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 herein

Petitioners-Debtors

and

ERNST & YOUNG INC.

Monitor

and

AURELIUS CAPITAL MANAGEMENT, LP

and

CONTRARIAN CAPITAL MANAGEMENT, L.L.C.

Noteholders

OBJECTION AND PLAN OF ARGUMENT OF AURELIUS CAPITAL MANAGEMENT, LP AND CONTRARIAN CAPITAL MANAGEMENT, L.L.C. IN CONNECTION WITH PETITIONERS' MOTION FOR THE ISSUANCE OF AN ORDER FOR THE CONVENING, HOLDING AND CONDUCT OF A CREDITORS'' MEETING AND OTHER RELIEF

AURELIUS CAPITAL MANAGEMENT, LP AND CONTRARIAN CAPITAL MANAGEMENT, L.L.C. (HEREINAFTER THE "NOTEHOLDERS") CONTEST THE FOREGOING MOTION (THE "CREDITORS' MEETING MOTION") FOR THE REASONS STATED BELOW:

A. OVERVIEW

1. Aurelius Capital Management, LP and Contrarian Capital Management, L.L.C. (collectively the "**Noteholders**") oppose the relief requested by the CCAA Applicants[1] in the Creditors' Meeting Motion.

2. The Noteholders own in excess of USD $200 million of the USD $600 million of 7.95% unsecured notes issued by Bowater Canada Finance Corporation ("**BCFC**"), which mature on November 15, 2011 (the "**Notes**"). As such, the Noteholders are in a position to vote down the CCAA Plan in respect of BCFC, which they have stated they will do. Because the CCAA Plan in respect of BCFC has no chance of success it should not be accepted for filing or approved by the Court.

3. As well, the CCAA Plan improperly seeks to compromise claims held by BCFC against other CCAA Applicants without any determination of what those claims may be and without providing BCFC the opportunity to vote on the CCAA Plan in respect of those claims. Those claims include actions related to the transfer of the Notes proceeds through a series of complicated and poorly disclosed intercompany transactions (the "**Intercompany Transactions**") by which BCFC came to own Class A preferred shares in Bowater Canadian Holdings Inc. ("**BCHI**"). Although Ernst & Young Inc. in its capacity as court-appointed monitor of the Canadian Applicants (the "**Monitor**") has undertaken to investigate and report on the Intercompany Transactions, an interim report was only issued on the afternoon of July 7, 2010 and a final report is still in progress.[2] It is inappropriate to compromise and/or release potential claims of BCFC related to the

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[1] All terms not otherwise defined herein have the meaning provided to them in the Plan of Reorganization and Compromise of AbitibiBowater Inc. and certain of its subsidiaries listed in Schedule "A" thereto pursuant to the *Companies' Creditors Arrangement Act* (Canada), Section 191 of the *Canada Corporations Act* and pursuant to such other Sections and legislations to be set forth in the Restructuring Transactions Notice (as defined therein (the "**CCAA Plan**") dated June 25, 2010.

[2] Forty-Ninth Report of the Monitor dated July 7, 2010.

Intercompany Transactions before they have even been properly investigated or quantified.

4. After holding BCFC captive throughout the duration of the CCAA Proceedings the CCAA Applicants now put forward the CCAA Plan which confiscates any assets held by BCFC without any consideration and without providing a vote to BCFC.

5. The Creditors' Meeting Motion should also be dismissed in that:

 5.1 the CCAA Plan includes overly broad and inappropriate release provisions which eliminate claims held by the Noteholders and by BCFC even where the Noteholders vote down the CCAA Plan in respect of BCFC and where BCFC as a creditor of the other CCAA Applicants is not provided with a vote on the CCAA Plan;

 5.2 the Order requested seeks authorization for the CCAA Applicants to remove from the CCAA Plan any of the CCAA Applicants without any explanation of how, when or why this would be done;

 5.3 the Rights Offering for which approval is sought arbitrarily excludes creditors of the CCAA Applicants who do not hold Proven Claims by August 18, 2010 (i.e. BCFC whose claims have not yet been identified and quantified) therefore providing for disparate compensation for various creditors of the same class, which is inappropriate;

 5.4 the Circular for which approval is sought does not provide full disclosure of the necessary information such that creditors can make an informed decision to accept or reject the CCAA Plan;

 5.5 the voting mechanism and tabulation of votes for Non-registered Noteholders in the draft order requested is unclear.

