CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

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

No: 500-11-036133-094

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

ABITIBIBOWATER INC.,
ABITIBI-CONSOLIDATED INC.,
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

REPLY AFFIDAVIT OF PHILLIP PIDDINGTON

I, **PHILLIP PIDDINGTON**, residing and domiciled in Swindon, Wiltshire, U.K., hereby make the following solemn declaration:

1. I am a duly authorized representative of Npower Cogen Limited (**"Cogen"**).

2. I have personal knowledge of the facts below or where I am advised by others, I truly believe same to be true.

3. The declarations in, and the exhibits attached to, this affidavit are submitted in reply to Abitibi's Contestation of the Cogen Motion dated October 27, 2010 (the **"Abitibi Contestation"**), the Affidavit of Allen Dea dated October 27, 2010 (the **"Dea Affidavit"**) and the Affidavit of Jean-Francois Guillot dated October 27, 2010 (the **"Guillot Affidavit"**).

A. Quantum of Cogen's Claim Already Accepted by Monitor and Claims Officer

4. The Abitibi Contestation in paragraphs 3-6, 31-34, and 70, and various paragraphs throughout the Dea Affidavit and the Guillot Affidavit, attempt to revisit the quantum of Cogen's claim (in the amount of £9,447,548.00) and collectively go on at length challenging the quantum of Cogen's claim and arguing why it should be less. The £9,447,548.00 amount has already been accepted by both the Monitor, in its Notice of Revision dated June 16, 2010, and the Claims Officers in the Determination of Joseph Nuss dated September 28, 2010.

5. As is acknowledged by Abitibi throughout its materials, under the ESC, BPCL was contractually obligated to pay to Cogen a monthly amount in respect of (a) energy and steam actually consumed during the month; plus (b) standing fees and other fixed charges which were levied monthly in respect of having a dedicated energy generation facility available for its sole use 24 hours a day, 7 days a week.

6. The standing charge was akin to the rental of that facility and was partially indexed to energy prices. In short, BPCL paid what was, in essence, a monthly rental amount to have the facility available to it (and only it) and a monthly operation amount for the operation and delivery of energy to it from the facility. Both services were required to supply energy to BPCL and the payment structure was the arrangement the parties made when they entered into the contract in 1998.

7. The £9,447,548.00 amount owing reflects the sum total of invoices for the period from November 1, 2009 - February 2, 2010 less payments received by Cogen towards the November invoice totaling £1,000,000, all follows:

Outstanding Energy Supply Invoice	**Amount (£)**
November 2009	2,616,437.93
December 2009	2,747,019.06
January 2010	3,140,524.92
February 2010	1,943,566.09
Partial Payment November 2009	(500,000)
Partial Payment November 2009	(500,000)
Total Amount Outstanding	**£9,447,458.00**

8. Each Cogen invoice, including in connection with the periods in question, was accompanied by a letter from Cogen stipulating that BPCL had a prescribed period of time within which to dispute the quantum of such invoice. No disputes to the invoices were ever received by Cogen.

9. As BPCL's own materials reveal, when BPCL failed to pay the amounts invoiced under the contract within the contractual time stipulated, Cogen would proceed to notify BPCL of impending default unless the contractual amounts were paid, and until the period in question, BPCL kept the contract in good standing so that Cogen was not in a position to terminate.

10. BPCL in its materials suggests that the energy supplied was expensive but in fact the monthly operational charges for energy supplied were actually below market, and standing charge for having a facility exclusively available to it which it had not paid to construct was a negotiated monthly rate for the exclusive long term rental of the facility. BPCL was offered a number of options when the contract was being negotiated as to how the global charge would be allocated between the operational energy supply charge and the rental charge and picked the particular allocation embodied in the contract. BPCL could not have enjoyed the energy supply arrangement it had without paying both of these charges, and failure to pay both each month would produce a default and right to terminate the contract.

11. Contrary to paragraphs 25, 26 and 27 of the Abitibi Contestation, and various paragraphs in both the Guillot and Dea Affidavits, electricity prices to BPCL were in fact, below market price. The electricity price (excluding the Standing Charge component) to BPCL as set by the ESC had been consistently below the market price paid by Extra Large Energy Users in the UK manufacturing industry as defined by the UK Department for Energy and Climate Change (DECC). For example in 2008 and 2009, the average price to BPCL was £26.57/MWh and £25.5/MWh respectively, whilst the average of prices paid by UK Manufacturing Industry as published by DECC were £56.60/MWh and £51.96 respectively. This is because the "Base Electricity Charge" was set at 1p/kWh (£10/Mwh) in the ESC at a time when the wholesale market price was approximately 2.2p/kWh (£22/MWh) such that even after being indexed to fuel/energy costs the price to BPCL compared favourably to market prices.

12. BPCL in its materials also questions the actual costs of the energy supplied by Cogen during the period from November 2009 through February 2, 2010. Abitibi's statements in paragraph 3 of the Abitibi Contestation (and throughout) that Cogen's November 1, 2009 - February 2, 2010 invoices include fixed monthly charges unrelated to actual energy supply or consumption are incorrect. As detailed in **Exhibit "1"** hereto, Cogen's invoices consist of two components - a variable cost component and a fixed cost component - both of which are related to actual energy supply and consumption. The direct variable expenses or the actual energy generation costs (including the input supplies procured by Cogen) for this period total £5,085,838.40. The direct variable expenses consist of the actual cost of the gas fuel, the transportation charges associated with the supply of the gas fuel, the grid connection charges, the Business Rates payable to the UK government and the operational and maintenance expenses of the CHP Plant. The balance of the invoice amounts of £5,361,710, is a fixed charge for rent BPCL pays to have the facility at its disposal 24 hours a day, 7 days a week for the supply of power on demand. Again, all related to the production and delivery of steam.

B. Priority and Status of the Cogen Post Filing Supply Claim Carved out of the Claims Decision

13. The Abitibi affidavits refer to the Claims Officer's decision to suggest that somehow the claim in the Cogen motion was precluded by that decision. However, Abitibi and Cogen expressly agreed at that hearing to carve the issues raised in this motion out of the claim dispute process and put them before the court by motion. Other than confirming the quantum of the post-filing supply claim as being equal to the amount claimed in the motion, the claims process did not determine any of the issues in this motion. In furtherance of that agreement, Abitibi agreed to the carve out in the subsequent Plan Sanction order to permit this motion to proceed.

C. Cogen was an Involuntary Supplier and Creditor

14. Abitibi's Contestation and materials neglect a key fact about the relationship - that Cogen was an involuntary supplier of energy once it entered into the ESC contract for as long as the contract remained in force. Unless it had a right to terminate, it was required to continue to make the facility available and BPCL was entitled to continue to draw energy whenever it wanted. The decision as to whether to draw energy rested in BPCL's hands, as its decision each day to use power determined whether and how much power was supplied. As a practical matter, unless BPCL triggered the right

to terminate through a payment default or its own insolvency, Cogen had no choice in the matter.

