EXHIBIT N-11

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
NO.: 500-11-036133-094

S U P E R I O R   C O U R T
(Commercial Division)

In the matter of the Plan of Compromise or Arrangement of:

ABITIBIBOWATER INC. -and-
ABITIBI-CONSOLIDATED INC., -and-
BOWATER CANADIAN HOLDING INC.,
And the other Petitioners listed in Schedules A, B and C,
Petitioners-Debtors,

-and-
ERNST & YOUNG INC.,
Monitor,
-and-
AURELIUS CAPITAL MANAGEMENT, LP,
-and-
CONTRARIAN CAPITAL MANAGEMENT, L.L.C.,
Petitioner-Noteholders.

EXAMINATION OF Mr. WILLIAM HARVEY

APPEARANCES:
Mr. Neil Rabinovitch
Mr. Louis Dumont
Counsel for Aurelius Capital Management, LP, Contrarian Capital Management, L.L.C.

Mr. Sean Dunphy
Mr. Joseph Reynaud
Counsel for AbitibiBowater Inc.

Mr. Martin H. Scheim
Monitor, Ernst & Young Inc.

May 20, 2010

EVA WARSZAWSKI
Official Court Reporter

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IN THE YEAR TWO THOUSAND TEN (2010), on this twentieth (20th) day of May, personally came and appeared:

WILLIAM HARVEY, born on November thirteen (13), nineteen fifty-seven (1957), domiciled and residing at 1 Rugosa Way, Greer, South Carolina, USA;

WHOM, after having been duly sworn to make a solemn affirmation, doth depose and say as follows:

EXAMINED BY Mr. NEIL RABINOVITCH
Counsel for Petitioner-Noteholders

Q. **[1]** Mr. Harvey, what's your work address?
A. 1155 Metcalfe Street, Montreal.
Q. **[2]** That's the head office of AbitibiBowater?
A. Yes.
Q. **[3]** Okay. And, sir, you signed an affidavit confirming the facts in a contestation of the Motion for an 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. If you can turn to your contestation, sir, and, in particular, the affidavit at the back...
A. Mm-hmm.
Q. **[4]** ... and just confirm for me that's your signature?
A. Yes, it is.
Q. **[5]** Okay. I take it you reviewed the contestation at the time you swore this affidavit?
A. Yes.
Q. **[6]** And the facts contained in the affidavit, to the best of your knowledge, information and belief, were true?
A. Yes.
Q. **[7]** And, upon reflection, from the time you signed this affidavit and today, are there any corrections you wish to make to that contestation?
A. No.
Q. **[8]** Okay. Sir, I understand you're the Executive Vice-President and Chief Financial Officer of AbitibiBowater Inc.?
A. Yes.
Q. **[9]** How long have you had that position?
A. Since August nineteen ninety (1990)... well, no, the merger dates, since October thirty-one (31),

two thousand seven (2007).
Q. **[10]** Okay. And AbitibiBowater Inc., just so the record's clear, is the ultimate parent of all of the Chapter 11 and CCAA applicants or debtors?
A. Yes.
Q. **[11]** Okay. And, sir, Mr. Jacques Vachon, do you know who he is?
A. Yes.
Q. **[12]** Is he the Senior Vice-President, Corporate Affairs and Chief Legal Officer of AbitibiBowater Inc.?
A. Yes.
Q. **[13]** And would he have held that position since roughly the same time, two thousand and seven (2007)?
A. Yes.
Q. **[14]** Okay. What are your responsibilities as Executive Vice-President and CFO of AbitibiBowater Inc.?
A. I'm responsible for the finance organization and the business development organization.
Q. **[15]** Okay. And when you say the finance organization and the business development, is that of all of the AbitibiBowater companies?
A. Yes.

Q. **[16]** So, you're the CFO, in essence, of the entire organization?

A. Yes.

Q. **[17]** And, sir, I take it you're remunerated by AbitibiBowater Inc.?

A. Yes.

Q. **[18]** As opposed to being remunerated by any of the subsidiary companies?

A. Yes.

Q. **[19]** How long have you been employed by, we'll call it the Abitibi or Bowater group of companies?

A. Since nineteen ninety-eight (1998).

Q. **[20]** And can you briefly give me your work history with the AbitibiBowater companies, just in terms of positions you've held.

A. Yes, I was part of a company acquired by Bowater in nineteen ninety-eight (1998) and I became -- it was called Abanor Inc. -- and I became the Treasurer of Bowater Inc. in August of nineteen ninety-eight (1998). I became the CFO of Bowater Inc. in December two thousand four (2004).

Q. **[21]** And then you became, I take it, the Senior Vice-President Corporate Affairs, Senior... sorry, Executive Vice-President and CFO of the merged entity when the merger took place in two thousand

and seven (2007)?
A. Originally Senior Vice-President and Chief Financial Officer, and the title was changed about a year ago.
Q. **[22]** Okay. And, sir, are you an officer or a director of all of the AbitibiBowater companies?
A. Not all of them.
Q. **[23]** Okay. I understand that you're a director, Vice-President and Treasurer of Bowater Canada Finance Corporation? Is that your understanding?
A. Yes.
Q. **[24]** Okay. Sir, I'm just showing you a printout from the Nova Scotia Registry of joint stock companies for Bowater Canada Finance Corporation...
A. Mm-hmm.
Q. **[25]** And take a quick look and just confirm for me that it, to the best of your knowledge, reflects its officers and directors?
A. To the best of my knowledge, it does.
Q. **[26]** Mr. Dunphy, let's mark this corporate profile report of BCFC as Exhibit 1 to this examination?
Mr. SEAN DUNPHY:
Sure.

EXHIBIT No. 1: Corporate profile report printout from Nova Scotia Registry of joint stock companies for Bowater Canada Finance Corporation (BCFC)

(OFF THE RECORD DISCUSSION)

Mr. NEIL RABINOVITCH:

Q. **[27]** Sir, how long have you been a Director, Vice-President and Secretary of, we'll call it BCFC?
A. I don't, I do not know.
Q. **[28]** Would it be likely since about two thousand and seven (2007), at least, when the merger took place?
A. I don't know.
Q. **[29]** And, sir, BCFC, I understand to be a special purpose financing vehicle? Is that correct?
A. Yes.
Q. **[30]** And, to your knowledge it's not an operating company?
A. Yes, it's not an operating company.
Q. **[31]** Okay. And, again, to your knowledge, it doesn't carry on any active trade; correct?
A. Yes, it does not carry on any active trade.
Q. **[32]** BCFC has no employees?

A. It has no employees.
Q. **[33]** What are your responsibilities for BCFC?
A. I'm a director of BCFC and I'm an officer of BCFC.
Q. **[34]** We know that, but in your capacity as Vice-President and Secretary of BCFC what are you actually responsible for doing?
A. I'm responsible... I'm an officer of BCFC and we prepare financial statements.
Q. **[35]** Other than preparing financial statements, in ordinary course, is there any day-to-day business of BCFC?
Mr. SEAN DUNPHY:
It's just established, so it's not carrying on an active business.
THE WITNESS:
A. No, no.
Mr. NEIL RABINOVITCH:
Q. **[36]** Sir, are you remunerated at all by BCFC?
A. No.
Q. **[37]** Mm-hmm. Okay. And I understand you're also a Director, Vice-President and Treasurer of Bowater Canadian Forest Products Inc.; is that your understanding as well?
A. I don't know.
Q. **[38]** Okay. I'm showing you a printout from the

Registry of joint stock companies of Nova Scotia for Bowater Canadian Forest Products Inc. Take a quick moment and look at it. You'll see it lists you as a Director and Vice-President Treasurer of that company.

A. It does.

Q. **[39]** To your knowledge are those the positions you hold with Bowater Canadian Forest Products?

Mr. SEAN DUNPHY:

We'll let you know if there's any reason to dispute it.

THE WITNESS:

A. I don't know.

Mr. NEIL RABINOVITCH:

Q. **[40]** I think you have no reason to doubt the accuracy of this.

A. I have no reason to doubt it.

Q. **[41]** Okay. And you'll also see that it reflects that Mr. Vachon is Vice-President and Secretary and a Director of this company, BCFP. Do you have any reason to doubt the accuracy of those positions as reflected in this printout?

A. I have no reason. I have no knowledge. I have no reason to doubt it.

Q. **[42]** Mr. Dunphy, perhaps you can give me an undertaking to advise whether the contents, if you come on any information to show that the contents are inaccurate.

Mr. SEAN DUNPHY:

I just, I think I just did.

Mr. NEIL RABINOVITCH:

Fantastic.

<u>UNDERTAKING 1:</u> To advise whether the contents of Exhibit 2 are inaccurate

Mr. NEIL RABINOVITCH:

Let's then mark this printout as Exhibit 2.

<u>EXHIBIT No. 2:</u> Corporate profile report printout from the Registry of joint stock companies of Nova Scotia for Bowater Canadian Forest Products Inc. (BCFP)

Mr. SEAN DUNPHY:

We will look at Exhibit 1 and 2, if we have, take any issue with the currency of the positions shown there we'll let you know. It appears accurate.

Mr. NEIL RABINOVITCH:
Q. **[43]** Okay. And, sir, could you tell me when you first became a Director, Vice-President and Treasurer of BCFP?
A. I do not know.
Q. **[44]** Can you undertake to advise me, Mr. Dunphy?
Mr. SEAN DUNPHY:
Sure.
Mr. NEIL RABINOVITCH:
Thank you.

<u>UNDERTAKING 2:</u> To advise when Mr. William Harvey first became a Director, Vice-President and Treasurer of BCFP

Mr. NEIL RABINOVITCH:
Q. **[45]** Sir, can you describe for me what the business of BCFP is, Bowater Canadian Forest Products?
A. I believe it's engaged in the manufacturing and production of pulp and paper and lumber.
Q. **[46]** Does it actually manufacture or is it a holding company for other Canadian entities that manufacture? Do you know?
A. I believe if it's Bowater Canadian Forest Products Inc., I believe it's a manufacturer.

Q. **[47]** Sir, what are your responsibilities with this company?

Mr. SEAN DUNPHY:

I've let you go a little bit into BCFP, but that is starting to wander afield, this... your proper field of interest is BCFC, it's your creditor.

Mr. NEIL RABINOVITCH:

Mm-hmm. My proper field of interest is the issue of conflicts between the various Bowater companies insofar as it relates to BCFC, Mr. Dunphy.

Mr. SEAN DUNPHY:

Well, you've got his positions and I think we're far enough down there without giving the operational issues of BCFP.

(REFUSAL)

Mr. NEIL RABINOVITCH:

So, I'll take that as a refusal on his responsibilities with BCFP.

Mr. SEAN DUNPHY:

I think we've gone as far as is relevant.

Mr. NEIL RABINOVITCH:

That's fine.

Q. **[48]** Sir, I understand you're also a Director and

Vice-President of Bowater Canadian Holdings Incorporated. Is that your understanding?
A. I do not know.
Q. **[49]** I'm showing you a printout from the Nova Scotia Registry of joint stock companies...
A. Mm-hmm.
Q. **[50]** ... for BCHI.
A. Mm-hmm.
Q. **[51]** Do you have any reason to doubt the accuracy of this document...
A. No.
Q. **[52]** ... insofar as it reflects you're a Director and Vice-President?
A. No. No reason to doubt the accuracy.
Q. **[53]** Okay. Let's mark this, then, as Exhibit 3, Mr. Dunphy. Okay?

<u>EXHIBIT No. 3:</u> Corporate profile report printout from the Nova Scotia Registry of joint stock companies for BCHI

Mr. NEIL RABINOVITCH:
Q. **[54]** And, sir, can you also confirm for me that Mr. Vachon is Vice-President and Secretary of this company?

Mr. SEAN DUNPHY:
If that's what you just showed him, he doesn't have it before him so you have to show him again.
Mr. NEIL RABINOVITCH:
Sure.
A. I have no reason to doubt the accuracy of this piece of paper.
Mr. SEAN DUNPHY:
If that's what Exhibit 3 says, then we agree with you.
Mr. NEIL RABINOVITCH:
Q. **[55]** Thank you. Sir, what's the nature of BCHI's business?
A. BC... I believe it is a holding company.
Q. **[56]** Is it the top Canadian company on the Bowater side?
A. I do not know.
Q. **[57]** Do you know what it's a holding company for?
A. I don't remember.
Q. **[58]** Do you know whether it's a holding company that's an indirect parent of Bowater Canadian Forest Products?
Mr. SEAN DUNPHY:
We have produced in the court file...