B. FACTS

6. On April 17, 2009, the CCAA 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. [3]

7. BCFC is an unlimited liability company incorporated under the laws of Nova Scotia. It was incorporated for the purpose of raising funds in a tax efficient manner to provide financing for BOW's Canadian activities. [4]

8. BCFC raised USD $600 million in 2001 through the issuance of the Notes. BCFC appears to have subsequently transferred the proceeds of the Notes to BOW and its affiliates through complex and poorly disclosed Intercompany Transactions. An interim report providing information on the Intercompany Transactions was issued by the Monitor on July 7, 2010, however, a final report is still being prepared.

C. LEGAL ISSUES AND ARGUMENT

9. The issues to be decided are as follows:

   9.1 Should the CCAA Plan be accepted for filing and approved with respect to BCFC;

   9.2 Should the CCAA Applicants be authorized to exclude any one or more of the other CCAA Applicants form the CCAA Plan on the terms set out in the CCAA Plan;

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[3] Affidavit of Dan Gropper sworn March 10, 2010 ("Gropper Affidavit") at paras. 3-9

[4] Gropper Affidavit at paras 11-13.

9.3 Should the CCAA Plan be accepted for filing and approved with respect to the other CCAA Applicants as it unfairly classifies and treats the claims of BCFC as a creditor;

9.4 Should the CCAA Plan be accepted for filing and approved with the overreaching release language included in the CCAA Plan;

9.5 Should the Rights Offering be approved as it unfairly disregards any claims of BCFC as a creditor of other CCAA Applicants;

9.6 Should the Circular be accepted for filing as it does not provide full and complete disclosure of information which is necessary for creditors to properly consider the CCAA Plan; and

9.7 Should the provisions regarding voting by Non-registered Noteholders be clarified;

The CCAA Plan should NOT be accepted for filing or approved with respect to BCFC

10. The Noteholders have made it clear that they intend to vote against the CCAA Plan. As the Noteholders together hold over 1/3 of the value of claims against BCFC it is not possible that the CCAA Plan as it relates to BCFC can be approved by the required majorities. As such the CCAA Plan, as it relates to BCFC as CCAA Applicant should not be accepted for filing or approved.

11. It is patently clear that the CCAA Plan, as it relates to BCFC is doomed to fail and no further steps to continue in the CCAA process as they relate to BCFC should be taken.[5]

The CCAA Applicants should not be authorized to exclude any one or more of the other CCAA Applicants from the CCAA Plan

12. The CCAA Applicants in paragraph 8 of the draft order, seek the authorization to exclude any one or more of the CCAA Applicants from the CCAA Plan on the terms set out in the CCAA Plan.

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[5] Re Stelco Inc. 92005) 15 C.B.R. 5th 280 (Ont. C.A.) at paras 22-24.

13. However, there are no terms set out in the CCAA Plan dealing with the exclusion of one or more of the CCAA Applicants from the CCAA Plan. No explanation of how the CCAA Plan will be modified by such removal, why or when such removal would occur are provided.

14. If a CCAA Applicant is excluded from the CCAA Plan (such as BCFC) there must be provisions made for the identification, valuation and voting of claims held by that CCAA Applicant against the other CCAA Applicants.

The CCAA Plan should not be accepted for filing or approved with respect to CCAA Applicants other than BCFC as it disregards BCFC's claims against other CCAA Applicants

15. It is inappropriate for the Court to authorize the calling of a creditors' meeting to consider a plan under the CCAA where the plan is not capable of being sanctioned by the Court.[6]

16. The CCAA Plan in section 2.5(a) provides if BCFC's creditors do not vote to accept the CCAA Plan then BCFC shall become a **"No Vote Applicant"** for purposes of the CCAA Plan.

17. Section 2.5(b) of the CCAA Plan goes on to provide that any other CCAA Applicant (in that CCAA Applicant's sole and unfettered discretion) may undertake any transactions necessary to cancel the No Vote Applicant's equity interest in such CCAA Applicant for NIL consideration. This would appear to include BCFC's preferred shares in BCHI.

18. Section 2.5(c) also provides that any Inter-Company Claim held by a No Vote Applicant shall be deemed to be Affected Unsecured Claims for purposes of the CCAA Plan and compromised pursuant to the CCAA Plan <u>even though such No Vote Applicants shall not have voted in respect of the CCAA Plan</u>.

19. As it is clear that BCFC will be a No Vote Applicant (as the Noteholders have repeatedly said that they will vote against the CCAA Plan) the CCAA Applicants seek to, in effect, extinguish any claims by BCFC against the other CCAA Applicants including any

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6 Re *Doman Industries Ltd.* (2003), 41 C.B.R. (4th) 29 (B.C.S.C.) at para 9.

possible claims related to the Inter-Company Transactions without any quantification of such claims or vote in respect of such claims.