15. Abitibi, as Guarantor of the contract, was familiar with its terms and knew that Cogen could not terminate simply because BPCL looked like a credit risk. Abitibi's continuing financial support enabled and was intended to ensure BPCL could pay its liabilities to Cogen and avoid a declaration of insolvency, thereby preventing Cogen from being in a position to terminate, and forced Cogen to continue supplying. Had Abitibi disclosed at any point that it was not fully financially supporting BPCL, BPCL would have been insolvent and Cogen would have been in a different position it would have terminated the ESC rather than continued to supply energy and make a facility available to a company that was not going to pay for those services.

16. As a party to a long term supply contract involving a facility built specifically for, and made available to a single client, Cogen was in a very different position than a normal supplier and Abitibi was fully aware of this. Since BPCL was entirely reliant on Abitibi for support, Cogen sought and relied on assurances from the time Abitibi filed for CCAA protection that it was providing the necessary financial support to enable BPCL to perform its obligations under the contract. Abitibi was fully aware that Cogen had no ability to prevent a credit loss on the continuing supply of the facility and the energy produced from it if Abitibi was not providing the requisite financial support. Abitibi was also aware that Cogen had a legitimate expectation, which it had communicated to Abitibi, that a managed shutdown would occur if Abitibi elected to discontinue its long standing practice of providing that full support, so that Cogen was not unfairly put in the position of involuntarily supplying the use of a facility and energy generated therein to a party that would take those benefits without paying for them.

17. It is apparent from Abitibi's materials that it made a decision to discontinue the unqualified full support required to enable BPCL to pay it liabilities by at least August 2009, but did not communicate that decision to Cogen, compelling Cogen to continue supplying while Abitibi considered its restructuring/liquidation strategy for BPCL. Cogen was told the converse even as late as September and November 2009 - that Abitibi support was continuing with no indication of any qualification on same.

D. <u>The Post-Filing Support Commitment</u>

18. The statements made in the Abitibi materials, far from undercutting Cogen's position, appear to support Cogen's position that Abitibi provided a financial support commitment to the BPCL directors for the benefit of Cogen. The following points are notable in reply to the Abitibi materials filed in this motion on the issue of the Post-Filing Support Commitment.

19. On October 27, 2010, Abitibi finally admitted, in statements in its Contestation, the Dea Affidavit and the Guillot Affidavit, the existence of the written Post-Filing Support Commitment and attached copies. In a nutshell, Abitibi's materials describe the Post-Filing Support Commitment, the beneficiaries of the Post-Filing Support Commitment and attach the Post-Filing Support Commitment itself as follows:

a) As acknowledged in paragraph 24 of the Dea Affidavit, in lieu of direct bank financing, BPCL was funded by intercompany advances from Abitibi.

b) As acknowledged in paragraph 19 of the Dea Affidavit, after the CCAA filing, there was no restriction in its DIP financing on Abitibi providing funds to BPCL (or Donohue Corp.) but rather simply a limit of $30 million.

c) On April 22, 2009, Cogen sent a letter to BPCL seeking confirmation that, notwithstanding the CCAA filing, the status quo would be maintained and that Abitibi would continue to fund BPCL's payment of Cogen's invoices to the extent BPCL could not pay on its own.

d) On or around April 29, 2009, Abitibi, being aware that Cogen had approached BPCL for financial assurances of payment of its invoices, directed BPCL management (Mr. Guillot and/or Mr. Barry Benson) to convey to Cogen that "BPCL will continue to pay Cogen invoices as in the past, no more and no less." (paragraph 14 of the Dea Affidavit).

e) In consequence of advising Cogen that Abitibi would continue to pay Cogen's invoices and continuing to draw energy supply from Cogen, the BPCL directors needed some formal confirmation of ACI's intention to provide such assistance for their own legal requirements. (paragraph 25 of the Dea Affidavit).

f) On April 8, 2009, Abitibi sent to the directors of BPCL a letter confirming that Abitibi "currently intends to provide adequate financial support <u>to enable BPCL to meet its liabilities</u> (paragraph 26 of the Dea Affidavit and Exhibit AD-7 of the Dea Affidavit). In relation to this commitment, the following is notable:

   i. This commitment had a specified financial minimum specifically the amount necessary to enable BPCL to meet its liabilities;

   ii. Abitibi knew that Cogen was a, if not <u>the</u>, principal monthly trading liability of BPCL;

   iii. It is obvious that this commitment was given to induce BPCL to continue trading and that Abitibi knew that by continuing trading, BPCL was drawing substantial monthly supply from, and incurring substantial monthly liabilities to, Cogen, which liabilities Abitibi was undertaking to fund if BPCL could not otherwise do so. In other words, Abitibi knew that it was inducing Cogen to continue supplying by making the commitment and intended precisely that result, in order to avoid BPCL shutting down; and

   iv. The commitment was intended to remain in force indefinitely once given as shown from the attempts to amend it subsequently from August onwards, which would have been unnecessary otherwise.

g) The Post-Filing Support Commitment was extended numerous times and ultimately to January 22, 2010 as evidenced from Exhibits AD-8 – AD 11 of the Dea Affidavit.

h) Abitibi attempted to amend this commitment below the amount necessary to fund BPCL's liabilities. This attempt was neither disclosed to Cogen by Abitibi or BPCL, nor was Cogen's consent sought. Had this been disclosed, BPCL would have been insolvent and Cogen would have been entitled under the ESC to terminate the ESC on the grounds of BPCL's insolvency.

20. It was always Cogen's understanding, and the Abitibi affidavits concede the point that Abitibi actually controlled BPCL's treasury operations and liquidity, as BPCL collections were actually transferred to Abitibi, which then authorized funding back to pay BPCL's liabilities as they came due. In other words, Abitibi was exercising direct control over BPCL financial affairs as part of its financial support process, and Cogen concluded that Abitibi, through its control over the BPCL treasury functions, and not just through its representatives on the BPCL board and its direct dealings with Cogen, had reasonably full information about BPCL's dealings with Cogen and of Cogen's expectations as to payment through Abitibi's continuing support.

21. The DIP Financing $30 million limit does not on its face prevent Abitibi from supporting BPCL but rather specifically authorizes it. The Dip Financing limit was never raised with Cogen by BPCL or Abitibi. Cogen was never advised that the limit was ever reached (there is no suggestion anywhere in Abitibi's materials that the limit was ever reached). And the Outstanding Post-Filing Cogen Payable in issue is for an amount far below that limit. If the limit had been reached such that Abitibi would or could not provide the funds necessary for Cogen to fund its operation, Cogen would have expected to have been advised. Cogen was never advised that any such issue ever developed.