THE WITNESS:
A. I would have to...
Mr. SEAN DUNPHY:
... charts that'll show who sits where in the tree. You can't expect him to memorize it.
Mr. NEIL RABINOVITCH:
I'm just asking questions, Mr. Dunphy. If he needs help looking at a corporate chart...
Mr. SEAN DUNPHY:
And I'm about to show him...
Mr. NEIL RABINOVITCH:
Great.
Mr. SEAN DUNPHY:
... for your assistance what is the better reproduction of Exhibit 2 to your Motion.
Mr. NEIL RABINOVITCH:
Thank you.
Mr. SEAN DUNPHY:
Which originally comes from, from initial applications. So, he now has that Exhibit before him, why don't you ask your questions on who sits where again, and he can answer.
Mr. NEIL RABINOVITCH:
Fantastic.
Q. **[59]** So, can you confirm then that BCHI is the top

Canadian company in the Bowater chain?
A. Mm-hmm, yes, it is.
Q. **[60]** Okay, and is it the indirect parent of Bowater Canadian Forest Products?
A. Yes, it is.
Q. **[61]** And, ultimately, is it the... I guess it's the holding company for all of the Canadian operations; is that correct?
A. No. It does not seem to be, is not correct.
Q. **[62]** Okay. And, sir, what responsibilities do you hold with BCHI?
A. From the document I'm an officer, I'm responsible for the finances of the AbitibiBowater Inc. Group which includes Bowater Canadian Holdings Inc.
Q. **[63]** And, sir, I understand you're a Director and President of Bowater Canada Treasury Corporation? Is that your understanding?
A. That's not what... I'm... that's not what this says. Bowater...
Mr. SEAN DUNPHY:
It shows you as Director and President.
THE WITNESS:
A. It shows me as Director and President.
Mr. NEIL RABINOVITCH:
Q. **[64]** Yes.

A. I thought, I thought you said Director and Treasurer. I may have misheard you.
Q. **[65]** Okay. Let's take a step back. Sir, you're the Director and President, or a Director and President of Bowater Canada Treasury Corporation?
A. I believe that's true.
Q. **[66]** And, sir, Mr. Vachon is Secretary of Bowater Canada Treasury Corporation?
A. I believe that's true.
Q. **[67]** Okay. Let's mark this corporate profile as Exhibit number 4.

<u>EXHIBIT No. 4:</u> Corporate profile of Bowater Canada Treasury Corporation

Mr. NEIL RABINOVITCH:
Q. **[68]** What's the business of Bowater Canada Treasury?
A. There's no active operating business.
Q. **[69]** Was this a special purpose vehicle?
A. It was a special purpose entity.
Q. **[70]** Mm-hmm. Created for financing purposes?
A. I believe so.
Q. **[71]** Mr. Dunphy, can we mark the chart you put before Mr. Harvey as Exhibit 5?

(OFF THE RECORD DISCUSSION)

Mr. NEIL RABINOVITCH:
We'll mark as Exhibit 5 the Title 11 and CCAA filing overview corporate chart, Paul Weiss draft 41409.

<u>EXHIBIT No. 5:</u> Title 11 and CCAA filing overview corporate chart, Paul Weiss draft 41409

Mr. NEIL RABINOVITCH:
Q. **[72]** Sir, I understand you're also Executive Vice-President and CFO for Bowater Incorporated; is that correct?
A. I believe it's yes.
Q. **[73]** Okay. And I also understand that Mr. Vachon is Senior Vice-President Corporate Affairs and Chief Legal Officer for Bowater Incorporated; is that correct?
A. I believe it is.
Q. **[74]** What are your responsibilities for Bowater Incorporated?
A. I'm responsible for the finance, financial organization of Bowater Incorporated.

Q. **[75]** And what's Bowater Incorporated's business? What's the nature of its business?
A. Bowater Incorporated is a manufacturer of pulp and paper products.
Q. **[76]** And Bowater Incorporated is a Chapter 11 debtor?
A. Yes, it is.
Q. **[77]** Can you also confirm for me that Bowater Incorporated is the member or shareholder of BCFC?
A. I'll have to check the diagram. Yes, it is.
Q. **[78]** Okay. And is it also the U.S. parent of BCHI, Bowater Canadian Holdings?
A. Yes, it is.
Q. **[79]** Sir, your responsibilities for the U.S. Bowater companies, are they similar to the responsibilities you have for the Canadian Bowater companies?
A. Yes, they are.
Q. **[80]** Can you tell me roughly what percentage of your time is spent on BCFC's business? Just BCFC's business.
A. A very small amount of time.
Q. **[81]** Then, sir, would you agree with me that the officers and directors of BCFC are also officers and directors of Bowater?

A. I do not know.
Q. **[82]** Okay. Are you aware of whether BCFC has any independent officers and directors, in other words people who aren't either officers or directors of any other Abitibi or Bowater company?
Mr. SEAN DUNPHY:
You've got the register, it is what it is.
Mr. NEIL RABINOVITCH:
Q. **[83]** Sir, U.S. counsel for the Chapter 11 debtors is Paul Weiss; is that correct?
A. Yes, it is.
Q. **[84]** Okay. And BCFC has filed in the Chapter 11 cases, is that correct, as a debtor?
A. Yes, it has.
Q. **[85]** So, Paul Weiss represents BCFC in the U.S. case; correct?
A. Yes, it is.
Q. **[86]** And, to your knowledge, BCFC is also a CCAA applicant; correct?
A. I believe so.
Q. **[87]** And Stikeman Elliott represents BCFC in the Canadian CCAA proceedings?
A. I believe so.
Q. **[88]** And, to your knowledge, Stikeman Elliott represents all of the other CCAA applicants as

well?
A. I believe so.
Q. **[89]** Sir, does BCFC hold board meetings?
A. No.
Q. **[90]** How are board-level decisions made at BCFC?
A. There are very, very few decisions.
Q. **[91]** Okay. For example, the decision to file under CCAA and Chapter 11...
A. Mm-hmm.
Q. **[92]** ... how was that made by BCFC? Did it have a board meeting to make that decision?
A. It was a decision made with counsel, with Jacques Vachon, as well as involving outside counsel.
Q. **[93]** Okay. Let me ask you again. Did BCFC hold a board meeting to consider whether it should file under Chapter 11 or CCAA?
Mr. SEAN DUNPHY:
Do you know the answer?
THE WITNESS:
A. No, I do not know the answer.
Mr. NEIL RABINOVITCH:
Q. **[94]** You are a member of the board. Do you recall attending a board meeting of BCFC to discuss whether to file under Chapter 11 or CCAA?
A. I don't remember.

Q. **[95]** Okay. Mr. Dunphy, I'd like an undertaking to produce any minutes of board meetings of BCFC relating to the decision to file for Chapter 11 or CCAA.

Mr. SEAN DUNPHY:

I suspect that there are none. There is likely a resolution. I'll find the resolution.

UNDERTAKING 3: To produce the minutes of Board meetings of BCFC relating to decision to file for Chapter 11 or CCAA

Mr. NEIL RABINOVITCH:

Q. **[96]** Do you have any recollection of a resolution of the board of BCFC having been circulated to you, authorizing BCFC to file under CCAA and Chapter 11?

A. I do not remember.

Q. **[97]** Okay. And at the time of the CCAA and Chapter 11 filings, I take it we can agree that BCFC was carrying on no active business?

A. No operating business.

Q. **[98]** Mm-hmm. And, sir, do I understand correctly that BCFC was created solely for the purpose of completing the financing transaction, the six

hundred million dollar ($600M) financing transaction in two thousand and one (2001)?
A. I believe so.
Q. **[99]** And is it your understanding that it was set up as an unlimited liability company for reasons of tax efficiency?
A. I believe so.
Q. **[100]** Since it was set up in two thousand and one (2001) for the six hundred million dollar ($600M) financing, other than raising the proceeds of that financing, has it carried on any other active business?
A. Not that I'm aware of.
Q. **[101]** Sir, at the time that BCFC filed for protection under the CCAA and Chapter 11, did the board of BCFC undertake or get an analysis of whether BCFC was better off in CCAA or in bankruptcy as opposed to being in bankruptcy in Canada?
Mr. SEAN DUNPHY:
I'm going to stop you there. He's told you that it's legal advice. The contents of that legal advice is not going to be discussed.
Mr. NEIL RABINOVITCH:
I'm asking whether they got legal advice, without

getting into the contents of the legal advice, I'd like to know whether there was an assessment done by BCFC's board as to whether they were better off in CCAA or under the Bankruptcy and Insolvency Act.

Mr. SEAN DUNPHY:

That is legal advice. They had legal advice. The contents of legal advice is not to be disclosed. You're asking a legal question.

Mr. NEIL RABINOVITCH:

Q. **[102]** Did BCFC's board obtain legal advice separate and apart from all of the other CCAA applicants?

Mr. SEAN DUNPHY:

Don't answer that question.

(REFUSAL)

Mr. NEIL RABINOVITCH:

Q. **[103]** Did BCFC's board have legal representation at or around the time of the filing under Chapter 11 and CCAA from any law firm other than Stikeman's and Paul Weiss?

A. Not that I'm aware of.

Q. **[104]** At the time the filings were made under the CCAA and Chapter 11 for BCFC, Mr. Vachon was acting, as it were, as general counsel for all of

the Abitibi and Bowater companies, to your knowledge?
A. I believe so.
Q. **[105]** And, sir, at the time BCFC filed for Chapter 11 protection, did its board obtain an analysis of whether it was better off under Chapter 11 or under Chapter 7?
Mr. SEAN DUNPHY:
Don't answer the question. We're not answering Chapter 11 related questions here at all.

(OBJECTION)

(OFF THE RECORD DISCUSSION)

Mr. NEIL RABINOVITCH:
Q. **[106]** At the time BCFC filed for protection under Chapter 11, did its board obtain an analysis of whether it was better off under Chapter 11 or under Chapter 7?
Mr. SEAN DUNPHY:
And that's objected to.

(OBJECTION)

Mr. NEIL RABINOVITCH:

Q. **[107]** And, sir, what was the basis upon which the board of BCFC determined that it was better off under CCAA than under a bankruptcy filing in Canada?

Mr. SEAN DUNPHY:

And you've asked the question before and you've been given the answer. Same objection of privilege.

(OBJECTION)

Mr. NEIL RABINOVITCH:

Q. **[108]** Sir, do you know whether the board of BCFC ever met, either just prior to the filing or since then to discuss their fiduciary duties to BCFC?

Mr. SEAN DUNPHY:

It's the very same question you've asked over and over again. The board, you've been told, had legal advice. The filing, by the way, is *res judicata*, it's an order of the court which has not been opposed by you or by anyone else, and even delving into it at this point is not relevant to the Motion before the court because the courts made the order. So, if you have a relevant question, I've let you, given you quite a bit of latitude but you're really wandering far off any path that is tangentially connected to relevant. The order of the court...

Mr. NEIL RABINOVITCH:
I wholeheartedly disagree with you.

Mr. SEAN DUNPHY:
We're in CCAA -- just to finish -- we are in CCAA by virtue of an order of this court, and that order was made based on the evidence presented at the initial hearing which has not been opposed by you or appealed or sought leave to appeal or any other of the correct means of dealing with any objections you may have had to that.

Mr. NEIL RABINOVITCH:
And I remind you that there's an outstanding Motion for the CCAA case to effectively become a bankruptcy case.

Mr. SEAN DUNPHY:
And that may be and that can be based on whatever evidence you want today, but the evidence of what the judge did in April of oh-nine ('09) is not a basis for a motion today.

Mr. NEIL RABINOVITCH:
I'm not asking questions about what the judge did. I'm asking why the board made the decision it made.

Mr. SEAN DUNPHY:
That decision has been approved by the court and is *res judicata*, we're not raking it over again.
Mr. NEIL RABINOVITCH:
Then we'll have to take that up with Justice Gascon at the appropriate time.
Mr. SEAN DUNPHY:
Yes. I think we shall.
Mr. NEIL RABINOVITCH:
Q. **[109]** Sir, going back to the question I asked previously, did the board of BCFC ever meet to discuss the fiduciary duties that the board members had to BCFC?
Mr. SEAN DUNPHY:
And that is objected to. You're asking for legal advice provided. You've been told they took legal advice, and I'm not going any farther.