20. It has been held that a creditor cannot be bound by a provision of a CCAA plan if they have not been given the opportunity to vote on it.[7] This is precisely what the CCAA Plan seeks to do and therefore should not be accepted for filing or be approved.

21. Although a related creditor is not able to vote for a plan pursuant to the CCAA, it is open to that related creditor to vote against a plan and BCFC must have the opportunity to have its claims against the other CCAA Applicants quantified and voted.

22. There is no reasoned basis on which BCFC could possibly support the CCAA Plan (which, if implemented would have the effect of eliminating BCFC's claims as well as its right to vote). The CCAA Plan does not serve the interests of BCFC or its creditors, and as such, the CCAA Plan is not able to be sanctioned by this Court and should not be put before the creditors for consideration.

The CCAA Plan should not be accepted for filing or approved with the overreaching release language included in the CCAA Plan

23. Even if BCFC is removed from the CCAA Plan and a process is developed which provides BCFC with the opportunity to vote on the CCAA Plan as a creditor of the other CCAA Applicants the broad overreaching release language in sections 6.10(a) and (b) of the CCAA Plan seeks to release claims by BCFC and the Noteholders against not only the other CCAA Applicants but their directors, officers, advisors, legal counsel and a wide range of other persons, which is entirely inappropriate.

24. By requiring the release provisions to be enshrined in the Sanction Order as a condition precedent of the implementation of the CCAA Plan (see for example section 6.11 of the CCAA Plan), the CCAA Applicants effectively seek to release and enjoin such claims (i) held by the creditors of BCFC where the creditors of BCFC have voted (or will vote) to reject the CCAA Plan; and (ii) held by BCFC where BCFC has not had an opportunity to

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7 see *Menegon v. Philip Services Corp.* (1999), 11 C.B.R. (4th) 262 (Ont. Sup. Ct.) at paras. 38 and 42 and; Re *Doman Industries Ltd.* (2003), 41 C.B.R. (4th) 29 (B.C.S.C.) at para 9.

vote on the CCAA Plan. The claims being released by BCFC include those relating to the Intercompany Transactions which are still in the process of being investigated and reported on by the Monitor, the independent officer and US and Canadian independent counsel.

25. These overbroad release provisions are not a permissible use of the CCAA and in order to provide third party releases, at the very least the parties providing the release must have had the opportunity to vote on the CCAA Plan and the class of creditors providing such releases must have voted to accept the CCAA Plan by the required majorities.[8]

The Rights offering should not be approved as it unfairly excludes claims held by BCFC against other CCAA Applicants

26. The Rights Offering has been constructed so that only creditors who hold Proven Claims as of the arbitrary deadline of August 18, 2010 will be entitled to participate. As any claims that BCFC may hold against the other CCAA Applicants have not been subject to any of the claims procedure orders to date, BCFC's claims against other CCAA Applicants are unfairly and inappropriately excluded from participation in the Rights Offering.

27. Based on the terms of the CCAA Plan, the ability to participate in the Rights Offering is far more valuable than the shares of New ABH Common Stock to be distributed to creditors on account of their Affected Unsecured Claims. Yet, the CCAA Applicants seek to rob creditors of this valuable right by establishing a procedure by which creditors which do not hold Proven Claims, including potentially BCFC, are denied the recovery to which they may be entitled. As a result, the proposed Rights Offering creates a disparate treatment issue that also makes the CCAA Plan unfair and impossible to sanction. Accordingly, the Rights Offering must not be approved without an adjustment to allow holders of claims that are adjudicated upon after the arbitrary August 18, 2010 deadline to participate in the Rights Offering.

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8 *ATB Financial v. Metcalf & Mansfield Alternative Investments II Corp.* (2008) 296 D.L.R. (4^{th}) 135 (Ont. C.A.).