22. Cogen was BPCL's single most important and largest recurring supplier as acknowledged by Abitibi in paragraphs 27 and 43 of the Abitibi Contestation and Mr. Guillot in paragraph 25 of the Guillot Affidavit, meaning that Cogen was a principal beneficiary, if not <u>the</u> principal beneficiary, of the Post-Filing Commitment.

23. Abitibi issued the April 8 commitment just over a week before it filed for CCAA protection. Abitibi's own materials reveal that right after the filing, Mr. Allen Dea instructed BPCL to tell Cogen that invoices will continue to be paid as usual - which is what the commitment contemplates. Cogen contacted BPCL right after the filing to express concern about the ability of BPCL to pay its invoices and the continuance of Abitibi support, and was provided with the assurance of continuing payment matching what Mr. Dea had instructed. Abitibi's materials indicate that BPCL then reported back to Mr. Dea to say they had done so. In reporting back, BPCL noted correctly that Cogen was risk adverse and was seeking a reduction in risk. Cogen understood from the assurance provided that Abitibi would continue to support BPCL.

24. Cogen was never advised that the April 8 commitment, nor any of the subsequent support commitment letters were ever repudiated, nor was it ever advised that Abitibi had altered it position to fully support the financial obligations of BPCL until the administration was being filed at the end of January 2010.

25. Cogen was explicit about its expectations in its May 26 discussions with BPCL and Abitibi. When it was suggested in that discussion that Abitibi may try to repudiate its Guarantee, I advised BPCL that its directors had responsibilities not to trade while insolvent and that they should take advice on the matter - communicating clearly

Cogen's reasonable expectation that BPCL's obligations to Cogen must either be adequately funded by Abitibi or that BPCL would have to be shut down.

26. In response, Abitibi did not repudiate its April 8 Commitment, but rather the materials admit that Abitibi ensured that BPCL had sufficient liquidity to continue paying Cogen through to November 2009.

27. Of the financial support letters themselves attached to the Abitibi materials dated April 8, August 18, October 1, December 15 and January 15, only the first is addressed to the BPCL directors. The others are sent to BPCL and record that the April 8 undertaking to fund all BPCL operating liabilities is being continued, which was Cogen's expectation, and what Cogen was told in September and November 2009.

28. The April 8 and November financial support letters contain no cap on that support and Cogen was not informed at any time of the caps on the support contained in the other letters and it had a reasonable expectation from its course of dealing and communications with Abitibi and BCPL that there was no such limitation, and that if there were any limitation, that Cogen would have been so informed so it could assess whether BPCL had triggered the right to terminate the ESC for insolvency.

29. Cogen's expectation was that any limits imposed would be above any amount sufficient to fully fund the obligations to Cogen. It appears that Abitibi is now saying that it imposed a limit from October 1 through to the end of January that was below that required to fully fund Cogen's obligation. Cogen was never so informed and had a reasonable expectation in the circumstances that it should have been so informed. To do otherwise would be to unfairly induce Cogen to continue supplying in reliance on pattern and representations of support to that point, knowing that Cogen would not be paid in full, which is precisely what happened.

30. While Abitibi claims it provided all of the support it committed to provide to BPCL, its commitment in each letter is to provide the funding necessary to support the operations. Clearly it did not do that as Cogen, its main operational supplier was left unpaid. If some internal undisclosed support limit was being exceeded by BPCL cash flow requirements, Cogen's reasonable expectation was that it would have been immediately informed, not that Abitibi and BPCL would then proceed to cherry pick which suppliers it would pay and thereby leave Cogen's invoices outstanding.

31. Even Abitibi's own numbers do not align on this point. Cogen was told the support provided in 2009 was £7-8 million, but Mr. Dea's affidavit now claims the deficiency was £9.7 million, of which £7 million was attributable to November and December 2009 alone. That is roughly equal to what Cogen was owed for those months, meaning that BPCL's insolvency was caused by its lack of support by Abitibi and was addressed not by ceasing to trade as BPCL should have, but by continuing to trade while ceasing to pay Cogen.

32. Cogen's reasonable expectation in that situation was not that Abitibi would "cherry pick"- i.e. selectively choose who to pay and who to accept supply from without paying, but to cease trading once it no longer had a sufficient commitment of the financial support necessary to pay Cogen for continuing supply.

33. Until the Dea Affidavit, Abitibi refused, in response to Cogen's claim filed in April 2010, to specifically admit the existence of the written Support Commitment, despite

specific production of same being requested back in the summer during the course of the hearing before the Claims Officer over the quantum of the Cogen claim.

34. Abitibi curiously points to the fact in its materials that Cogen did not refer to the Post-Filing Support Commitment in its first proof of claim filed in November 2009. Given that BPCL was still paying Cogen's bills up until that point, and that the unpaid invoices in respect of supply in November 2009-January 2010 had not yet materialized, let alone dishonoured, the entire claim had not even arisen. However it had arisen by the time that Cogen filed its amended proof of claim in April 2010, two (2) months after BPCL failed, and the issue is accordingly quite front and centre in that amended proof of claim. Cogen has maintained since it filed its April 2010 proof of claim that a written Post-Filing Support Commitment existed and referred again to the non-production of the Post-Filing Support Commitment when it filed this motion.

35. But Abitibi, instead of being forthright and admitting the existence of the written Post-Filing Support Commitment, hedged and failed for months to admit outright that any such written commitment existed. The inadequacy of Abitibi's disclosure about Abitibi's undertaking to fund BPCL's liabilities in the claims dispute parallels the problem giving rise to Cogen's post-filing supply claim in the first place, and from that reasonable inferences may be drawn.

E. Cogen was the Principal intended Beneficiary of the Support Commitment

36. Abitibi's materials conceded that Cogen was by far the single largest recurring trade supplier. The support commitment by definition was intended to ensure Cogen's bills would be paid, failing which the entire BPCL operation would immediately have to close.

37. Mr. Guillot in paragraph 63 of his Affidavit, further acknowledges that "Cogen benefitted tremendously from the financial support provided by Abitibi between April 2009 and January 2010, while BPCL attempted to restructure the ESC and its operations. Not only did such assistance permit the payment of Cogen's invoices from the period prior to April 17, 2009, but Cogen was able to continue to collect the standing and other fixed charges at no incremental operating cost to themselves over this period." In short, Mr. Guillot appears to be conceding that Cogen was an intended beneficiary of the commitment.

38. As far as I am aware, no supplier other than Cogen ever raised the need for such a commitment, and as far as I am aware, the facts of the commitment was not communicated to anyone other than Cogen.