(OBJECTION)

Mr. NEIL RABINOVITCH:
Well, I've actually been told, I believe, Mr. Dunphy, the boards never even met.
Mr. SEAN DUNPHY:
No, you've been told that they acted by way of

resolution, that doesn't mean they don't take legal advice before they sign resolutions. You've been told they took legal advice and you've been told they signed resolutions.

Mr. NEIL RABINOVITCH:

Q. **[110]** Sir, has the board of BCFC had any discussions about the manner in which BCFC can best maximize its assets and recoveries?

Mr. SEAN DUNPHY:

Are you aware of any such meeting?

THE WITNESS:

A. No. No.

Mr. NEIL RABINOVITCH:

Q. **[111]** And you're not aware of any such discussions?

A. I'm not aware of any.

Mr. SEAN DUNPHY:

I assume you're referring to the period after the filing?

Mr. NEIL RABINOVITCH:

Yes.

Q. **[112]** And, sir, Exhibit 1 we previously looked at, the corporate profile report for Bowater Canada Finance Corporation, BCFC, you'll see under the description type, it says NS unlimited liability? It's page 1, Mr. Dunphy.

Mr. SEAN DUNPHY:
Mm-hmm.
THE WITNESS:
A. Yes.
Mr. NEIL RABINOVITCH:
Q. **[113]** Do you have any understanding of what an unlimited liability company is?
Mr. SEAN DUNPHY:
You can ask him at a very high level but we're certainly not going to get into legal advice here.
Mr. NEIL RABINOVITCH:
Q. **[114]** That's fine.
A. Some understanding.
Q. **[115]** What's your general understanding of what an unlimited liability company is?
A. It has unlimited -- in fact, I don't, technically, from a legal point of view, I do not have enough understanding to comment on it.
Q. **[116]** Is it your understanding that under Nova Scotia law when an unlimited liability company is wound up, if it's unable to pay all its debts and liabilities, its member or shareholder is liable for that deficiency? Is that your understanding?
A. I am not an expert in that area.
Q. **[117]** I'm not asking you to be. I note that it's

referred to in the contestation, Mr. Dunphy, and I understand Mr. Harvey's filed an affidavit which is...

Mr. SEAN DUNPHY:

You can refer to a paragraph, it may refresh his memory. You're asking him about matters that he would typically take advice on

Mr. NEIL RABINOVITCH:

Q. **[118]** Sir, paragraph 11 of your contestation...

A. Paragraph 11?

Q. **[119]** Yes. Talks about contribution claim.

Mr. SEAN DUNPHY:

Just read the paragraph. Just read the sentence.

THE WITNESS:

A. Mm-hmm. It says "may" have a claim.

Mr. NEIL RABINOVITCH:

Q. **[120]** Okay. Is it your understanding that one of the consequences of being an unlimited liability company is that when BCFC is wound up its shareholder or member is liable for any deficiency of its assets?

Mr. SEAN DUNPHY:

I think he's already -- you've asked the question once, which is fundamentally asking for legal advice under Nova Scotia's company's law. He's given you the answer he can give you. You said that it said something different in his affidavit; he didn't. I don't know what you're asking at this stage.

Mr. NEIL RABINOVITCH:
I'm asking if that's his understanding of the consequence of it being an unlimited liability company, Mr. Dunphy.

Mr. SEAN DUNPHY:
And that's calling for a legal conclusion, and he told you he didn't know. You've asked the exact question.

Mr. NEIL RABINOVITCH:
Mr. Dunphy, do you have the contestation that was filed December eighteenth (18th)?

Mr. SEAN DUNPHY:
I don't. If it's not the one...

Mr. NEIL RABINOVITCH:
It's not the one you're looking at currently.

Mr. SEAN DUNPHY:
It's the one we have. Which motion is that that you're referring to?

Mr. NEIL RABINOVITCH:
It was the motion for production.

Mr. SEAN DUNPHY:
The one that didn't go forward?
Mr. NEIL RABINOVITCH:
Yes.
Mr. SEAN DUNPHY:
You could show it to me.

(OFF THE RECORD DISCUSSION)

Mr. NEIL RABINOVITCH:
Q. **[121]** We're looking at the contestation filed on the motion for the issuance of an order to provide financial information...
A. Mm-hmm.
Q. **[122]** ... and, in particular, Mr. Harvey, your affidavit sworn December eighteen (18), two thousand and nine (2009).
A. Mm-hmm.
Q. **[123]** Can you confirm that's your signature?
A. Yes, it is.
Q. **[124]** And at the time you swore this affidavit, you reviewed the contestation?
A. Yes, I did.
Q. **[125]** And, to the best of your knowledge, information and belief, its contents were true and

accurate?
A. Yes.
Q. **[126]** Okay. Mr. Dunphy, why don't we mark...
Mr. SEAN DUNPHY:
You don't need to mark something that's in the court record.
Mr. NEIL RABINOVITCH:
Well, I just don't know that it's actually before him.
Mr. SEAN DUNPHY:
Was this filed?
Mr. JOSEPH REYNAUD:
Yes.
Mr. NEIL RABINOVITCH:
But it just may not be before him in respect of this motion.
Mr. SEAN DUNPHY:
You will drive him crazy if you give it another number because I have the court docket number.
Mr. LOUIS DUMONT:
We might just mark it just for identification purposes.
Mr. NEIL RABINOVITCH:
Why don't we then mark it Exhibit A for identification.

EXHIBIT No. A: Contestation filed on the Motion for the Issuance of an Order to Provide Financial Information (for identification purposes)

Mr. NEIL RABINOVITCH:

Q. **[127]** You'll see paragraph 10 of their contestation, sir, it reads very similar to paragraph 11 of the contestation we just looked at.
A. Yes.
Q. **[128]** And so at the time you swore this affidavit, on December eighteenth (18th), you believed BCFC may have a claim for contribution against its shareholder Bowater Incorporated under the Nova Scotia Companies Act; correct?
A. Yes.
Q. **[129]** Prior to December eighteenth (18th), to your knowledge, had the board of BCFC taken any steps to investigate whether it had a contribution claim?
A. Not to my knowledge.
Q. **[130]** And since you swore this affidavit on December eighteenth (18th), has the board of BCFC taken any steps to determine whether it has a contribution claim against Bowater Inc.?
A. Not that I'm aware of.

Q. **[131]** So the board of BCFC has done nothing to determine whether, in fact, there's a contribution claim against Bowater Inc.; correct?
A. I believe... Not that I'm aware of.
Q. **[132]** Okay.
Mr. SEAN DUNPHY:
I'd like to tell you that you're asking a question he does not have personal knowledge of as he was in Korea and missed a board meeting. So.
Mr. NEIL RABINOVITCH:
Q. **[133]** When did this board meeting in question take place, sir?
A. I was in Korea for a week, possibly there could have been a board meeting during that week that I did not attend.
Q. **[134]** Did you receive minutes of that board meeting?
A. Not that I'm aware of.
Q. **[135]** Okay. I'd like an undertaking to produce copies of the minutes of that board meeting.
Mr. SEAN DUNPHY:
If there are minutes of the board meeting I will review them for admissibility. We'll take it under advisement, I have your question.

Mr. NEIL RABINOVITCH:
That's fine.

UNDERTAKING 4: To produce copies of the minutes of BCFC's board meeting (the one where Mr. Harvey was in Korea and did not attend) (under advisement)

Mr. NEIL RABINOVITCH:
Q. **[136]** And what company held this board meeting? Was it just a BCFC board meeting?
A. I don't know.
Q. **[137]** Mr. Dunphy, is that something you can assist with?
Mr. SEAN DUNPHY:
It's a BCFC board meeting.
Mr. NEIL RABINOVITCH:
Okay. I'd also like an undertaking to produce any documents that were provided to the board as part of that meeting.
Mr. SEAN DUNPHY:
I'll take it under advisement. I'll see if there are minutes, what the minutes refer to.

UNDERTAKING 5: To produce any documents that were provided to the board as part of BCFC's meeting (under advisement)

Mr. NEIL RABINOVITCH:
Q. **[138]** Sir, when were you in Korea? It's within the last couple of weeks anyways?
A. I can tell you in one minute. May second (2nd) to May seventh (7th).
Q. **[139]** Okay. So, can we agree, at least, until prior to this board meeting, BCFC's board has never met or considered the contribution claim it may have against Bowater Inc.?
A. Yes.
Q. **[140]** You agree with me, correct?
A. Yes.
Q. **[141]** And, sir, do you have any knowledge or understanding of the magnitude of this contribution claim?
A. No.
Q. **[142]** Sir, have there been any discussions that you've been present at about the implications of this contribution claim and the ability of the AbitibiBowater companies to restructure?

A. I am not aware really.

Q. **[143]** Are you aware whether there's been any discussions with any third parties like the UCC about this contribution claim?

Mr. SEAN DUNPHY:

We're not going to go into that. You're asking about a claim that's before the U.S. Bankruptcy court, or it's a claim against Bowater Inc. under U.S. bankruptcy rules and dealing with U.S. creditors committees, not relevant to this motion.

(OBJECTION)

Mr. NEIL RABINOVITCH:

And it's an asset of a Canadian debtor, Mr. Dunphy.

Mr. SEAN DUNPHY:

I have an affidavit that says it "may" be a claim, not that it is, but "may" be.

Mr. NEIL RABINOVITCH:

And if it is a claim, it potentially is a six hundred million dollar ($600M) claim.

Mr. SEAN DUNPHY:

That's what you say.

Mr. NEIL RABINOVITCH:

Well...

Mr. SEAN DUNPHY:
And any discussions with people about a six hundred million dollar ($600M) claim are not relevant. The claim is what it is.
Mr. NEIL RABINOVITCH:
Q. **[144]** Sir, are you aware of any presentations that have been made to any third parties relating to this contribution claim?
Mr. SEAN DUNPHY:
It's objected to, it's not relevant.

(OBJECTION)

Mr. NEIL RABINOVITCH:
Q. **[145]** Other than the indebtedness to the noteholders of six hundred million dollars ($600M), what other debt does BCFC have?
A. None that I'm aware of.
Q. **[146]** And, sir, other than the Class A preferred shares of BCHI, what other assets does BCFC have?
A. None that I'm aware of.
Q. **[147]** Sir, has the board of BCFC obtained any valuation or appraisal for the Class A pref shares?
A. I'm not aware.
Q. **[148]** Do you have any knowledge, information or

belief as to the value of those shares?

Mr. SEAN DUNPHY:

In the current bankruptcy proceeding?

Mr. NEIL RABINOVITCH:

Q. **[149]** Yes.

Mr. SEAN DUNPHY:

If I recall they filed a bankruptcy plan that does not attribute value to any shares.

Mr. NEIL RABINOVITCH:

Q. **[150]** So, I take it, sir, your view is these pref shares are valueless, correct?

A. That is our plan. That is the plan, yes.

Q. **[151]** Okay. So, given that those shares are the only asset, you've told me of BCFC, I take it we can agree BCFC is unable to pay the six hundred million dollars ($600M) that it owes its noteholders; correct?

A. Yes.

Q. **[152]** Sir, we've looked at paragraph 10 of the contestation you filed on your earlier motion to produce financial information which we saw replicated in paragraph 11 of the contestation in this motion, that's the paragraph dealing with the contribution claim. Do you recall having looked at that a couple of minutes ago?

A. Yes.
Q. **[153]** And do you recall I turned your attention to the fact that you indicate there may be a contribution claim?
A. Yes.
Q. **[154]** Okay. What was the basis for your statement that there may be a contribution claim?

Mr. SEAN DUNPHY:
You're asking intrinsically about legal advice, you, therefore, get the ritual objection.

(OBJECTION)

Mr. NEIL RABINOVITCH:
Q. **[155]** Is that the sole basis on which you made that statement, sir? Was it purely based on the advice of counsel?
A. Yes.

Mr. SEAN DUNPHY:
Well, there is, to be fair on the record, there is more than that since there's the advice of your client who was writing a series of letters prior to that. It's in the record. There's a little more than that in the record, to be fair to the witness.

