CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No: 500-11-036133-094

SUPERIOR COURT

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

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

ABITIBI BOWATER INC.,

and

ABITIBI-CONSOLIDATED INC.,

and

BOWATER CANADIAN HOLDINGS INC.,
and the other Petitioners listed on Schedules A, B. and C

Debtors

and

ERNST & YOUNG INC.

Monitor

and

NPOWER COGEN LIMITED

Petitioner

CONTESTATION OF NPOWER COGEN LIMITED IN CONNECTION WITH DEBTORS MOTION FOR AN ORDER SANCTIONING THE DEBTORS PLAN OF REORGANIZATION AND COMPROMISE

Npower Cogen Limited ("**Cogen**") opposes the relief requested by the Debtors to the extent and for the reasons set out herein.

I. OVERVIEW

1. The Debtors, in their motion for an order sanctioning the Debtors plan of reorganization and compromise (the "**CCAA Plan**") seek, amongst other things:

    (a) That the Applicants and each of their respective directors and officers be released and discharged from any and all Obligations of any Person which are claims which were filed or were required to be filed pursuant to the Claims Procedure Orders pursuant to Section 6.10(b) of the CCAA Plan; and

    (b) That the Bridgewater Entities release and discharge the Applicants and each of their respective directors and officers from any claims that they may be entitled to assert against them as a result of claims filed against the Bridgewater Entities resulting from any Obligations to any Person pursuant to the Claims Procedure Orders pursuant to Section 6.10(c) of the CCAA Plan.

2. All terms not defined herein shall have the meanings ascribed to them in the CCAA Plan

3. Cogen, until February 2010, was a supplier of electricity and steam to Bridgewater Paper Company Limited ("**BPCL**"), a member of the Abitibi Group, pursuant to a long term energy supply contract (the "**ESC**") between BPCL and Cogen. The ESC was guaranteed by Abitibi Consolidated Inc. ("**Abitibi**"). Abitibi also guaranteed and committed to support certain post-filing obligations of BPCL to Cogen.

4. On February 2, 2010, BPCL entered administration in the United Kingdom and Roy Bailey, Thomas Jack and Alan Bloom of Ernst and Young LLP were appointed as its joint administrators (collectively, the "**Administrators**").

5. On February 8, 2010, Cogen terminated the ESC for non-payment.

6. BPCL and Abitibi have failed, despite requests, to pay Cogen for energy provided to BPCL during the Abitibi post-filing period of November 1, 2009 to February 2, 2010, invoiced at £9,447,548.

7. Cogen submitted a claim in the Abitibi CCAA claims process, portions of which were disallowed, as described in greater detail below. The disallowed portions of the claim were referred to a claims officer. On August 26 and 27, 2010, the parties appeared before Claims Officer Nuss and agreed before the Claims Officer that the disallowed portions of Cogen's claims relating to the Guarantee Repudiation Claim (defined below), the Post Filing Supply Claim (defined below) and the Oppression Remedy Claim (defined below) would be transferred from the

claims process to the CCAA Court for resolution, further to a motion to be brought by Cogen seeking determination of same.

8. Since those aspects of the Cogen claim remain disputed and unresolved, those matters should be carved out of the Section 6.10(b) release and sections 21 and 22(b) of the Sanction Order to the extent allowed by the CCAA Court further to the motion to be brought by Cogen. In addition Abitibi and the Monitor should be directed to establish a reserve (including pursuant to section 5.2 of the CCAA Plan) for such disputed claims until they are determined by the CCAA Court.

9. In addition, the Bridgewater Release needs to be amended to carve out the subrogation and contribution rights of the BPCL Administrators should they be required to pay out anything, as guarantor to the secured creditors of Abitibi-Consolidated Company of Canada ("**ACCC**") from the proceeds of realization from the BPCL estate, before such claims are paid in full by ACCC, as contemplated by the CCAA Plan.

10. Cogen is directly affected by that issue as it is one of the largest creditors of the BPCL estate. A distribution to the ACCC secured creditors by the BPCL Administrators would significantly reduce the funds available to BPCL unsecured creditors and accordingly, would significantly prejudice Cogen, as one of BPCL's largest unsecured creditors.

11. If the Administrators are required to make a distribution to the ACCC secured creditors, BPCL would be able to pursue a subrogation claim against ACCC and/or contribution claims against the co-guarantors.