39. Abitibi's materials suggest that the Post-Filing Support Commitment was just a technical directors requirement. But its quite the opposite. The point of the obligations on directors, and which is why I raised it with BPCL from the outset of the Abitibi filing, is to ensure that companies do not trade when they can't pay their suppliers, is not to protect the directors. It is to protect the suppliers. And when a support commitment is obtained, the point of the commitment is to fulfill the obligation not to prejudice the suppliers by trading without resources to pay them. The suppliers, are by definition, the beneficiaries of that arrangement and the funding provided is specifically intended to flow to them. Abitibi's own commitments recognize this fact by their wording which refers to Abitibi providing the amounts necessary to fund the operational commitments of BPCL. Abitibi knew that its support

was primarily to pay BPCL's largest supplier and by definition intended that the support be used for that purpose. And both Abitibi and BPCL knew that by communicating the fact of that commitment to Cogen that Cogen would be induced to rely on the support being provided for its benefit with the express purpose of preventing Cogen from terminating the involuntary supply arrangement.

F. August 2009 Call Between Mr. Piddington and Mr. Dea

40. Mr. Dea's recollection of the call between Mr. Dea and me is incorrect. The purpose of my call was not simply to inquire about the status of lender approval of the ESC restructure. Cogen had three (3) concerns which are evident throughout the materials - whether that restructuring would be implemented, whether Abitibi would continue to honour its commitment to fund BPCL operations until it was either restructured or shut down, and whether if BPCL was to be shutdown that Cogen's expectation of a managed shutdown as discussed in 2008 would be honoured.

41. As this conversation took place in August 2009 shortly after Abitibi purported to repudiate the guarantee, and as BPCL and Abitibi had represented the alternatives in the BPCL ESC restructuring as being either restructure the agreement or shut down BPCL, Cogen was naturally concerned to receive assurance on the latter two (2) points above, and that was what motivated my call. For that reason, we discussed in the call what is set out in my prior affidavit.

42. I note that Mr. Dea's recollection of the conversation varies from his notes. He indicates hedging was discussed but that does not appear in his notes. His notes refer twice to Mr. David Sprawley who is not mentioned in his affidavit. He suggests that I inquired whether the ESC had the "support of Abitibi" for, but obviously if they were taking it to the lenders, that had already been decided - the issue was whether the lenders would support what they were asked to do. And his notes do not appear to say that. They appear to simply contain three (3) words on this subject on a separate line: "Support from Abitibi" with a star beside it.

43. The issues of the restructuring and continuing support from Abitibi/BPCL in the meantime remained linked in Cogen's dealings with Abitibi thereafter as reflected in the conversations with Mr. Benson on September 25.

44. What is also interesting from Mr. Dea's affidavit is what was not disclosed in his call. It was not disclosed that Abitibi was in the process of trying to transfer other accounts receivables out of BPCL that BPCL used to fund its operations. And, it was not disclosed that Abitibi was considering waiting to the end of the Abitibi restructuring to even approach the lenders on the ESC restructure.

G. The Oppression Remedy Claim

45. Abitibi questions in its materials the relevance of Abitibi being named in an oppression proceeding. But Abitibi is clearly the prime relevant company. It was involved in the original negotiations of the ESC and guaranteed its terms. It controlled BPCL's treasury operations. Its representatives sat on BPCL's board. It funded BPCL's operations. It issued the Post-Filing Support Commitment. It engaged in various communications directly with Cogen about the issues in this motion, as noted in the materials of both sides. It was involved in the European supply arrangements, which

supplied BPCL with liquidity. And Abitibi's decisions regarding funding and non funding of BPCL decided its ultimate fate and the fate of Cogen's accounts receivable.

46. Abitibi's materials do not dispute the assertion in Cogen's materials that Abitibi controlled BPCL, Indeed they provide a window on the extent of its control over BPCL. In addition to the matters above, and in Cogen's other affidavits, I note the following:

a) Abitibi as shareholder placed two (2) of its nine (9) senior officers on BPCL's board, which is a typical tool in large corporations for corporate parent to exercise control over it's subsidiaries;

b) Abitibi's exercised control over BPCL treasury operations and cash as noted above, which when combined with the fact that BPCL was totally reliant on Abitibi for funding, highlight that BPCL was just an arm of Abitibi;

c) Abitibi's use of BPCL to sell its products in Europe, and its description of the resulting BPCL accounts receivable as Abitibi's own accounts receivable;

d) We dealt with Abitibi not BPCL in connection with the proposed 2008 restructuring of BPCL, as is admitted in the Dea Affidavit;

e) Mr. Guillot who was a BPCL employee refers to Mr. Melkerson not as a BPCL director but as an Abitibi officer. Mr. Guillot has himself been reassigned since BPCL's failure to an Abitibi facility in Canada; and

f) Mr. Dea gave direct instructions to BPCL about how to make representations about the intent to continue to pay Cogen after Abitibi filed, and BPCL implemented them and then reported back to him.

47. Abitibi in its Contestation and related Affidavits has misunderstands the significance of the oppression remedy claim. It is not just another ground of relief - it is the centerpiece of the complaint. And it is not just about the European Sales Transaction. Rather the totality of the circumstances by which Cogen was induced to continue supplying when it was not going to be paid are alleged to amount to conduct by Abitibi and its subsidiary BPCL, which is oppressive and unfairly prejudicial to Cogen.

48. Abitibi's statements in its materials, in an attempt to refute that Cogen relied upon or was induced by alleged financial assurances or representations by Abitibi or BPCL, are either incorrect, irrelevant or in direct conflict with the facts set out in other paragraphs of the Abitibi Contestation, the Dea Affidavit and the Guillot Affidavit.

49. In short, Abitibi offers three (3) arguments for its findings that there was no reliance by Cogen:

a) Cogen knew about BPCL's precarious financial state;

b) Cogen's primary objective was to acquire the CHP Land as opposed to being concerned with being paid for ongoing going supply; and

c) Cogen neither sought, nor did Abitibi give, any assurances that Abitibi would be responsible for Cogen's accounts receivable from BPCL or any other party.

50. Subparagraphs 64(g)(h)and (l) of the Abitibi Contestation place great emphasis on the fact that Cogen knew of Abitibi's CCAA filing and its tenuous financial state. Cogen does not dispute this, but fails to see its relevance. Cogen's position is that it would not have continued to supply to BPCL in connection with the relevant period - November 2009 through to January 2010 (or any previous period for that matter) without the Post-Filing Support Commitment from Abitibi, precisely because it knew that BPCL was not capable of paying for its invoices on its own without external financial support.