Mr. NEIL RABINOVITCH:
Well, I'd like to know what he's relying on.
Q. **[156]** Mr. Harvey, what were you relying on when you made that statement in the two contestations, that there may be a claim?
Mr. SEAN DUNPHY:
Well, you've got a very clear answer. There's legal advice. You say "is that all there is," and legal advice comes in the context of your client writing a bunch of letters which makes...
Mr. LOUIS DUMONT:
Well, that was your answer, Mr. Dunphy.
Mr. SEAN DUNPHY:
I'm saying that to be fair... Just, Mr. Dumont, I'm representing this witness here and, to be fair to the witness, you're asking is there anything else in the record you put before him, there are other things. So, letters you've written to him.
Mr. NEIL RABINOVITCH:
Q. **[157]** Other than the letters from Aurelius that are in the record, and the advice of your counsel, was there anything else you were relying on when you made that statement that BCFC may have a contribution claim?
A. I was relying on my counsel.

Q. **[158]** And were you also relying on internal advice from Mr. Vachon?

Mr. SEAN DUNPHY:
He is counsel, I'm not going to allow the question.

(OBJECTION)

Mr. NEIL RABINOVITCH:
I think I'm entitled to ask whose advice he was relying on without getting into that advice, Mr. Dunphy

Mr. SEAN DUNPHY:
I disagree with you. There are three sets of counsel involved: U.S., Canadian, and in-house, and they're all as equally privileged.

Mr. NEIL RABINOVITCH:
However, I'm entitled to export whose advice he was relying on without getting into that advice.

Mr. SEAN DUNPHY:
I respectfully disagree, but we'll leave it at that.

Mr. NEIL RABINOVITCH:
Yes, we've got another objection.

Q. **[159]** Sir, have the directors or officers of BCFC ever met to discuss how best to maximize the value

of the pref shares?
A. You've asked that question before.
Q. **[160]** I haven't asked about the pref shares in that regard, Mr. Harvey.
A. You said the maximized value and that's the only thing they own.
Q. **[161]** So I guess we got a "no" on that one. Sir, since you've told me that BCFC doesn't have sufficient assets to pay its liabilities, it has no active business to restructure, why isn't it just filing for protection under the Bankruptcy Act?
Mr. SEAN DUNPHY:
Don't answer the question. It's an objection.

(OBJECTION)

Mr. NEIL RABINOVITCH:
Q. **[162]** Sir, what benefit does BCFC's board think BCFC obtains by being a debtor or an applicant under the CCAA, continuing to be under CCAA protection as opposed to bankruptcy?
Mr. SEAN DUNPHY:
Other than legal advice, is there anything you can add to legal advice?

THE WITNESS:
A. I think the whole entity is better off in the situation we are now, and it's better off as a combined entity in creating value, value in merging as a combined viable entity.
Q. **[163]** Yes, but how does that help BCFC which isn't, from a business perspective, how does that help BCFC, which isn't carrying on any active business?
Mr. SEAN DUNPHY:
At that point you've got argument.
Mr. NEIL RABINOVITCH:
I want his opinion as a member of the board of BCFC, from a business perspective, Mr. Dunphy...
Mr. SEAN DUNPHY:
He just gave you the perspective which was he said the entire enterprise has its value improved.
Mr. NEIL RABINOVITCH:
Mm-hmm.
Mr. SEAN DUNPHY:
It's what he just told you.
Mr. NEIL RABINOVITCH:
Q. **[164]** And have you done any financial analysis to satisfy yourself as an officer and director of BCFC that BCFC continues to be better off being in Chapter 11 and CCAA?

Mr. SEAN DUNPHY:
Don't answer the question, that's been objected to several times.
Mr. NEIL RABINOVITCH:
I'm not asking about legal advice, Mr. Dunphy, I'm asking about financial analysis.
Mr. SEAN DUNPHY:
Is there anything other than legal advice that's already been obtained that you can refer to?
THE WITNESS:
A. No.
Mr. NEIL RABINOVITCH:
Q. **[165]** Sir, to-date, what steps has the board of BCFC taken to prosecute the contribution claim against Bowater Inc.?
A. None that I'm aware of.
Mr. SEAN DUNPHY:
Again, that's -- you've asked about a meeting that he wasn't present at.
Mr. NEIL RABINOVITCH:
Q. **[166]** Sir, did anyone report back to you on the discussions at that board meeting that you weren't present at?
A. Not specifically.
Q. **[167]** Did you get a general summary of what

happened at that board meeting?
A. I believe... not specifically at the board meeting, no.
Q. **[168]** Do you have a general understanding of what the purpose of the board meeting was?
A. Not specifically.
Q. **[169]** To your knowledge, was the purpose of this board meeting to authorize the appointment of conflicts counsel in the U.S. Chapter 11 case?
A. I am not aware.
Q. **[170]** To your knowledge, was the purpose of this board meeting to authorize someone within AbitibiBowater to be the instructing client for conflicts counsel?
A. I am not aware.
Mr. SEAN DUNPHY:
You're asking the details, we told you we'd get it and you'll have it.
Mr. NEIL RABINOVITCH:
Q. **[171]** Sir, is there anyone who's been designated to represent solely the interests of BCFC in the Chapter 11 and CCAA cases?
A. Not that I'm aware.
Q. **[172]** And in the internal discussions relating to the Canadian and U.S. plans that were recently

filed, was there anyone designated by the company to be the advocate for BCFC in those plan discussions?
A. No.
Q. **[173]** Was there anyone in the context of those plan discussions from the company solely representing BCFC's interests?
A. No.
Q. **[174]** Sir, I understand that BCFC has recently retained Al Togut of the law firm Togut, Segal & Segal, as conflicts counsel in the Chapter 11 case, are you aware of that?
A. No.
Mr. SEAN DUNPHY:
The phrase "conflicts counsel," by the way, is not something that he'd be familiar with for that. You're using it as a term of art, something I don't use myself.
Mr. NEIL RABINOVITCH:
It's actually, I believe, the term that's used in the U.S. Motion that's been filed.
Mr. SEAN DUNPHY:
It may be, I'm just saying it's a U.S. phrase which he wouldn't necessarily be familiar with. I certainly don't use it, so.

Mr. NEIL RABINOVITCH:
Q. **[175]** Sir, I'm showing you an application for an order in the Chapter 11 proceedings authorizing BCFC to retain Togut, Segal & Segal as conflicts counsel to BCFC.
A. Mm-hmm.
Q. **[176]** Are you aware that BCFC is seeking to have Mr. Togut's retainer approved by the Court as conflicts counsel for the company?
A. I wasn't aware of the name of the firm, I was aware that there was going to be a retention of a counsel.
Q. **[177]** And, to your knowledge, why was conflicts counsel being retained by BCFC?
Mr. SEAN DUNPHY:
If it's other than on the advice of legal counsel, you can answer; if it's legal advice, you may not.
THE WITNESS:
A. It was the advice of legal counsel.
Mr. NEIL RABINOVITCH:
Q. **[178]** And, sir, do you know whether the reason for it was because BCFC had this contribution claim against Bowater Inc.?
Mr. SEAN DUNPHY:
Can we agree to say "may have" and then we'll save

ourselves a lot of trouble?
Mr. NEIL RABINOVITCH:
Sure.
A. It may have.
Q. **[179]** But is that the reason, one of the reasons why conflicts counsel was being retained by BCFC because it may have this contribution claim against its parent, Bowater Inc.?

(OFF THE RECORD DISCUSSION)

Mr. NEIL RABINOVITCH:
Q. **[180]** Sir, you've had an opportunity to at least review paragraphs 11 through 15 of the U.S. application by BCFC?
A. Yes, I have.
Q. **[181]** Okay. Can we agree one of the reasons BCFC is seeking to have Mr. Togut's firm appointed is because it may have this contribution claim against its parent, Bowater Inc.?
A. Yes.
Q. **[182]** And can we agree that the debtors want to avoid even the appearance of impropriety given that this is a potential claim between two Bowater companies?

Mr. SEAN DUNPHY:
That's what it says.
THE WITNESS:
A. Yes.
Mr. NEIL RABINOVITCH:
Okay. Mr. Dunphy, let's mark this as Exhibit 6, please.
Mr. SEAN DUNPHY:
All right.

<u>EXHIBIT No. 6:</u> Application for an order in the Chapter 11 proceedings authorizing BCFC to retain Togut, Segal & Segal as conflicts counsel to BCFC

Mr. NEIL RABINOVITCH:
Q. **[183]** Well, sir, you'll agree with me it was important enough to the debtors in the Chapter 11 case to avoid the appearance of impropriety that they are taking the step of retaining conflicts counsel; correct?
A. Yes.
Q. **[184]** And do you know whether Mr. Togut's retainer also extends to representing BCFC's interests in

plan negotiations?
A. I do not know.
Q. **[185]** Mr. Dunphy, I'd like an undertaking to advise.

Mr. SEAN DUNPHY:
I'll take it under advisement. I don't know, A) I don't know the answer, and B) I don't know whether we can answer his retainer is to be approved by the U.S. court, I think his retainer will be with the U.S. court such as it is, but.

<u>UNDERTAKING 6:</u> To advise whether Mr. Togut's retainer also extends to representing BCFC's interests in plan negotiations (under advisement)

Mr. NEIL RABINOVITCH:
Q. **[186]** Do you know whether there's a written retainer agreement between BCFC and Mr. Togut's firm?
A. I do not know.
Q. **[187]** I'd like an undertaking to inquire whether there is one and, if so, to produce it.

Mr. SEAN DUNPHY:
I'm not going there because that is part of a pending U.S. Motion and I'm not going to give any undertakings in connection with a U.S. Motion that is before the U.S. court, and your rights will be what they are under that process and I'm not going to interfere with it or do end runs around it through this examination.

<u>UNDERTAKING 7:</u> To inquire whether there's a written retainer agreement between BCFC and Mr. Togut's firm and, if so, to produce it (Refused)

Mr. NEIL RABINOVITCH:
Q. **[188]** Sir, to the best of your knowledge, who is Mr. Togut taking instructions from on behalf of BCFC?
A. I do not know.
Q. **[189]** Would he be taking instructions from the board of BCFC?
A. I do not know.

(OFF THE RECORD DISCUSSION)

Mr. NEIL RABINOVITCH:
Q. **[190]** Sir, has Mr. Vachon been designated to provide instructions on behalf of BCFC to Mr. Togut as conflicts counsel?
A. Yes.
Q. **[191]** And was Mr. Vachon designated in that role by the board of BCFC?
A. Yes.
Q. **[192]** Has Mr. Vachon resigned his position as an officer and director of the other AbitibiBowater companies?
A. No.
Q. **[193]** And has Mr. Vachon been relieved of his fiduciary duties to the other AbitibiBowater companies?
A. No.
Q. **[194]** Mr. Dunphy, I'd like an undertaking to produce any resolution or direction from the board of BCFC designating Mr. Vachon to be the instructing person.
Mr. SEAN DUNPHY:
I'll take it under advisement. I'm not sure exactly what exists but I will first inquire what is there and will then advise you of our position.

UNDERTAKING 8: To produce any resolution or direction from the board of BCFC designating Mr. Vachon to be the instructing person (under advisement)

Mr. NEIL RABINOVITCH:
Q. **[195]** Mr. Harvey, if Mr. Togut wants to take adversarial proceedings against another AbitibiBowater company on behalf of BCFC, who does he need to get permission or instructions from?
Mr. SEAN DUNPHY:
I'm going to stop you only because there is a pending application in the U.S., and my understanding is the U.S. court settles things like retainers, and I'm not going to allow this proceeding to do a backdoor around the U.S. process because that's not a good idea. So, if you're going to ask about the U.S. process, Mr. Togut is being... going to have his retainer approved in the U.S., I'm not going to go there here because there is a whole other court supervising that.
Mr. NEIL RABINOVITCH:
I think it's more a function, Mr. Dunphy, of understanding if BCFC's counsel, Mr. Togut, decides

he wants to, he thinks it's in the interest of BCFC, to take adversarial proceedings against another Bowater company...

THE WITNESS:

Mm-hmm.

Mr. NEIL RABINOVITCH:

... who's giving him those instructions?

Mr. SEAN DUNPHY:

That's a hypothetical at that point. There is a U.S. Motion dealing with specific things, we're just not going there. I'm going to have to object to it. We have, you have asked about resolutions and the directors' minutes and if any light is shone on the question by those documents, we'll look at them and provide you our position on that shortly.

