THEREFORE GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, April 21, 2010

BCF LLP

BCF LLP
Attorneys for the Intervenor

CANADA PROVINCE OF QUÉBEC DISTRICT OF **MONTRÉAL** N° : 500-11-036133-094	**SUPERIOR COURT** (Commercial Division) **IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF:** **ABITIBIBOWATER INC.** **ABITIBI-CONSOLIDATED INC.** **BOWATER CANADIAN HOLDINGS INC.** Petitioners and **ERNST & YOUNG INC.** Monitor

SERVICE BY TELECOPIER
(140.1, 146.0.1 and 146.0.2 C.P.C.)

SENDER: BCF LAWYERS PATENT & TRADE MARK AGENTS	**BCF** LLP 1100, René-Lévesque Blvd. West, Suite 2500 Montréal, Québec H3B 5C9 Telephone: (514) 397-8500 Telecopier: (514) 397-8515 Mtre Bertrand Giroux Our file: 18814-1
SERVED TO:	Me Guy P. Martel
FIRM:	STIKEMAN ELLIOTT
FAX N°:	(514) 397-3493
DATE AND TIME OF TRANSMISSION:	April 21, 2010 at
NATURE OF DOCUMENT:	DECLARATION OF INTERVENTION OF RECYCLAGE ARTIC BÉLUGA INC.
NUMBER OF PAGES TRANSMITTED INCLUDING THIS SLIP:	12 pages

CONFIDENTIALITY