51. Even the statements set out in the Abitibi Contestation and the Dea Affidavit support the fact that Cogen's primary objective was to get paid for ongoing supply:

a) The April 22, 2009 letter from Cogen to BPCL noted Cogen's concerns that BPCL would be unable to pay Cogen's future invoices;

b) Mr. Benson noted on April 29, 2009, in an email to Mr. Dea that "Cogen was very concerned about the nonpayment" and that "Cogen requested a letter from a director of BPCL indicating BPCL's intention to pay future invoices and that steam or electricity would not be consumed unless we had the ability to pay"; and

c) Mr. Guillot in the Guillot Affidavit acknowledges that "Cogen expressed concern about the losses that could be incurred should Bridgewater be unable to pay its invoices going forward."

52. Finally, the Abitibi allegation that Cogen neither sought, nor did Abitibi give any assurances that Abitibi would be responsible for Cogen's accounts receivable from BPCL, is incorrect and refuted by Abitibi's Contestation and supporting affidavits, including, without limitation, as follows:

a) On April 22, 2009, Cogen sent a letter to BPCL seeking confirmation of its understanding that its invoices would continue to be paid by BPCL with Abitibi's support as required (as in the past);

b) Barry Benson's response on April 23, 2009 did not rebut the foregoing statement;

c) Mr. Dea confirmed Cogen's understanding on or around April 29, 2009, when he instructed BPCL management to tell Cogen that its invoices would continue to be paid as in the past, no more and no less. Past invoices were all paid by BPCL with Abitibi's support as required.

d) Mr. Dea notes in paragraph 7 of his affidavit that BPCL would have needed to be wound down if the ESC were not restructured. Yet, from the Abitibi CCAA filing date to February 2, 2010, BPCL did not wind down its operations but continued to consume steam and electricity, notwithstanding Cogen's requests not to do so, unless BPCL intended to pay for such power. As detailed in my Affidavit dated Oct. 6, 2010, BPCL continued to draw down power and, in accordance with the ESC terms, Cogen had no choice but to supply such power until it was legally able to terminate the ESC.

H. The European Sales Transaction

53. The statements offered concerning this transaction in the Abitibi Contestation and supporting affidavits are inconsistent with Abitibi's position and assist in substantiating Cogen's position.

54. Abitibi's contestation is in essence twofold: (i) the European Sales Transaction was financially neutral to Bridgewater and had no impact on Cogen; and (ii) the European Sales Transaction was approved by the Court in a manner that precludes Cogen from raising the issues concerning same that it has raised.

55. The European Sales Transaction was not financially neutral to Bridgewater. Before the closing of the transaction, Abitibi provided financial assistance to BPCL by deferring the collection of amounts due to it each month from the collection of its European Sales. As a result, and as noted in paragraph 33 of the Abitibi Contestation, "Abitibi covered and continued to cover the negative cash flow experienced by Bridgewater in the months following Abitibi's CCAA filing in April 2009." As such, after the closing of the European Sales Transaction in November 2009, BPCL no longer had this source of cash flow to use as financial support.

56. The mechanism of Abitibi's financial support for Bridgewater was not disclosed before the Dea Affidavit was filed on October 27, 2010 in response to this motion. Indeed, up until that the filing of that affidavit, Abitibi even refused to admit that such a financial support commitment even existed. However, it is now clear that up to $60 million in financial support was withdrawn from BPCL by the European Sale Transaction. It is my understanding that in its motion seeking to approve the European Sales Transaction, Abitibi noted that it was supplying and invoicing BPCL approximately $15-20 million a month in respect of such supply. When that information is married with the financial support procedure described in the Abitibi affidavits filed in support of its Contestation, up to $45-60 million in liquidity would have been available to BPCL over the November 2009 - January 2010 period.

57. In the three (3) month period, as noted in paragraph 34 of the Dea Affidavit, between November 2009 and December 2009, BPCL's monthly reported EBITDA loss went from £(1,183,000) to £(5,508,000). The liquidity withdrawn from BPCL by the European Sales Transaction was far in excess of those losses - meaning that they would have been fully funded had Abitibi not pursued the transaction.

58. The European Sales Transaction clearly did have a direct and immediate impact on Cogen. BPCL stopped paying Cogen right after the closing of the European Sales Transaction was approved.

59. Quite simply, non payment occurred, because Abitibi, without disclosing to Cogen what it was doing, had stopped providing the unqualified financial support to which it had committed in April 2009, and instead it now appears, stripped out the liquidity needed to cushion BPCL's operating losses, and without telling Cogen or the court, capped Abitibi's external financial support for BPCL at a level insufficient to fund the

monthly losses being incurred by BPCL during that period, dooming the company to insolvency.

60. While Abitibi's participation in the European Sales Transaction was approved by the Court in November 2009;

a) BPCL's participation in the transaction was not so approved;

b) The actual financial impact on BPCL was neither disclosed nor approved; and

c) The impact of the transaction on Cogen was neither disclosed nor approved.

61. Abitibi represented to the Court that the consideration for the transaction was Abitibi's continued willingness to supply paper to BPCL. However, it does not appear that any such willingness actually existed:

a) The Abitibi affidavits disclose that BPCL's consent to the transaction was procured in July 2009 by threatening to cut off financial support unless BPCL consented. As Abitibi was BPCL's only source of financial support, and BPCL was its wholly owned subsidiary, BPCL was not really given any meaningful choice in the matter;

b) This threat was made at the same time that (i) Ernst & Young was appointed to consider options to inter alia liquidate BPCL; (ii) Abitibi purported to repudiate Cogen's Guarantee; both of which steps, it may reasonably be inferred, were preparatory steps for the liquidation of BPCL;

c) Only a few weeks before November 10, 2009 motion was heard, Ernst & Young to the knowledge of Abitibi, had been given a further mandate to explore detailed options to liquidate the company, a fact not mentioned in the November 10, 2009 motion materials;

d) The transaction left BPCL without the liquidity it had been relying upon to operate and no equivalent replacement had been arranged by Abitibi, a fact not mentioned in the November 10, 2009 motion materials. The lack of information about the true effect of the transaction in the court materials mirrors the lack of information about the true effect of the transaction provided to Cogen by BPCL only two (2) weeks earlier by Mr. Benson, BPCL's CFO, who reported to Abitibi's senior management;

e) Abitibi unilaterally lowered its level of financial support below the actual monthly operating losses of BPCL as of November 2009, a fact not mentioned in the November 10, 2009 motion materials; and

f) Abitibi now claims it then advised BPCL within a month of making that representation to the court that it was discontinuing all financial assistance. That it was considering any such step was not mentioned in the court motion, and Cogen was not informed of it at any time prior to the end of January, 2010 either.

It is reasonable to infer from these facts that: (i) Abitibi knew that BPCL had no other sources of financial support; (ii) Abitibi knew that BPCL could not purchase paper without Abitibi's financial support; and that (iii) Abitibi knew it was not going to provide adequate support for BPCL to do so. In short, it is reasonable to infer that Abitibi knew, despite what appeared in the November 10, 2009 court materials, that the purported consideration to BPCL for the surrender of BPCL's critical source of liquidity actually had no value, and that in fact there was no consideration at all. Rather Abitibi in essence was foreclosing upon its loan to BPCL, and triggering BPCL's collapse, something which it should have told both Cogen and the Court at the time.