Mr. NEIL RABINOVITCH:

Q. **[196]** Who interviewed the candidates for the independent counsel, do you know?

A. I do not know.

Q. **[197]** Mr. Dunphy, it's our understanding that it was Paul Weiss along with the financial advisors to the debtors and Mr. Vachon who interviewed the various candidates. Could you advise me, by way of undertaking if you have any information to the

contrary?
Mr. SEAN DUNPHY:
I neither can nor will, I'm not going to ask the question. Again, the U.S. process is going to happen in the U.S., and there's a pending Motion before the Delaware judge, and if those questions are relevant and are asked and answered in the U.S. context, that's where it's going to have to be.
Mr. NEIL RABINOVITCH:
Q. **[198]** Mr. Harvey, has BCFC retained independent Canadian counsel?
A. Not that I'm aware.
Q. **[199]** Mm-hmm. Are you aware of whether there have been any discussions at the board of BCFC about retaining independent Canadian counsel?
A. It may have been at the board meeting, I did not attend.
Mr. SEAN DUNPHY:
I can advise you that BCFC has retained counsel.
Mr. NEIL RABINOVITCH:
Q. **[200]** Can you advise me who Canadian counsel is?
A. I would if I knew the name. I know that there was Nova Scotia counsel retained, I don't know the name.
Q. **[201]** Can you undertake to advise me who's been

retained, Mr. Dunphy?

Mr. SEAN DUNPHY:
If I can inquire of Mr. Vachon, I will find out what his answer is.

Mr. NEIL RABINOVITCH:
I'd also like an undertaking to advise me on the scope of their retainer.

Mr. SEAN DUNPHY:
I'll find out what I can tell you. I don't know what I can tell you.

Mr. NEIL RABINOVITCH:
Okay.

Mr. SEAN DUNPHY:
Ask your questions and I will give you our position on it if you like.

Mr. NEIL RABINOVITCH:
I'd also like you to advise who's instructing Nova Scotia counsel.

Mr. SEAN DUNPHY:
Again, I'll, I will take that under advisement and we'll see what answer we'll provide you.

<u>UNDERTAKING 9:</u> To advise who has been retained as Nova Scotia counsel, what is the scope of their mandate, and

who is instructing them (under advisement)

(OFF THE RECORD DISCUSSION)

Mr. NEIL RABINOVITCH:
Q. **[202]** Sir, do you know whether the terms of the retainer of Canadian counsel permit them to take all proceedings they deem appropriate to maximize the value of BCFC's estate for the benefit of BCFC's creditors?
Mr. SEAN DUNPHY:
We'll give you our position on that along with the other questions relating to that, counsel, once we've informed ourselves.
Mr. NEIL RABINOVITCH:
Q. **[203]** Sir, is it your understanding that, similar to yourself, Mr. Vachon is remunerated by AbitibiBowater Inc.?
A. Yes.
Q. **[204]** I take it he isn't separately remunerated by BCFC; correct?
A. He is not.
Q. **[205]** Okay. And, sir, do you know whether Mr. Vachon is the beneficiary of any KERP retention

program?
A. No, he's not.
Q. **[206]** Is AbitibiBowater proposing to grant any new AbitibiBowater common stock to its officers and directors as part of the restructuring?
Mr. SEAN DUNPHY:
You're talking on emergence?
Either on emergence or part of the plan.
Mr. SEAN DUNPHY:
Well, there's a draft plan filed. It says what it says.
Mr. NEIL RABINOVITCH:
Q. **[207]** Are you aware of whether, on emergence, AbitibiBowater is planning on granting any stock or granting any stock to its officers and directors?
Mr. SEAN DUNPHY:
Can he speak for AbitibiBowater on that?
THE WITNESS:
A. I believe there is a proposal.
Mr. NEIL RABINOVITCH:
Q. **[208]** And, under that proposal, would Mr. Vachon be receiving stock in your new Abitibi common stock?
A. I believe so.
Q. **[209]** I'd like an undertaking to produce that proposal and, in particular, provide me with

details of what benefits or stock Mr. Vachon...

Mr. SEAN DUNPHY:

There isn't one and so you're not going to get that answer. There is a proposal for the reservation of... you've got the plan, the plan speaks for itself. That's the proposal.

Mr. NEIL RABINOVITCH:

The plan is in skeletal form, shall we say.

Mr. SEAN DUNPHY:

And that is the only plan that exists.

Mr. NEIL RABINOVITCH:

Q. **[210]** To your knowledge, what percentage of the new common stock is proposed to be reserved for the officers and directors?

Mr. SEAN DUNPHY:

There isn't one. Oh, sorry. The proposed... there is a reservation of a block amount, and again, I'm not going to start analysing a publicly filed documents. There is a reservation of block amount, the allocation of it is down the road.

Mr. NEIL RABINOVITCH:

Q. **[211]** Have there been any discussions in terms of what allocation is going to be made to the directors and officers individually?

Mr. SEAN DUNPHY:
Until it's happened, it's not relevant.

(OBJECTION)

Mr. NEIL RABINOVITCH:
I think we're entitled to know, Mr. Dunphy, what incentives Mr. Vachon has as part of this restructure.
Mr. SEAN DUNPHY:
And the answer, if you're asking what may come out of the restructuring based on a plan which has been filed at this point, which doesn't allocate to anybody, I think that is your answer. It is so tangentially relevant as to fall over the edge into irrelevant.
Mr. NEIL RABINOVITCH:
I'll take that as another objection.
Mr. SEAN DUNPHY:
You'll take that as an objection if you like.
Mr. NEIL RABINOVITCH:
Given that I have no answer for it, I can't think of what else it is.
Q. **[212]** Sir, given that BCFC has decided to appoint a conflicts counsel, or independent counsel I think

as we call it here, Mr. Dunphy, can you tell me why BCFC is refusing to appoint an independent director to instruct its independent or conflicts counsel?

Mr. SEAN DUNPHY:

Don't answer the question. It's objected to, it's not relevant.

(OBJECTION)

Mr. NEIL RABINOVITCH:

Q. **[213]** Now, sir, we've looked at the U.S. application to approve the retainer of Mr. Togut, as what they referred to as conflicts counsel; do you recall that?

A. I recall the application, yes. Yes. Mm-hmm.

Q. **[214]** And you recall I showed you the paragraph that talks about the debtors being concerned about even the appearance of impropriety?

A. Yes, I recall you showed me that, yes.

Q. **[215]** Remember looking at that paragraph?

A. Mm-hmm.

Q. **[216]** Sir, aren't you concerned, as a member of the board of BCFC, that you have that same appearance of impropriety in having an officer and director of other AbitibiBowater companies, including Bowater

Inc., giving instructions to its conflicts, to the conflicts and independent counsel of BCFC?
A. I don't have a perspective on that.
Q. **[217]** So you have no view one way or another?
A. No. I believe it's an independent counsel. So I don't have any view as to -- other than that.
Q. **[218]** Okay, but we've talked earlier about the fact that the independent counsel is going to take his instructions from Mr. Vachon, right? Remember we had this discussion a few minutes ago? And Mr. Dunphy reminded you that it was Mr. Vachon who has been designated to give instructions on behalf of BCFC?
A. Yes, but I believe it's an independent counsel, in my belief.
Q. **[219]** All right. But, sir, as a member of the board of BCFC, don't you think BCFC should be having an independent director giving independent instructions to its independent counsel?
A. I don't have that view. I believe it's an independent counsel.
Q. **[220]** So, is it your view as a board member of BCFC that the independent counsel should be able to take whatever steps it deems appropriate to preserve and protect the interests of BCFC?

Mr. SEAN DUNPHY:
Don't answer the question, it's objected to. You're asking about a U.S. retainer, I'm not going there.

(OBJECTION)

Mr. NEIL RABINOVITCH:
Q. **[221]** You've told me that conflicts counsel has also been retained in Nova Scotia?
Mr. SEAN DUNPHY:
Yes. You had a U.S. retainer there and they've retained Nova Scotia counsel. I've taken under advisement what I can tell you about that, but we're not going to go into the U.S. Motion. It's what you're doing, you know, trying to knock on the back door six different ways and we're not going there.
Mr. NEIL RABINOVITCH:
Mr. Dunphy, is the Nova Scotia counsel retained for the purpose of the CCAA proceedings?
Mr. SEAN DUNPHY:
I can't provide you any more information than what you are given, and we told you, for the rest, we'll get you what we can by way of further advisement. I have no further details than what I gave you.

Mr. NEIL RABINOVITCH:
Q. **[222]** Sir, in paragraph 32 of the present Motion, there's reference to a series of transactions involving BCFC?
Mr. SEAN DUNPHY:
And many others.
THE WITNESS:
A. Mm-hmm, yes.
Mr. NEIL RABINOVITCH:
Q. **[223]** Now this list in paragraph 32 was also contained in the prior Motion for seeking production of financial information and, in particular, was found at paragraph 27 of the prior Motion.
A. Okay. Mm-hmm.
Q. **[224]** I take it, Mr. Harvey, you would have seen this list prior to swearing your affidavits, both on the original contestation and on the contestation of this Motion; correct?
A. Yes.
Q. **[225]** Okay. What steps did you take to determine whether the transactions listed in paragraph 32 were accurately described?
Mr. SEAN DUNPHY:
Do you have any present information about the

steps, about the transactions in paragraph 32?
THE WITNESS:
A. I've...
Mr. SEAN DUNPHY:
Bearing in mind that only A and B concern the company...
THE WITNESS:
A. Yes, only A and B concern the company here. I'm familiar with A and B, and the balance of it was pertaining to something, a tax transaction that had no linking to BCFP.
Mr. NEIL RABINOVITCH:
Q. **[226]** Are the transactions themselves in paragraph 32 accurately described, to the best of your knowledge, information and belief?
Mr. SEAN DUNPHY:
Do you know?
THE WITNESS:
A. I don't know.
Mr. NEIL RABINOVITCH:
Q. **[227]** And I take it you've taken no steps to determine whether or not the transactions in paragraph 32 were accurately described; correct?
A. I read them and I've looked at information I have, but I did not verify that they're true. I only

have partial information.

Q. **[228]** And, Mr. Dunphy, can you confirm that the Monitor is currently undertaking a review of inter-company transactions and will be reporting on the transactions that ultimately resulted in BCFC holding the preferred shares of BCHI?

Mr. SEAN DUNPHY:

My understanding is the Monitor is looking into inter-company transactions involving BCFC and they have your letter and these paragraphs and they have no limitations from the company as to what they're going to do. I would infer from that that they will seek to answer the questions raised, but I can't be more detailed than that because I'm not doing the report.

Mr. NEIL RABINOVITCH:

What were the instructions provided to the Monitor by the company with respect to these trans... to reporting on the transactions?

Mr. SEAN DUNPHY:

The company did not provide instructions to the Monitor at all.

Mr. NEIL RABINOVITCH:

Or request, I should say.

Mr. SEAN DUNPHY:
The Monitor has indicated that they are going to review this inter-company transaction. I can't tell you more than that, you'll have to speak to the Monitor.
Mr. NEIL RABINOVITCH:
Do you have any information on when that report should be available?
Mr. SEAN DUNPHY:
Again, you're asking the wrong party. I can tell you we are cooperating with the Monitor and providing information, more information is being provided this week, and more next, so.
Mr. NEIL RABINOVITCH:
Q. **[229]** Mr. Harvey, are you aware of whether the documents relating to the transactions by which BCFC ultimately came to own the preferred shares of BCHI are available in the AbitibiBowater data room?
A. No, I don't believe so.
Q. **[230]** And, sir, in both contestations that you filed you referenced the fact that it would be onerous to provide the information that was being requested by the Noteholders. Did you make any inquiries to determine just how onerous or difficult it would be to obtain the information

that was being requested?
A. I did have a call, I believe. I did talk to somebody about how much information there was.
Q. **[231]** Who did you have that call with?
A. I believe it...
Mr. SEAN DUNPHY:
Internal people?
THE WITNESS:
A. Internal people. Only internal people.
Mr. SEAN DUNPHY:
You're talking about employees?
THE WITNESS:
A. It was with one of my employees, I believe.
Mr. NEIL RABINOVITCH:
Q. **[232]** Okay. And what were you advised in terms of how difficult it would be to pull together the requested information?
A. It would be difficult. My own... It would be difficult.
Q. **[233]** Sir, aside from the transactions listed in paragraph 32, are you aware of any other inter-company transactions that BCFC has been involved with since its inception?
A. Yes. Some tax transactions, some tax reorganizations.