12. Section 6.10(c) of the CCAA Plan and paragraphs 21 and 22(c) of the proposed Sanction Order as presently drafted purports to release the Applicants and their respective directors and officers from all Bridgewater Claims. Since the aspects of the Cogen claim noted in paragraphs 9 through 11 above remain disputed and unresolved, a carve out from that release is required to protect the BPCL Administrator's potential subrogation and contribution claims.

II. BACKGROUND

A. Introduction

13. For details on the background please refer to the Submissions to the Claims Officer of Cogen (the "**Claims Submissions**").

14. Pursuant to the ESC, National Power PLC ("**National Power**"), agreed to build a power plant next to BPCL's paper mill on land owned by BPCL and supply the mill with steam and electricity for a period of 15 years. At the end of this 15 year term, BPCL had an option to purchase the plant for a nominal sum. The ESC was assigned by National Power to Cogen on November 22, 2000.

15. As a condition precedent to National Power entering into the ESC, Abitibi, BPCL's parent, was required to provide an unlimited guarantee of BPCL's obligations under the ESC. The ESC Guarantee was assigned by National Power to Cogen on May 26, 2005.

16. By letter dated July 7, 2009, Abitibi purported to repudiate the ESC Guarantee

(the "**Purported Repudiation**"). Cogen objected to the Purported Repudiation by letter dated August 11, 2009, noting, *inter alia,* that the Purported Repudiation did not comply with paragraph 46(f) of the Initial CCAA Order or CCAA case law.

17. As further detailed in the Claims Submissions, immediately after the granting of the CCAA Initial Order, Cogen obtained assurances that Abitibi would continue to pay for post-filing electricity and steam supplied by Cogen, since BPCL was unable to pay Cogen from its own resources and funding for payments up to that point had come from Abitibi. Cogen relied on Abitibi's assurances in continuing to supply product post filing and forbearing from exercising its rights and remedies.

18. Cogen is owed £9,447,548 on account of energy provided to BPCL during the CCAA post filing period of November 1, 2009 to February 2, 2010.

B. The Claims Process

19. In accordance with the Second Claims Procedure Order of the Honourable Mr. Justice Clement Gascon, dated February 23, 2010, on April 6, 2010, Cogen submitted a proof of claim in the amount of £70,160,658.13 in the Abitibi claims process. This amount consisted of amounts owing from BPCL to Cogen, as guaranteed by Abitibi under the ESC as follows:

(i)	Supplies of electricity and steam:	£9,447,548.00
(ii)	"Take or Pay" liability:	£9,986,380.01
(iii)	Transfer Charge Liability:	£49,633,937.00
(iv)	Other liabilities:	£1,092,793.13

20. A Notice of Revision or Disallowance of a Claim or Subsequent Claim dated June 16, 2010 was delivered to Cogen by email on June 17, 2010 (the "**Notice of Revision**") issued by Ernst & Young Inc. (the "**Monitor**") and Abitibi.

21. Of Cogen's total claim of £70,160,658.13, the Notice of Revision:

    (i) Disallowed Cogen's entire claim subject to receiving evidence of the assignment to Cogen, which was subsequently provided by Cogen, reviewed by the Monitor and accepted by the Monitor as satisfactory and resulted in the Monitor allowing the amount of CDN 101, 916, 948;

    (ii) Disallowed Cogen's claim for "take or pay" liability in the amount of £1,223,551;

    (iii) Disallowed part (£14,700,000) of Cogen's Transfer Charge claim; and

    (iv) Disallowed Cogen's claim for unaffected and/or secured status under Abitibi's Plan of Arrangement.

22. Cogen disputed the disallowances noted above and served its notice of dispute of the Notice of Revision dated June 29, 2010 setting out its position and response to the disallowances.

23. The matter was referred to a Claims Officer and a hearing occurred on August 26 and 27, 2010. For the issues before Mr. Nuss, see page 6 of the Cogen Claims Submissions.

24. The result of the claims hearing was as follows:

(a) Issues 2 and 3 were heard before the Claims Officer and his decision is under reserve; and

(b) Cogen and Abitibi agreed before the Claims Officer and the Monitor to transfer the remaining disputed claims issues from the claims process (collectively, the "**Guarantee Repudiation Claim, the Post Filing Supply Claim** and **Oppression Remedy Claim**") to the CCAA Court for determination, further to a motion to be brought by Cogen before this Honourable Court (the "**Cogen Motion**") to have them heard. Abitibi agreed (without prejudice to its rights to fully oppose the motion) not to object to Cogen's standing to do so or to argue that the Plan or the proposed Sanction Order preempts or releases the relief to be sought in such motion. Cogen is proceeding to bring such a motion.