I. Alleged Unfairness by Cogen Unfounded

62. Abitibi's materials contain various assertions that Cogen somehow acted unfairly. These claims are unfounded, and my response to these assertions are set out below:

63. It is suggested that Cogen was somehow unfairly benefitted by being paid the freely negotiated contractual price for the power it supplied to BPCL. However, Cogen is not unfairly benefitted when it simply is paid what BPCL promised to pay. In a long term contract, many variations can occur that make the price from time to time favourable to one side or the other. As the holder of a $107 million unsecured claim against Abitibi in respect of which a distribution of 3.5% is projected, Cogen has not been enriched but severely disadvantaged by the events of 2009 and 2010. Its claim is simply that to aggravate that loss even further by post filing conduct, is unfair and oppressive.

64. Abitibi also objects to the pricing but as noted above, it has mischaracterized the situation. The pure energy component was below market and the balance was in essence the rent for having a dedicated energy supply facility solely and exclusively available to it for 15 years.

65. Abitibi also objects to the indexation of the standing charges to the energy prices. But that is simply what BPCL decided to agree to in 1998 when it signed the contract presumably because it thought to do so based on its own projections was in its interest.

66. The Transfer Charge is described as punitive. But again it is simply a freely negotiated contractual term in a long term contract between sophisticated parties. As it turns out the clause did not benefit Cogen at all, as 96.5% of the amount is not going to be paid.

67. Abitibi also suggests that in a restructuring negotiation, Cogen should have lowered its pricing before Abitibi obtained lender consent to the *quid pro quo* requested in the Heads of Agreement to restructure the ESC. Mr. Guillot even goes so far to say that Cogen's living by their existing contract was the "straw that broke the camel's back". But Cogen agreed to change its pricing, surrender most of its Transfer Charge and had agreed to implement the entire ESC restructure by August 5, 2009. The delay was caused not by Cogen, but by Abitibi's failure to obtain lender consent to the draft deal, and its decision not to even try to seek lender consent after July 2009. Abitibi could have funded the BPCL "camel" for as long a journey as it wanted while it waited

for its lenders. Nothing broke BPCL's back other than its parent company refusing to supplement its bills the way it agreed to.

68. The Guillot Affidavit appears to suggest that Cogen preferred to have a peaker plant than its contract with BPCL. The notion that Cogen would wish to trigger a $107 million loss (its admitted claim less the £3.5 million attributed to the residual assets) rather than restructure is not only economically nonsensical, but is patently counter to the clear facts. Clearly, the best financial outcome for Cogen would have been for the CHP Plant to continue operating under the Energy Supply Contract terms delivering a forecast net present value ("NPV") of circa £80 million. To abandon this, for a strategy to operate the CHP plant as a peaking plant with an uncertain NPV of between £6 million - £10 million (at the time the Energy Link report was produced) would be unthinkable. Even if the ESC restructure had been adopted by BPCL on the Heads of Terms agreed, the NPV forecast at circa £48 million would have been more than the peaking plant value. In addition, the CHP Plant is ill suited for operation as a peaking plant because it was designed for "base load" operation i.e. continuous operation at maximum output with approx 10 stop/starts per year. Peaking plant operation involves short 1-2 hour periods of running with 50 - 200 stop/starts per year. The plant design for these two (2) operating regimes is very different. Ideally (and to secure the best value) the peaking plant should be capable of achieving full output within less than 5 minutes of a start instruction. The BPCL gas turbine is constructed for much slower start and loading rates (18-20 mins is the best likely to be achievable). In addition, the gas turbine components will suffer deterioration and potentially higher maintenance costs due to the high number of starts and the stresses of rapid loading rates. Finally, as a peaking plant, much of the installed equipment, steam turbine, steam boilers etc., would be redundant and have little or no open market resale value as they are broadly a bespoke design for the BPCL requirements.

J. <u>Status of the ESC Guarantee</u>

69. Abitibi notes that Cogen did not challenge the purported repudiation of the ESC Guarantee. But this misunderstands what Cogen advised Abitibi. Cogen in its solicitors letter to Abitibi on August 11, 2009 advised Abitibi that repudiation of the contract had not occurred, and flagged the defects that made the attempt ineffective. If the repudiation is ineffective, it is not Cogen that needs to do something, but rather Abitibi, because Cogen still has an ESC Guarantee unless Abitibi succeeds in properly repudiating it. If the issue is uncertain, either party could go to court, or both parties can wait until the status of the Guarantee becomes a specific issue that is not otherwise resolved between the parties. As it turns out, the parties are going to court over this issue in this motion because it has become a specific issue that was not resolved between the parties.

70. While there is a court order permitting Abitibi to repudiate contracts, the letter sent by Abitibi purporting to do so is not a court order, but a private act of Abitibi purportedly under that power. Whether Abitibi succeeded in invoking that power by privately sending that letter is the issue.

71. One of the things Abitibi acknowledges it had to do before it could use that power was obtain the consent of the Monitor. While Abitibi claims it has done so, I am not aware of it. Abitibi has in over a year failed to produce any evidence from the Monitor that it has done so. I am advised that (i) Greg Adams of the Monitor's office was present in the Claims Dispute hearing at the hearing table when this issue was initially being

discussed before the issue was withdrawn from the Claims Dispute process; and (ii) Mr. Adams addressed other issues in the claims dispute but offered no comment in support of Abitibi on this issue.

72. It would have been easy for Abitibi at any time before the sanction order to have reissued the repudiation notice if it otherwise met the criteria to do so. That was never done either.

73. The ESC Guarantee was an integral part of Cogen's ESC arrangement with BPCL and was negotiated together, particularly since BPCL's ability to perform under the agreement was entirely dependent on Abitibi's financial support.

74. Absent a replacement system for assuring BPCL was financially capable of performing, repudiation of the ESC Guarantee was effectively a termination of the ESC. That is why a discussion was required between Abitibi and Cogen before any purported repudiation was attempted. When the repudiation letter was sent and BPCL continued to draw power under circumstances where Cogen was told that Abitibi was providing financial support, and where BPCL could not lawfully trade without it, Cogen had a reasonable expectation that the alternative arrangement was in force to protect it from financial exposure through the continuance of the relationship. In that sense, the ESC Guarantee was not independently capable of being terminated without either admitting BPCL's insolvency, terminating the ESC, or providing equivalent financial protection.

K. <u>Status/No Waiver</u>

75. Abitibi's materials refer to the fact that the Cogen proof of claim against BPCL filed in the UK insolvency process does not raise these claims. However the Cogen proof of claim against BPCL is not a claim against Abitibi. The claim against Abitibi is raised in this proceeding, because it is a claim against Abitibi.