Q. **[234]** In roughly what period of time would they have taken place?
A. Two thousand five (2005) and two thousand seven (2007).
Q. **[235]** Generally speaking, what was the nature of those tax transactions?
A. Tax planning. Tax planning.
Q. **[236]** Did any of those transactions result in, for example, inter-company loans being converted to equity?
A. Yes.
Q. **[237]** I'd like an undertaking to produce documentation relevant to those transactions, please.
Mr. SEAN DUNPHY:
We're not going to provide the undertaking, but that is not to say that they're not going to be provided. What I can tell you is the Monitor is doing a report which goes into all of this and, when that report's been delivered, I think we will take it from there. And if there is a requirement, a reasonable requirement for documents arising from that report, that will be something to be taken based upon the report when delivered. At this stage we're not going to go on a document hunt.

UNDERTAKING 10: To produce documentation relevant to transactions resulting in inter-company loans being converted to equity (Refused)

Mr. NEIL RABINOVITCH:

Q. **[238]** Mr. Harvey, are you aware of, prior to the filings under Chapter 11 and CCAA, how BCFC funded its interest obligation on the notes?
A. Yes.
Q. **[239]** How did it fund the interest obligation?
A. It took contributions from the parent, Bowater Inc.
Q. **[240]** When you say "contributions," was it loans from the parent?
A. Exactly.
Q. **[241]** So, Bowater Inc. would subscribe for equity of BCFC, in essence, mirroring the obligation to pay interest under the notes?
A. I believe so. The word "mirroring" I'm not specific about, but I'm not clear about what the word "mirroring" means in that context, but in order to pay the interest injections of equity from the capital contributions from the parent.
Q. **[242]** Okay. So BCFC would issue equity to its parent which would subscribe for that equity and

then the proceeds of the purchase of that equity would be used to fund the interest payments?
A. Yes.
Q. **[243]** I'd like an undertaking to produce the documents relating to how the funding worked, Mr. Dunphy.
Mr. SEAN DUNPHY:
I don't presently have it, but I understand that's part of the Monitor's mandate, so. Anything related to that, it's suspense, we can always see the Monitor's report.

<u>UNDERTAKING 11:</u> To produce the documents relating to how the funding worked (Under reserve)

Mr. NEIL RABINOVITCH:
Q. **[244]** Mr. Harvey, are there any other transactions, inter-company transactions, that BCFC has been involved with, to your knowledge, other than what's in paragraph 32 and the tax transactions you've broadly described?
A. None that I know of.
Q. **[245]** So, to your knowledge, we're really talking only about a handful of transactions that BCFC has

been involved with since inception; correct?
A. Yes.
Q. **[246]** Now, sir, in paragraph 32 (g) of the present Motion, there's reference to BCFC exchanging LP units, limited partnership units held in BCF LP for Class A pref shares of BCHI in the first quarter of two thousand and seven (2007). To your knowledge, is that what happened?
A. I'm not aware of this.
Q. **[247]** Is it your understanding that in or about the first quarter of two thousand and seven (2007), in essence, BCFC's shares in BCFPI were, in essence, converted to Class A pref shares of BCHI?
A. I have a blank. I don't remember this at this point.
Q. **[248]** So you don't know one way or another?
A. I don't know one way or the other.
Q. **[249]** And this, I assume, would have been one of the tax transactions you were talking about?
A. I believe it could be but I do not remember the specifics of this.
Q. **[250]** Mr. Dunphy, is this one of the things the Monitor will be reporting on?
Mr. SEAN DUNPHY:
This definitely is, yes.

Mr. NEIL RABINOVITCH:
Q. **[251]** Sir, I take it that, to-date, no one on behalf of BCFC's looked at the inter-company transactions to see whether they give rise to any potential claims against other Abitibi or Bowater companies; correct?
A. I don't... correct, I don't believe so.
Q. **[252]** And I take it, to-date, no one on behalf of BCFC has looked at the inter-company transactions to determine whether they give rise to a potential claim against BCFC's officers and directors; correct?
A. I do not believe anybody has.
Mr. SEAN DUNPHY:
Excepting, obviously, what is current underway, which is the Monitor's going to be providing the court with the report, which is not strictly speaking to BCFC, it is to the court.
Mr. NEIL RABINOVITCH:
Mr. Dunphy, is it anticipated the report will be publicly filed?
Mr. SEAN DUNPHY:
I truly cannot speak for the Monitor, so.
Mr. NEIL RABINOVITCH:
I'm asking in terms of the company; is it the

company's present intention that the report be available publicly?

Mr. SEAN DUNPHY:

I cannot emphasize enough, I do not speak for the Monitor. The Monitor will do what the Monitor does. I have exactly the same access to him as you do.

Mr. NEIL RABINOVITCH:

Does the company have an objection to the Monitor's report, when it's prepared, being made public?

Mr. SEAN DUNPHY:

I cannot speak in the abstract as there is no report that I've seen. We'll cross that bridge when we get to it, and if the Monitor gets something in private, then I'm sure they'll say what it is and why.

Mr. NEIL RABINOVITCH:

Q. **[253]** Sir, let's talk briefly about the DDIP facility.

A. Mm-hmm.

Q. **[254]** Can we agree that BCFC isn't a borrower under the DDIP?

A. Yes.

Q. **[255]** And we can agree that BCFC isn't a guarantor under the DDIP either, right?

A. I'm not completely sure of that. I don't... I'm not completely sure.

(OFF THE RECORD DISCUSSION)

Mr. NEIL RABINOVITCH:
Q. **[256]** Off the record, Mr. Harvey, we looked at Exhibit R-16 to the Aurelius Contrarian reply, and can we agree that BCFC is neither a borrower nor a guarantor under the DDIP?
A. Yes.
Q. **[257]** And, sir, can we agree that BCFC doesn't have obligations under the DDIP?
A. Yes.
Q. **[258]** Sir, have the DDIP lenders advised that if a bankruptcy order is made against BCFC it will constitute a default under the DDIP?
Mr. SEAN DUNPHY:
I don't know that they've given any formal advice, they'll say what they say in court.
Mr. NEIL RABINOVITCH:
Q. **[259]** Have they taken the position with the company that if a bankruptcy order is made against BCFC, that would trigger a default under the DDIP?

Mr. SEAN DUNPHY:
You're going to have to ask them. We have nothing other than the Motions that are filed.
Mr. NEIL RABINOVITCH:
Q. **[260]** So I take it the answer is, as we sit here today, the DDIP lenders haven't put the company on notice that as a result of Aurelius' Motion, if a trustee in bankruptcy is appointed, that would trigger a default under the DDIP; correct?
Mr. SEAN DUNPHY:
You have... the public record is all we've got on that, so if they have not intervened or said anything, you've got a pretty comprehensive answer. Thirty-five (35) of our Contestation indicates where it may be a default, and there being no such order they'll speak for themselves in court.
Mr. NEIL RABINOVITCH:
Q. **[261]** Mr. Harvey, as you sit here today, you're not aware of the lenders taking the position with the company that the appointment of a trustee in bankruptcy would trigger a default under the DDIP; correct?
A. I'm not aware.
Q. **[262]** And so, in paragraph 35, you say that the granting of the relief to the BCFC Noteholders

could potentially trigger an event of default, what was the basis for that statement, sir?

Mr. SEAN DUNPHY:

It's based on legal advice and he's not going to go into it.

Mr. LOUIS DUMONT:

Let the witness answer.

Mr. SEAN DUNPHY:

You're asking -- just a minute -- you're asking interpretations of a very lengthy legal document. You put a bunch of things to him that, you know, based on the U.S. order. These things are what they are, okay, you're getting into legal argument.

Mr. NEIL RABINOVITCH:

Q. **[263]** Sir, you're saying, if I understand correctly, that the Court shouldn't make the order that Aurelius and Contrarian are asking for because it could trigger an event of default, render the DDIP due and payable forthwith, and jeopardize the entire restructuring. That's what paragraph 35 says; right?

Mr. SEAN DUNPHY:

Paragraph 35 says what it says.

Mr. NEIL RABINOVITCH:

Yes. That's what it says.

A. Yes.

Mr. NEIL RABINOVITCH:

Well, Mr. Dunphy, with respect, I'd like you to allow him to answer questions. It's his affidavit, it's your client's contestation.

Mr. SEAN DUNPHY:

When you say "that's what it says," why don't you read it, 'cause that's not what it says. It says exactly what it says. So, if you're going to quote it, quote it. If you don't want to quote it, move on to something else.

Mr. NEIL RABINOVITCH:

Q. **[264]** Sir, are you aware of any facts that would lead you to conclude that if the requested orders are made they would trigger an event of default under the DDIP? Are there any facts you're aware of?

Mr. SEAN DUNPHY:

That is objected to because it is legal advice. You're looking at a contract which you have and he refers to the exact contract and you're asking for legal advice of a witness, that's not fact, that's interpretation. Interpretation is quintessentially a matter of law. He refers to the contract, that's it.

(OBJECTION)

Mr. NEIL RABINOVITCH:
Q. **[265]** What provisions of the DDIP agreement are you relying on in support of your statement that granting the relief could potentially trigger an event of default?
Mr. SEAN DUNPHY:
We will take that under advisement, it is legal advice.
Mr. NEIL RABINOVITCH:
I'm entitled to know what provisions you're relying on, Mr. Dunphy.
Mr. SEAN DUNPHY:
Then, you have asked the question and I said we'll take it under advisement.
Mr. NEIL RABINOVITCH:
Q. **[266]** Sir, when you signed your affidavit, did you actually review Exhibit D-3 that's referred to in paragraph 35?
A. I don't remember.
Q. **[267]** Do you recall reading through the DDIP agreement to see whether there was anything in there that, on your reading, led you to be concerned that an event of default could be

triggered?

Mr. SEAN DUNPHY:

Objected to. You are asking over and over and over again about the content of legal advice. This is a matter of law.

(OBJECTION)

Mr. NEIL RABINOVITCH:

I'm not asking for legal...

Mr. SEAN DUNPHY:

It is pleaded as a matter of law. You're asking a witness about a pleading of law and I'm not going to allow any further questions on it.

Mr. NEIL RABINOVITCH:

Q. **[268]** So, I take it, sir, you're not aware of any facts to support the suggestion that granting this relief could trigger an event of default? Sir, as you sit here today, are you aware of any facts or not?

A. I'm not aware of any today.

Mr. SEAN DUNPHY:

Since you asked the question, article 7 has the events of default and, among others, article 7 (n) refers to conversion of any cases into Chapter 7 for bankruptcy. If there are others we'll advise.

Mr. NEIL RABINOVITCH:

Q. **[269]** And I take it we can agree that, as of today, the DDIP lenders haven't put the company on notice; correct?

Mr. SEAN DUNPHY:

Article 7 speaks for itself.

Mr. NEIL RABINOVITCH:

The Motion is a matter of public record.

Mr. SEAN DUNPHY:

Correct.

Mr. NEIL RABINOVITCH:

The DDIP lenders have been served with the Motion.

Mr. SEAN DUNPHY:

Correct.

Mr. NEIL RABINOVITCH:

Have they, DDIP, put the company on notice that if the order is made it would trigger a default under the DDIP?

Mr. SEAN DUNPHY:

You've asked the question and you've been told they'll stipulate the position in Court.

Mr. NEIL RABINOVITCH:

I'm getting somewhat tired of playing games with this, Mr. Dunphy.

Q. **[270]** Sir, on December fourth (4th), two thousand and nine (2009), Aurelius sent a letter to David Paterson in his capacity as Director of Bowater Canada Finance Corporation that appears to have been copied to you.
A. Mm-hmm.
Q. **[271]** Do you recall receiving this letter?
A. Yes.
Q. **[272]** Okay. And, sir, did you review it when you received it?
A. I read it.
Q. **[273]** Did you have any discussions with the other board members of BCFC about the contents of the letter?
A. I believe I discussed it with Jacques Vachon.
Q. **[274]** In his capacity as a director or officer of BCFC?
A. In his capacity as a chief legal counsel.
Q. **[275]** So not in his capacity as an officer and director of BCFC?
A. That's right.
Q. **[276]** Or was it unclear which hat he was wearing?
Mr. SEAN DUNPHY:
He said in his capacity as chief legal counsel. You've got an answer. You're characterizing.