C. Request of ACCC Secured Creditors from BPCL funds of realization

25. In connection with the administration of the BPCL estate, the Administrators have advised that they have now realized on the majority of BPCL's assets and are in the process of determining the appropriate distribution of the net proceeds of sale ("**Proceeds**"), which amount to approximately 24.8 million UK Pounds (L24.8 million).

26. The Administrators have advised that the ACCC secured creditors (the "**Secured Creditors**") have approached BPCL, as guarantor of the ACCC secured indebtedness, to be paid out from the BPCL Proceeds The secured indebtedness is guaranteed by BPCL and other Abitibi entities.

27. The CCAA Plan provides for the payment in full to those same Secured Creditors.

28. Cogen, as one of the largest unsecured creditors of BPCL, was invited by the Administrators to comment on the possibility of an immediate distribution to the Secured Creditors of the net proceeds of realization.

29. Cogen's position is that given that the payout to the Secured Creditors under the CCAA Plan is imminent, the Administrators should not pay out the Secured Creditors from the BPCL estate. In the event that the Administrators were to pay

the Proceeds to the Secured Creditors such that no funds are distributed to BPCL's creditors, Cogen's losses will be significantly increased.

30. In light of Cogen's response, as well as the response of other BPCL unsecured creditors, the Administrators have decided to apply to the Court for direction as to whether to make a distribution to the Secured Creditors. They propose to wait until after October 18 before preparing such application, to see whether the Secured Creditors will be paid out under the CCAA Plan.

31. Were the BPCL Administrator required to pay out any portion of the Secured Debt not fully paid out by Abitibi or any of its affiliates who are co guarantors, the BPCL Administrators would have a right to subrogate to the rights of the Secured Creditors against Abitibi and to claim contribution from other co guarantors. The Release ordered to be granted by the Bridgewater Entities needs to be modified to clarify that any such right in the nature of subrogation or contribution against any Applicant or other party covered by the Release (and any rights privileges or entitlements ancillary or equivalent thereto) will not be released or impaired through the releases or provisions of the CCAA Plan or the proposed Sanction Order.

32. As the foregoing issue will be an open issue at the time of the Sanction hearing, BPCL cannot provide a release of such potential contribution and subrogation claims and as such, a carve out to the Bridgewater release is required.

III. NOTICE OF CONTESTATION

33. Pursuant to the Order Amending the Creditors' Meeting Order dated July 21, 2010, any person intending to object to the motion seeking the Sanction Order is instructed to file with the Court a written notice containing a description of its proposed grounds of contestation on or before Friday, September 17, 2010 at 12 noon (Montreal Time).

IV. GROUNDS OF CONTESTATION

34. Cogen objects to the approval of the CCAA Plan as presented to the court for the reasons set out below under headings II A, B and C.

A. Carve out to Section 6.10(b) for Cogen Motion

35. Section 6.10(b) (Releases by Others) of the CCAA Plan, and paragraph 22(b) of the proposed Sanction Order each provide, in part, as follows:

> *As of the Final Restructuring Transactions Time (i) the Applicants...(xiii) their respective...officers, directors...will be released and discharged from any and all Obligations to any Person (including any Person who may claim contribution or indemnification from or against any Released Party) which are (A) claims which were filed or were required to be filed pursuant to the Claims Procedure Orders...*

36. Section 21 of the proposed Sanctioned Order further provides that all Affected Claims of the Applicant are discharged and released.

37. The parties have agreed to remove the Cogen Motion from the claims process and have it resolved by the Court.

38. Accordingly, an express carve out to Section 6.10(b) of the CCAA Plan (Release by Others) and Sections 21 and 22 (b) of the proposed Sanction of Order are required to acknowledge that the Applicants and their respective directors and officers are not released from any obligations resulting from Cogen's Guarantee Repudiation Claim, Post Filing Supply Claim and Oppression Remedy Claim to the extent determined in Cogen's favour by this Honourable Court.

B. Carve out to Section 6.10(c) for Subrogation and Contribution Claims

39. Should the Administrators be required to make a distribution to the Secured Creditors, the Administrators would be able to pursue a subrogation claim (the "**Subrogation Claim**") in the Canadian proceeding against ACCC to the extent that BPCL has paid a guarantee obligation when the primary obligation was ACCC and/or a contribution claim (the "**Contribution Claim**") against the other co-guarantors.