76. Abitibi indicates that the Administrator has not raised these claims against Abitibi. That is irrelevant, as the claim is neither more nor less valid by what the Administrator chooses to do. Cogen was the principal supplier and the principal party suffering damage by the conduct complained of. Cogen is not privy to the decision process of the Administrator and Abitibi has tendered no evidence of it either. As representative of a party which participated with Abitibi in the conduct complained of, its ability to make a claim would be very different than Cogen's, in any event.

77. Abitibi indicates that the Post Filing Supply claim is within the definition of claim because Cogen filed a proof of claim in respect thereof. However, the status and scope of the claim was controversial and for that reason, the claim was included as a precaution but with a clear reservation of rights to seek this relief, and a clear specification that the right to argue that the amount sought was outside the definition of Claim in the CCAA process.

L. <u>Non Disclosure of Documents by Abitibi</u>

78. The Court directed the parties to exchange requests to produce documents and then to respond to those requests. Cogen produced documents in response, but Abitibi has produced no documents in response beyond those upon which it seeks to rely in its affidavits. It only advised of this position on November 5, 2010. The specific

document requests not already attached to the Ansell affidavit, and Abitibi's responses not already so attached, are annexed hereto as **Exhibit "2"**.

79. It is clear that Abitibi has the documents as many of them are referred to in its materials including:

a) Monthly EBITDA reports from BPCL upon which Mr. Dea's calculations in his affidavit are based;

b) The reports of Ernst & Young to the BPCL board on which sit two (2) designates of Abitibi. Abitibi has admitted one of them, Mr. Melkerson, is in possession of the documents but claims that he possesses them personally. A designate of a parent company does not sit on the subsidiary board in a mere personal capacity - he also sits as the representative of the parent and is accountable to report to the parent and acquires the papers he or she acquires in that capacity. Abitibi nevertheless continues to refuse to produce them;

c) Similarly, Mr. Melkerson is in possession of board papers, minutes and notes from BPCL that Abitibi refuses to produce offering the same excuse as above;

d) The July 31, 2009 letter to BPCL advising of the proposal to transfer the European accounts receivable out of BPCL, referred to in the August 18 Support Commitment;

e) The August 11, 2009 legal advice to the BPCL directors which was tabled with the BPCL Board at the January 21, 2010, meeting where non directors were present and which is referenced in the minutes already filed in this proceeding;

f) Its proof of claim filed in the BPCL proceedings, of which Abitibi would have a copy, which would amongst other things illustrate if Abitibi actually provided the financial support to BPCL as it claims;

g) Proof that funding was advanced, which Abitibi as controller of the BPCL operations could easily have tendered at any time if it existed;

h) Communications with its lenders about the request to consent to the ESC restructuring; and

i) The 2001 Paper Supply Agreement with BPCL which is referenced in the August 18, 2009 support commitment (Abitibi threatened to terminate it in that document if BPCL did not surrender ownership of the European accounts receivable.

M. Other Incorrect Statements

80. Several statements made in Abitibi's materials are simply incorrect as follows:

a) Contrary to paragraph 2 of the Abitibi Contestation, Cogen did not know by December 2009 that Abitibi had determined to decline any further financial support of Bridgewater by this time;

b) Contrary to paragraph 2 of the Abitibi Contestation, Cogen was not aware of the meeting with the secured creditors in January, 2010. ;

c) Cogen was not aware of the monetary caps placed on the Post-Filing Support Commitment; and

d) Contrary to paragraph 2 of the Abitibi Contestation, Cogen and BPCL management did not openly discuss the difficulties with obtaining material financial assistance from Abitibi in the circumstances.

81. All the facts alleged in the present affidavit are true to my personal knowledge.

AND I HAVE SIGNED:

NAME Phillip C. Piddington.

SOLEMNLY DECLARED before me at
Swindon Wiltshire UK, this 11th day of November 2010

Solicitor D. LEACOCK.

This is Exhibit "1" referred to in the Reply Affidavit of Phillip Piddington, sworn before me this 11th day of November, 2010.

Commissioner for Taking Affidavits (or as may be)

Cogen Costs Relating to Post ACI Filing Claim

Line	Description		Nov-09	Dec-09	Jan-10	Feb-10
			£	£	£	£
1	Gas Fuel Costs		1,083,446.00	1,252,010.00	1,602,224.00	92,469.00
2	Gas Transportation Charges		53,167.00	54,513.00	55,212.00	36,493.00
3	Grid Connection Charges		19,191.18	19,191.18	19,191.18	19,191.18
4	Business Rates		16,166.67	16,166.67	16,166.67	16,166.67
5	Site Operational Costs		191,826.00	191,826.00	200,417.00	130,804.00
	Sub totals		1,363,796.85	1,533,706.85	1,893,210.85	295,123.85
	Total Post Filing Costs		**£ 5,085,838.40**			

Line 1 - Indicates the actual cost of the gas fuel that Cogen purchased to produce the steam and electricity in the CHP plant. This does not appear on the invoices as Cogen did not directly recharge the fuel cost to BPCL. This cost was recovered through the steam, electricity and standing charge. As a result, the amount does not reconcile to any line item on the invoice.

Line 2 - Indicates the transportation charges associated with the supply of fuel gas to the CHP plant. In calculating the steam and electricity prices to be charged to BPCL in a given month, the price paid per unit (pence per therm or pence per kWh) of natural gas is added to the transportation cost per unit of gas. The total price is then used in the indexation formulae stated in the contract. As a result, the amount does not reconcile to any line item on the invoice.

Line 3 - Indicates the grid connection charges which are fixed monthly costs that Cogen paid on behalf of BPCL (as BPCL were the counterparty to the Grid Connection Agreement) and recharges directly to BPCL (no mark up). This is shown on the invoice as "REC charges". Note: due to the way that grid connection meters are registered in the UK, the grid system operator charges the fixed fees to the meter registrant (i.e. Cogen in this case) and not the connection agreement counterparty if these differ.

Line 4 - Indicates the Business Rates payable to the UK government (via the local government authority) for the CHP installation at BPCL. As the owner of the CHP plant this cost is payable by Cogen but the ESC made this cost the responsibility of BPCL and hence was another direct pass through charge. This is shown on the invoice as "Business Rates".

Line 5 - Indicates the budgeted costs for Operation and Maintenance of the CHP Plant. This includes the salaries of the xx operators, engineers, plant manager and administrator, the monthly cost of the various maintenance / service contracts in place (e.g. gas turbine contract with GE), consumables (e.g. lubricating oils, filters, water treatment chemicals etc). This is not shown on the invoice as it is not a directly recharged cost.