Mr. NEIL RABINOVITCH:
Q. **[277]** And, sir, on page 2, in paragraph 2 of that letter, Mr. Groper raises issues about conflicting duties that the officers and directors of BCFC have.
A. Yes.
Q. **[278]** Can you tell me what steps BCFC's officers and directors took up until the board meeting that took place in Korea to address or resolve in their conflicting duties?
A. Just have to correct you, the board meeting wasn't in Korea.
Q. **[279]** Oh, no, the board meeting when he was in Korea.
A. That's fine, go ahead.
Mr. LOUIS DUMONT:
In May two thousand ten (2010)?
Mr. NEIL RABINOVITCH:
Yes.
THE WITNESS:
A. Mm-hmm.
Mr. SEAN DUNPHY:
So you're asking what steps between September two thousand and nine (2009) and May two thousand and ten (2010)...

Mr. NEIL RABINOVITCH:
Q. **[280]** ... did the board take to resolve or address their conflicting duties?
Mr. SEAN DUNPHY:
Do you have any answer that does not legal advice?
THE WITNESS:
A. I have no answer that's not legal advice.
Mr. NEIL RABINOVITCH:
Q. **[281]** Are there any concrete steps that the board put in place between September of two thousand and nine (2009) and May of two thousand and ten (2010) to address actual or potential conflicts of interest?
A. We specifically just, we took legal advice.
Q. **[282]** Well, aside from changing legal advice, were there any changes to corporate governance, let's say, in BCFC?
Mr. SEAN DUNPHY:
You put words in his mouth. He didn't say changing legal advice, they took legal advice.
Mr. NEIL RABINOVITCH:
Q. **[283]** Other than taking legal advice, which is what I said, Mr. Dunphy, not changing legal advice, other than taking legal advice did the board of BCFC take any concrete steps, for example, to

change of its internal corporate governance?
A. Mm-hmm. No specific changes by the board.
Q. **[284]** So, I take it, really nothing changed in respect of the manner in which the board conducted the business of BCFC from the time you received this letter until the board meeting of May of two thousand and ten (2010); correct?
A. Yes.
Q. **[285]** Mr. Dunphy, let's mark that letter as Exhibit 7, September four (4), two thousand and nine (2009).

<u>EXHIBIT No. 7:</u> Letter of September 4, 2009, sent by Aurelius to David Paterson in his capacity as Director of Bowater Canada Finance Corporation

Mr. NEIL RABINOVITCH:
And Mr. Paterson responded to that letter on October fifteen (15), two thousand and nine (2009).
A. Mm-hmm.
Q. **[286]** You show as a 'cc' on the bottom of this letter. Did you receive this letter?
A. Yes.

Q. **[287]** Do you recall discussing it with Mr. Paterson before it went out?
A. I don't recall.
Q. **[288]** And I take it we're agreed that nothing changed in terms of the way the board conducted the business of BCFC between the time Mr. Paterson sent this letter and May of two thousand ten (2010); correct?
A. Yes.
Q. **[289]** Let's mark that as Exhibit 8, Mr. Dunphy.
Mr. SEAN DUNPHY:
All right.

<u>EXHIBIT No. 8:</u> Mr. Paterson's response dated October 15, 2009, to letter of September 4, 2009

Mr. NEIL RABINOVITCH:
Q. **[290]** Sir, have you been involved in any meetings or discussions with third parties relating to the BCFC notes, the contribution claim or the preferred shares?
Mr. SEAN DUNPHY:
You're going to have to break that up into pieces. The preferred shares you're talking about...

Mr. NEIL RABINOVITCH:
When I say "third parties," what I mean, Mr. Dunphy, is non debtors and not counsel for the debtors. So, in other words, discussions with parties, let's say like secured lenders or, for example, the UCC.
A. I have not.
Q. **[291]** And are you aware of any presentations being made to third parties relating to the notes since the commencement of these proceedings and the Chapter 11 proceedings?
A. I am not.
Q. **[292]** Mr. Dunphy, I'd like an undertaking to produce any presentations that have been made to third parties that relate to or address the notes.
Mr. SEAN DUNPHY:
I'm not going to give you that undertaking.

<u>UNDERTAKING 12:</u> To produce any presentations that have been made to third parties that relate to or address the notes (Refused)

Mr. NEIL RABINOVITCH:
Q. **[293]** Sir, are you aware of any presentations or

written materials that have been provided by the company to third parties relating to the contribution claim under the Nova Scotia Companies Act?
A. I am not.
Q. **[294]** I take it that just means you're not aware of it, not that it may not exist; correct?
A. I'm not aware of it.
Q. **[295]** Mr. Dunphy, I'd like an undertaking to inquire on whether there... if there have been any presentations or written documents relating to the contribution claim that the company has provided to third parties, I'd like them produced.
Mr. SEAN DUNPHY:
I'm not going to give that undertaking.

<u>UNDERTAKING 13:</u> To produce any presentations or written documents relating to the contribution claim that the company has provided to third parties (Refused)

Mr. NEIL RABINOVITCH:
Q. **[296]** And I take it, sir, you're also unaware of any presentations or written materials that the

company has prepared and provided to third parties relating to the preferred shares that BCFC owns; correct?

A. I'm not aware of any.

Q. **[297]** Mr. Dunphy, I'd ask for the same undertaking in respect of presentations or written materials provided to third parties by the company relating to the preferred shares.

Mr. SEAN DUNPHY:

I'm not going to give you the undertaking.

<u>UNDERTAKING 14:</u> To produce presentations or written materials provided to third parties by the company relating to the preferred shares (Refused)

Mr. NEIL RABINOVITCH:

Q. **[298]** Sir, are you aware of any reason why the contribution claim hasn't been asserted to-date by BCFC?

Mr. SEAN DUNPHY:

That's legal advice, you're not going to get that.

Mr. NEIL RABINOVITCH:

Q. **[299]** Has there been anything, to your knowledge, preventing BCFC from asserting this claim to-date?

Mr. SEAN DUNPHY:

Again, you're asking for legal conclusions. There is a U.S. process. It's a claim against Bowater Inc. who is the U.S. debtor...

Mr. NEIL RABINOVITCH:

And it's an asset...

Mr. SEAN DUNPHY:

... and you will not ask questions about the U.S. process.

Mr. NEIL RABINOVITCH:

It's an asset of a Canadian debtor that's also cross-filed, Mr. Dunphy.

Mr. SEAN DUNPHY:

It may be an asset, it may not, but you're asking what steps can, should, or have been taken in the U.S. process, and we're not going there.

Mr. NEIL RABINOVITCH:

I want to know what steps have been taken by this Canadian debtor to actually protect and assert a potential significant asset.

Mr. SEAN DUNPHY:

And you already asked a lot about that, about an hour ago. You got plenty of information about conflicts counsel having been retained and motions in that regard, and you got information about everything else to do with that.

Mr. NEIL RABINOVITCH:

Q. **[300]** Sir, are you aware of any defences that Bowater Inc. has raised relating to the contribution claim?

Mr. SEAN DUNPHY:

Don't answer the question, it's objected to.

(OBJECTION)

Mr. NEIL RABINOVITCH:

Q. **[301]** Sir, in your capacity as an officer and director of BCFC, have you been made aware that Bowater Inc. is disputing the contribution claim?

Mr. SEAN DUNPHY:

Don't... it's... the U.S. process is not relevant here. I am going to object to everything on that line.

(OBJECTION)

Mr. NEIL RABINOVITCH:

Q. **[302]** Sir, as an officer and director of BCFC, do you know whether any creditors of Bowater Inc. have

expressed objections to the contribution claim?
Mr. SEAN DUNPHY:
Objected to.

(OBJECTION)

Mr. NEIL RABINOVITCH:
Q. **[303]** Sir, the company has filed Canadian and U.S. plans, I believe, on May fourth (4th); correct?
A. I believe it was May fourth (4th).
Q. **[304]** Were you involved in the negotiations around those plans?
A. Yes.
Q. **[305]** What was your role?
A. As the financial officer of the company, discussions with the parties.
Q. **[306]** Sir, when you say "of the company," you're talking about AbitibiBowater Inc. and all of the Canadian and U.S. debtors?
A. Yes.
Q. **[307]** So, you're not speaking about a specific, in your specific capacity as an officer and director of BCFC; correct?
A. That's correct.
Q. **[308]** And, sir, did BCFC's board meet and review

the draft plans?
A. I don't believe so.
Q. **[309]** Do you know whether BCFC's board passed any resolution authorizing the filing of the plans?
A. I do not know that.
Q. **[310]** I'd like an undertaking to produce any resolution that may have been passed by BCFC approving the filing.

Mr. SEAN DUNPHY:
The plans have not been filed in Canada. The Monitor has filed copy, information copies, and I'm not going to get into the U.S. process here. You're not going to use this to go and conduct a fishing expedition about the U.S. process. It's not relevant to the Motion, to the matters before this Court on this Motion.

UNDERTAKING 15: To produce any resolution that may have been passed by BCFC approving the filing of the claims (Refused)

Mr. NEIL RABINOVITCH:
Q. **[311]** Do you know whether BCFC's board has considered whether the Canadian and U.S. plans are

in the best interests of BCFC?
A. I don't know. I do not know what happened at the last board meeting, at the board meeting in May, but I do not... So, I'm not sure.
Q. **[312]** Did that board keep -- can you give me an undertaking to advise me of the date on which that board meeting took place?
Mr. SEAN DUNPHY:
We've taken up the whole issue under advisement. When we see the minutes, we'll let you know what we can tell you.
Mr. JOSEPH REYNAUD:
There's an undertaking to provide the minutes on which that date will be described.

UNDERTAKING 16: To advise of the date on which the board meeting took place in May (Refused)

Mr. NEIL RABINOVITCH:
Q. **[313]** Do you know whether the board meeting took place before or after the plans were filed?
A. I just don't know.
Q. **[314]** So, aside from that board meeting, you're not aware of any other discussion that the board of

BCFC had about whether the plans, the two plans, were in the best interest of BCFC?

A. I'm not aware of any other discussion.

Q. **[315]** Are you aware of any discussion that BCFC's board had about whether the plans were in the best interest of BCFC's creditors?

Mr. SEAN DUNPHY:

He's told you he wasn't aware of them being considered by that board. So, every other question is assumed in the first question and answer.

A. Mm-hmm.

Mr. NEIL RABINOVITCH:

Q. **[316]** Sir, is it your understanding that the plans were considered by the boards, in essence on a parent level, who is on the board of AbitibiBowater Inc. that met and approved the filing of the plans in Canada and in the U.S.?

Mr. SEAN DUNPHY:

I'm going to object to it. It is just not relevant to this Motion. You're wandering off on a fishing expedition to do with the U.S. process, the plans have been filed in the U.S. process, okay, the Canadian plan is a draft which the Monitor has filed and which has been given to the creditors, and is now public. It is what it is. We don't have a meeting order and I'm not going to go into a fishing expedition on the U.S. process in the context of a completely different Canadian Motion.

(OBJECTION)

Mr. NEIL RABINOVITCH:

Q. **[317]** Sir, the two plans, the draft Canadian plan and the U.S. plan contemplate that the inter-company loans are not going to be entitled to recovery. You're aware of that?

A. Yes. Mm-hmm.

Q. **[318]** Is it your understanding that the contribution claim, if it's found to be a valid claim, is an inter-company claim that won't be entitled to recovery under your plans?

A. I do not know.

Q. **[319]** Well, sir, you're the CFO of this enterprise, right, the AbitibiBowater companies?

A. Yes.

Q. **[320]** And you're telling me you don't know whether the contribution claim, if it's allowed, would be entitled to recovery?

Mr. SEAN DUNPHY:

Your asking a hypothetical about something that hasn't happened and may happen in the future about a claim that may or may not exist. This is not proper examination.

Mr. NEIL RABINOVITCH:

Q. **[321]** Sir, at the time these plans were filed, you were aware that BCFC may have a contribution claim; correct?

A. Yes.

Q. **[322]** And we know you're aware because you filed two affidavits talking about that. right?

A. Mm-hmm.

Q. **[323]** So you knew this was a potential claim; correct?

A. Potential contribution claim, mm-hmm.

Q. **[324]** Right. And you also knew that if this claim was successfully asserted it was going to be for a significant amount of money because BCFC had no other assets, you knew that; right?