40. Section 6.10(c) (Releases by the Bridgewater Entities) of the CCAA Plan, and paragraph 22 (c) of the proposed Sanction order each provide, in part, as follows:

> *As at the Final Restructuring Transactions Time, each and every one of the Bridgewater Entities will be deemed to forever release, waive and discharge from any and all Obligations to any Person (including any Person who may claim contribution or indemnification from or against any Released Party) which are (a) claims which were filed or were required to be filed pursuant to the Claims Procedure Orders,....against the Released Parties that the Bridgewater Entities may be entitled to assert...*

41. As such, BPCL's potential Subrogation Claim and Contribution Claim against the Applicants including ACCC needs to be carved out of the Bridgewater Releases

in Section 6.10(c) of the CCAA Plan and Sections 21 and 22(c) of the proposed Sanction Order.

C. Reserve For Cogen Motion

42. In addition to the carve outs requested above, in connection with Cogen's Guarantee Repudiation Claim, Post Filing Supply Claim and Oppression Remedy Claim in the amount of 9,447,548 UK Pounds Sterling (Cdn $ 17,752,887 representing the sum in UK pounds converted to Canadian dollars at the rate of 1 Uk pounds = 1.8791 Cdn dollars), Cogen requests that a cash reserve be set aside by Abitibi and the other Applicants in this amount **(plus a reserve for interest at the rate of 3% on said sum accruing since Feb 2, 2010)** and held by the Monitor, pending resolution of the Guarantee Repudiation Claim, Post Filing Supply Claim and the Oppression Remedy Claim and the Cogen Motion, and that such Reserve be paid to Cogen in the event it is successful in its motion.

V. RELIEF REQUESTED

43. Cogen respectfully submits that this court orders that the CCAA Plan and Sanction Order be amended to:

    (a) Carve out any obligations of the Applicants and their respective directors and officers in connection with any Obligations incurred as a result of the outcome of the Cogen Motion from the Section 6.10(b) release of the CCAA Plan and Sections 21 and 22(b) of the Sanction Order;

    (b) Carve out the BPCL Administrator's potential Subrogation Claims and Contribution Claims from Section 6.10(c) of the release of the CCAA Plan and Sections 21 and 22(c) of the proposed Sanction Order; and

    (c) Set aside a reserve of £9.5 million (Cdn $ [Cdn $ 17, 752, 887]) plus a reserve for interest accruing at the rate of 3% per annum from and after Feb 2, 2010, all of which sums are to be held with the Monitor, pending the resolution of the issues to be raised in the Cogen Motion (and further thereto, an order directing payment to Cogen of such portion of the reserve as the court may determine is owing upon determination of the issues to be raised in the Cogen Motion.).

44. The present Contestation is well founded in fact and law.

Toronto, September 16, 2010

Baker & McKenzie LLP

Baker & McKenzie LLP

Attorneys for Npower Cogen Limited

AFFIDAVIT

I, the undersigned, Phillip Piddington, exercising my profession at Npower Cogen Limited, solemnly declare as follows:

1. I am a duly authorized representative of Npower Cogen Limited.
2. The facts alleged in the present Contestation are to my knowledge and are true.

AND I HAVE SIGNED:

____

~~PHILLIP PIDDINGTON~~

SOLEMNLY AFFIRMED before me at

___________ **this 17th day of September, 2010**

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~~Solicitor~~ Commissioner for oaths.

NOTICE OF PRESENTATION

TO: Service List

TAKE NOTICE that the Contestion of Npower Cogen Limited in connection with Debtors Motion for an Order Sanctioning the Debtors Plan of Reorganization and Compromise will be presented for adjudication before this Honourable Court, on **September 20, 2010**, at 9:15 AM, at the Courthouse of Montreal in the same room as the Motion for an Order Sanctioning the Debtors Plan of Reorganization and Compromise, which room is to be communicated to the Service List.

DO GOVERN YOURSELVES ACCORDINGLY.

Toronto, this 16th day of September 2010

Baker & McKenzie LLP

Baker & McKenzie LLP
Attorneys for Npower Cogen Limited

SUPERIOR COURT
Commercial Division
(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act*)

No. 500-11-036133-094

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

In the matter of Plan of Compromise or Arrangement of:

ABITIBI BOWATER INC. *et al*
Debtors

and

ERNST & YOUNG INC.
Monitor

and

NPOWER COGEN LIMITED
Petitioner

BS0350 n/dos.: 041053-1170

CONTESTATION OF NPOWER COGEN LIMITED IN CONNECTION WITH DEBTORS MOTION FOR AN ORDER SANCTIONING THE DEBTORS PLAN OF REORGANIZATION AND COMPROMISE

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