The Circular should not be accepted for filing as it does not provide full and complete disclosure of information which is necessary for creditors to consider the CCAA Plan

28. The CCAA Applicants also seek acceptance of the Circular for filing, however the Circular, which remains in draft form with numerous blanks and brackets, fails to disclose key information which is required by creditors to determine whether or not to vote to accept or reject the CCAA Plan. In particular the Circular fails to include:

28.1 the recovery model (the "**Recovery Model**") on which the the CCAA Applicants have indicated the CCAA Plan was based and which was allegedly used to allocate value between the two entity groups that comprise the CCAA Applicants corporate structure, described in the circular as the Abitibi-D-Corp. Companies and the Bowater Companies and individually as to each of the CCAA Applicants;

28.2 a description of the detailed claims analysis which the CCAA Applicants have stated that was undertaken in order to develop the Recovery Model including an explanation of the how the CCAA Applicants determined which claims should not be included in the Recovery Model;

28.3 an explanation of how the Inter-Company Claims are being treated under the CCAA Plan and in the Recovery Model, and specifically, the amount of each of the Inter-Company Claims, how the CCAA Applicants will determine which of the Inter-Company Claims to subordinate, cancel or reinstate and what value will be realized by the creditors based on the treatment of the Inter-Company Claims on an Applicant by Applicant basis;

28.4 a liquidation analysis for each CCAA Applicant;

28.5 a valuation of the Reorganized CCAA Applicants;

28.6 any discussion of BCFC's claims based on the Intercompany Transactions or otherwise;

28.7 an explanation as to how the CCAA Applicants proposed to treat Inter-Company equity interests including BCFC's preferred shares in BCHI, which may be unaffected under the CCAA Plan;

28.8 a clear explanation of the sources and uses of cash necessary to fund the distributions provided for under the CCAA Plan included detailed information about the terms of the Exit Financing and Rights Offering; or

28.9 adequate information with respect to potential Restructuring Transactions that may be undertaken by the CCAA Applicants without further notice to this Court or disclosure to creditors including information as to the impact of such Restructuring Transactions on an Applicant by Applicant basis.

29. No explanation for the lack of disclosure has been given despite the fact that much of the information sought by the Noteholders exists and has been shared with certain creditor-constituencies chosen by the CCAA Applicants to be included in plan negotiations. Steven Zelin, a representative of the US Debtors' financial advisor, provided extensive testimony at a hearing held on June 17, 2010 in the US Proceedings regarding the proposed backstop commitment (the "**Backstop Hearing**") that the US Debtors worked closely with the official committee of unsecured creditors and an ad hoc group of bondholders to develop the Plans, sharing information concerning, *inter alia*, the Recovery Model, the financial projections that provide the basis for the Plans, business plans for the reorganized entitites, estimated sources and uses of the cash and exit financing requirements, a valuation of the reorganized entities, the allocation of plan value among the applicable entities and a detailed claims analysis. Mr. Zelin testified that the goal in sharing this information was to ensure that "everyone understood the math behind how value would flow so there was no uncertainty as to what people were being offered and why."[9] Yet, none of this information is included in the Circular, meaning that, other than the creditors anointed by the CCAA Applicants as worthy of receiving such information, none of the CCAA Applicants' creditors have any

9 Backstop Hr'g Tr., 18:10-15, June 17, 2010

information concerning the financial assumptions underlying the formulation of the Plans or any idea "what they are being offered and why," which is the exact opposite of the stated goal.

The provisions of the draft Order relating to voting by Non-Registered Noteholders require clarification

30. The draft order requested contains provisions concerning the voting process and tabulation of votes for Participant Noteholders and Non-Registered Noteholders. However, these provisions do not make clear how votes of Non-Registered Noteholders will be tabulated. It is unclear from the draft Order whether the only votes being counted are those submitted by the Participant Holder or by the Non-registered Noteholders. If the votes are tabulated based on the Non-registered Noteholders, each creditor's vote will count in tabulating the votes in a given class of creditors. However, if the votes are counted solely by Participant Noteholder, there will only be a single yes or no vote submitted on account of a given group of Non-registered Noteholders. The voting procedures must be clarified to provide that the votes of individual Non-registerd Noteholders must be counted in tabulating the votes to accept or reject the CCAA Plan.

D. RELIEF SOUGHT

31. The Noteholders request an order dismissing the Creditors Meeting Motion.

The whole respectfully submitted.

Montreal, this 8th of July, 2010

Fraser Milner Casgrain LLP

FRASER MILNER CASGRAIN LLP
Attorneys for Noteholders Aurelius Capital Management, LP and Contrarian Capital Management, L.L.C.

No. **500-11-036133-094**

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CONTRARIAN CAPITAL MANAGEMENT, L.L.C.
Noteholders

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

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ORIGINAL

FMC

FRASER MILNER CASGRAIN LLP
1, PLACE VILLE-MARIE • 39TH FLOOR
MONTRÉAL QC H3B 4M7
TELEPHONE: (514) 878-8800 • FAX: (514) 866-2241
BB0822