A. Mm-hmm, yes.

Q. **[325]** So you knew that, potentially, this claim, if it was successful, could be a six hundred million dollar ($600M) claim, for argument's sake; correct?

A. It's an argument... for argument's sake, it's so hypothetical I've never thought, I've never thought about the hypothetical scenario.

Q. **[326]** What makes the existence of this contribution claim so hypothetical, sir, in your mind? Why is it so hypothetical? You refer to it twice in your contestations.

A. Mm-hmm. Mm-hmm. The amount... it's may, I have a contribution claim, the wording was "may."

Q. **[327]** But the amount you understood to be the deficiency between the assets and liabilities of BCFC; right? Correct?

A. Yes.

Q. **[328]** Okay. So, you've told me that BCFC has no assets of any value; correct?

A. Mm-hmm.

Q. **[329]** So if it has no assets of any value and it owes six hundred million dollars ($600M) on the notes, can't we agree that if the contribution claim is allowed or found to be valid, the potential exposure on it is six hundred million dollars ($600M); correct?

A. There was a guarantee, so I may be missing your question, there was a guarantee to...

Q. **[330]** So, in your mind, then, any recovery on the guarantee would reduce the amount of the contribution claim? Is that your understanding?

Mr. SEAN DUNPHY:

I'm going to stop you. You are getting into argument as opposed to facts. The facts are the proper subject matter of an examination. Argument is certainly not. And that's all I've heard for the last five minutes.

Mr. NEIL RABINOVITCH:

Q. **[331]** Sir, you're the CFO of these companies.

A. Mm-hmm.

Q. **[332]** BCFC is on the hook for six hundred million dollars ($600M) to its Noteholders. Can we agree on those facts?

A. Mm-hmm. Yes.

Q. **[333]** Okay. BCFC, you said, may have a contribution claim. We can agree on that; correct?

A. Yes.

Q. **[334]** You filed plans, you filed a plan in the U.S. and a draft plan in Canada that say there's going to be no recovery for inter-company claims. Can we agree on that?

A. Yes.

Q. **[335]** And you were aware that's what the two plans said because, in fact, you signed the U.S. plan. It's your signature block; correct?

A. Mm-hmm. Yes.

Q. **[336]** So when these plans were filed, sir, you were

aware that they contemplate no recovery for inter-company claims; correct?
A. Yes.
Q. **[337]** And you were involved in the negotiation of these plans; correct?
A. Yes.
Q. **[338]** And in the course of negotiating these plans, sir, did you consider whether that contribution claim that you say may exist, would be an inter-company claim that would not be entitled to recovery?
A. Yes.
Q. **[339]** So the plan that you signed off on, as an officer and director of various companies including BCFC...
Mr. SEAN DUNPHY:
That's not established that that's what has been signed off on as. He is an officer and director of BCFC. The plans are filed and we're not going into the U.S. process here. It is what it is.
Mr. NEIL RABINOVITCH:
Q. **[340]** Sir, I'm showing you a copy of the U.S. plan, page 54 shows you as the authorized signatory. It says Chief Financial Officer, AbitibiBowater Inc., and it's above the listing of numerous companies

including BCFC.

A. Mm-hmm.

Q. **[341]** Is it your understanding that your name on that reflects the fact that BCFC is a proponent of this plan?

Mr. SEAN DUNPHY:

Don't answer the question. It's a matter of U.S. law and we're not going there here.

(OBJECTION)

Mr. NEIL RABINOVITCH:

Q. **[342]** Sir, is BCFC seeking to have this plan that I just showed you confirmed in the U.S.?

Mr. SEAN DUNPHY:

Don't answer the question. I'm not going to answer any questions to do with U.S. law here.

(OBJECTION)

Mr. NEIL RABINOVITCH:

Q. **[343]** Did the board of BCFC -- I think I may have asked this and if I did I apologize, Mr. Dunphy -- did the board of BCFC meet and consider whether it was in BCFC's interests...

Mr. SEAN DUNPHY:
You've asked...
Mr. NEIL RABINOVITCH:
Q. **[344]** ... to walk away from the contribution claim?
Mr. SEAN DUNPHY:
You have asked the question about the plan and that's already been answered.
Mr. NEIL RABINOVITCH:
Q. **[345]** Sir, the Canadian draft plan also talks about the inter-company claims not receiving any recovery; correct?
A. Yes.
Q. **[346]** In fact, it's your intention, the company's intention, that the inter-company claims will be dealt with the same in Canada and the U.S.; correct?
Mr. SEAN DUNPHY:
That's actually not what they say, you're putting inaccurate words in the witness' mouth. Read the Canadian plan. You'll find that inter-company claims are -- wait for it -- un-a-ffected. Read the plan.
Mr. NEIL RABINOVITCH:
Q. **[347]** And under the Canadian plan there's an ability for the debtors to waive or release inter-

company claims; correct?
Mr. SEAN DUNPHY:
If you want to show him the provision, if we're going to play, you know, tic-tac-toe on a legal document, this is not proper examination. You're asking for legal documents, draft legal documents, this has nothing to do with your Motion.
Mr. NEIL RABINOVITCH:
Q. **[348]** Sir, let me make this real simple for you. Did BCFC's board ever meet and agree to walk away from the contribution claim?
Mr. SEAN DUNPHY:
You may answer that question.
THE WITNESS:
A. No.
Mr. NEIL RABINOVITCH:
Q. **[349]** Okay. Has there ever been a discussion at BCFC's board about walking away from the contribution claim?
A. Not that I know of. I was not at the board meeting.
Q. **[350]** Has BCFC's board approved the filing of a plan that provides for a release of inter-company claims?

Mr. SEAN DUNPHY:
I'm not going to have that question answered. It's in the U.S.

(OBJECTION)

Mr. NEIL RABINOVITCH:
Q. **[351]** Sir, putting on your hat as an officer and director of BCFC for a moment, is it your view that BCFC walking away from the contribution claim is in the best interests of BCFC?
Mr. SEAN DUNPHY:
Have you got an opinion today?
THE WITNESS:
A. I don't have an opinion.
Mr. NEIL RABINOVITCH:
Q. **[352]** So you don't have an opinion one way or another?
A. No. No.
Q. **[353]** And, sir, do you have any opinion, wearing your hat as an officer and director of BCFC, of whether BCFC walking away from the contribution claim is in the best interests of BCFC's creditors?
Mr. SEAN DUNPHY:
You are characterizing something that hasn't

happened. You're already here being quite unfair to this witness when you've already been told that independent counsel has been retained to look at that exact claim. Until that advice has been received, every other question characterizing advice that hasn't been received is utterly unfair.

Mr. NEIL RABINOVITCH:
I'm entitled to explore his knowledge, Mr. Dunphy.

Mr. SEAN DUNPHY:
And you're far beyond knowledge, you're making argument.

Mr. NEIL RABINOVITCH:
I'm not being...

Mr. SEAN DUNPHY:
This witness has got to leave in a matter of a very tiny number of minutes. So if we have facts we want to get to, we're happy to answer them.

Mr. NEIL RABINOVITCH:
Q. **[354]** Sir, do you have any knowledge of what happens to the contribution claim if BCFC's creditors vote the plan now?
A. I don't have knowledge of that.
Q. **[355]** Do you know whether the claim becomes an allowed claim?
A. I don't know that.

Mr. SEAN DUNPHY:
You are delving into legal analysis of a draft document. Please, we need to...
Mr. NEIL RABINOVITCH:
Mr. Dunphy, I'm entitled to his knowledge on *the plan* which he's purportedly, among others, approved on behalf of BCFC.
Mr. SEAN DUNPHY:
You've got the position on the plan.
Mr. NEIL RABINOVITCH:
Q. **[356]** Sir, has the board of BCFC met and approved the debtors being entitled to cancel the preferred shares for no consideration in the event of a no-vote occurrence?
Mr. SEAN DUNPHY:
Don't answer the question.

(OBJECTION)

Mr. NEIL RABINOVITCH:
That's section 2.6 (b) of the Canadian plan, Mr. Dunphy.
Mr. SEAN DUNPHY:
All right, it's a draft Canadian plan. We are... this is just not the subject of your Motion. The

subject of your Motion is a trustee in bankruptcy.
Mr. NEIL RABINOVITCH:
The subject of the Motion is the conflicts that continue to plague this case which are now reflected in the plans that have been filed in both Canada and the U.S., Mr. Dunphy.
Mr. SEAN DUNPHY:
Make your arguments based on the documents, but...
Mr. NEIL RABINOVITCH:
Well, I just took him to the documents...
Mr. SEAN DUNPHY:
They speak for themselves. You've got no, no, nothing, no foundation to establish there's been a board meeting to discuss any of those things, and he's told you to the contrary there hasn't. So, other than one meeting he wasn't at, that he can't speak to, and so you're asking questions that have no foundation whatever.
Mr. NEIL RABINOVITCH:
Q. **[357]** Sir, wearing your hat as an officer and director of BCFC, do you have any view on whether the cancellation of the preferred shares for no consideration is in the best interest of BCFC?
A. I don't have a thought on that.
Q. **[358]** Have there been any discussions at the board

about winding up or dissolving BCFC?

A. Not that I'm aware of.

Q. **[359]** And, to your knowledge, is BCFC to be wound up or dissolved as part of the reorganization transactions that are contemplated under the plans?

A. Nothing has been finalized there.

Q. **[360]** As things sit today, is the current intention to wind up or dissolve BCFC as part of the transactions that are going to be implemented as part of the plan?

Mr. SEAN DUNPHY:

Don't answer the question. He's already told you nothing's been finalized.

Mr. NEIL RABINOVITCH:

Q. **[361]** Sir, who is determining what new Abitibi common shares get allocated to BCFC and its creditors as part of the plan?

Mr. SEAN DUNPHY:

Again, this is off track.

Mr. NEIL RABINOVITCH:

Who's making this decision?

Mr. SEAN DUNPHY:

There aren't any decisions. You've asked about decisions of BCFC, you've been told there aren't any. And, therefore, you have no facts upon which to ask questions.

Mr. NEIL RABINOVITCH:

Mr. Dunphy, there's shares that are purported, and we don't know the quantity yet or the value, but there are shares that are purporting to be allocated under these plans. I want to know who is making the call on what shares are going to be allocated to BCFC and its creditors.

Mr. SEAN DUNPHY:

As and when a final plan is filed, it will be done in accordance with the law. And, by the way, it won't happen unless the creditors of the affected company vote for it. So, I guess the answer to your question is, Under Canadian law, you are.

Mr. NEIL RABINOVITCH:

Q. **[362]** Sir, who currently has authority to settle or compromise any claims or interests of BCFC?

Mr. SEAN DUNPHY:

It's a legal question, don't answer it.

(OBJECTION)

Mr. NEIL RABINOVITCH:

Mr. Dunphy, is Bowater Inc. prepared to stipulate that the CCAA and Chapter 11 proceedings have triggered the contribution claim?

Mr. SEAN DUNPHY:

I can't answer that question here.

Mr. NEIL RABINOVITCH:

I'd like an undertaking to advise me.

Mr. SEAN DUNPHY:

Bowater Inc. is not a party to this proceeding, so I don't know why I would be giving you that undertaking.

UNDERTAKING 17: To advise if Bowater Inc. is prepared to stipulate that the CCAA and Chapter 11 proceedings have triggered the contribution claim (Refused)

(OFF THE RECORD DISCUSSION)

Mr. NEIL RABINOVITCH:

Mr. Dunphy, we would ask that the undertakings be responded to expeditiously and, in any event, before May twenty-sixth (26th).

Mr. SEAN DUNPHY:

I will do what we can do, I can't give a guarantee on a particular date. We'll see what we can do.

Mr. NEIL RABINOVITCH:
Subject to the undertakings, refusals, and questions taken under advisement, which Mr. Dunphy, we agree, caused a few refusals and less answered, those are my questions for this examination. Thank you, Mr. Harvey.
A. Thank you.

AND FURTHER DEPONENT SAITH NOT

CERTIFICATE

I, the undersigned, EVA WARSZAWSKI, Official Court Reporter being duly authorized to practice in English, using the method of stenomask in the district of Montreal, hereby certify under my oath/affirmation of office the foregoing to be a true and faithful transcript of evidence, the whole in accordance with the law on this 20th day of May, 2010;

And I have signed:

EVA WARSZAWSKI
Official Court Reporter