This is Exhibit "2" referred to in the Reply Affidavit of Phillip Piddington, sworn before me this 11th day of November, 2010.

Commissioner for Taking Affidavits (or as may be)

From: Besant, Chris
Sent: Sunday, August 08, 2010 12:48 AM
To: Salvi, Lydia
Subject: FW: Abitibi/Npower -- Cogen Disputed Claim
original email with disclosure request...

Best regards,
Chris

Chris Besant
Partner
Baker & McKenzie LLP
Brookfield Place, Suite 2100
181 Bay Street, P.O. Box 874
Toronto, Ontario, Canada M5J 2T3
Tel: +1 416 865 2318
Fax: +1 416 863 6275

From: Besant, Chris
Sent: Tuesday, July 27, 2010 3:13 PM
To: Stephen W. Hamilton
Cc: lydia.salvi@bakemet.com; Joseph Reynaud
Subject: Abitibi/Npower – Cogen Disputed Claim

Hi Stephen

In preparation for the call, here are some things we need to discuss.

1. The Claims Process Order requires that the Monitor first attempt to explore resolution of the claim. That has not happened yet.

2. We have previously advised the Monitor and ACI counsel of our wish to schedule a motion regarding the interim protection of our claim to ensure that it is not affected by the release in the plan if it is not finally resolved before plan implementation, and to ensure that there are funds set aside to pay the claim if it is successful. We need to discuss this generally as it affects the claims hearing process.

3. We do not really have any definition of the issues. The Disallowance Notice was very sketchy outside of quantum and the status of the guarantee, and we have no response to the Dispute Notice defining the issue. It would be helpful if we could have a more complete response and a narrowing of the issues.

4. Our unsecured claim was allowed contingent on providing evidence as to the assignment of the Guarantee, which we provided. We have not had confirmation that the information provided is sufficient and would appreciate confirmation in that regard.

5. We need to discuss what sort of process we envisage to resolve the issues in dispute, but that very much depends on getting your position as to what is in dispute.

6. We have some informational requirements. In particular, we would like to receive the following documentation:

a. Backup to substantiate 14.7 transfer charge deduction of Monitor for value of power plant.

b. Support Commitments from Abitibi Group to BPCL to continue trading from April 17, 2009 until Feb. 2, 2010 and any amendments thereto, as well as Abitibi Bowater group materials and communications relating to whether to provide such a commitment and the terms and effect thereof

c. Abitibi group Board meeting minutes and board and management materials relating between June to Sept 2009 surrounding (a) the Support Commitment and approval thereof and (b) ACI decision to terminate financial support for BPCL

d. E and Y report to BPCL board on or around July 2009 re restructuring options for BPCL and Abitibi Group internal communications and memos concerning same.

e. Board meeting minutes and board and management materials of the Abitibi Group relating to the decision to transfer a substantial portion of BPCL s liquid assets to a newly created ACI entity on the eve of BPCLs shutdown

f. Board meeting minutes of Abitibi Group and BPCL and board and management materials relating to the decision to shut down BPCL and to file for administration on or about February 2010

g. Proofs of claim of Abitibi Group creditors in the BPCL administration process and in CCAA process.

We will advise of additional materials as needed, but this is a priority list.

I look forward to speaking with you.

Best regards,
Chris

Chris Besant
Partner
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Tel: +1 416 865 2318
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From: Stephen W. Hamilton [mailto:SHamilton@stikeman.com]
Sent: Tuesday, July 27, 2010 9:33 AM
To: Besant, Chris
Cc: lydia.salvi@bakernet.com; Joseph Reynaud
Subject: Abitibi/Npower

Mr. Nuss would prefer to have the call at 3:45. Are you available? If not, we can have the call at 4.

Stephen

Stephen Hamilton
Tél/Tel : 514-397-3055
shamilton@stikeman.com

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MONTRÉAL TORONTO OTTAWA CALGARY VANCOUVER NEW YORK LONDRES SYDNEY

From: Besant, Chris
Sent: Saturday, August 07, 2010 11:34 PM
To: Salvi, Lydia
Subject: FW: Cogen Claim vs ACI -Disclosure Repsonse
Disclosure requests and responses are in point 6 a-g below.

Best regards,
Chris

Chris Besant
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From: Sean Dunphy [mailto:SDunphy@stikeman.com]
Sent: Friday, August 06, 2010 3:04 PM
To: Besant, Chris
Cc: 'Leanne Williams'; Joseph Reynaud; Stephen W. Hamilton; 'Sophie Rossignol'
Subject: Cogen Claim vs ACI -Disclosure Repsonse

Chris - I set forth below our response on behalf of the Company to the points raised in the email below (and discussed in our call on Tuesday of this week):

"1. The Claims Process Order requires that the Monitor first attempt to explore resolution of the claim. That has not happened yet. "

As discussed, we view the process of establishing the claim of Npower against ACI under the Claims Process Orders as being the only matter before us at this time. We shall work with you of course to resolve or schedule the hearing you have mentioned regarding alleged priority status arising from allegations of regarding post-filing matters. We continue to co-operate with the Monitor in trying to narrow and resolve outstanding issues

"2. We have previously advised the Monitor and ACI counsel of our wish to schedule a motion regarding the interim protection of our claim to ensure that it is not affected by the release in the plan if it is not finally resolved before plan implementation, and to ensure that there are funds set aside to pay the claim if it is successful. We need to discuss this generally as it affects the claims hearing process. "

See above. As discussed, we invite you to provide a draft of your motion when you are ready and we can seek to narrow issues as appropriate. Justice Gascon is next sitting re Abitibi matters at the end of August and we would expect that a motion served before that time returnable on a date to be fixed by Justice Gascon can be delivered reasonably in advance of that hearing with a view to requesting scheduling.

"3. We do not really have any definition of the Issues. The Disallowance Notice was very sketchy outside of quantum and the status of the guarantee, and we have no response to the Dispute Notice defining the issue. It would be helpful if we could have a more complete response and a narrowing of the issues. "

I think our discussion has narrowed the issues greatly. As previously noted, we have reviewed the information provided by you regarding the assignment of the guaranty and indicated our satisfaction with it. The issues appear to resolve to a relatively small number:

a) the residual value of the plant which reduces the "liquidated damages" claimed - the Monitor has described its methodology in arriving at that value and listened to your clients explanations for a potentially different value. The Monitor shall be doing follow up investigations to determine whether its view has changed on the matter and communicate directly in due course. There does not appear to be a significant dispute about whether the residual value is relevant so much as a dispute as to that value and the Monitor will continue to review the matter in light of the representations made. In this regard, the Monitor was awaiting information from your client regarding the carbon credit issue in order to update its valuation.

b) whether "take or pay" claims can be added to the liquidated damages number or are subsumed within it (we clearly take the former view - the issue would appear to be primarily a narrow one);

c) whether there is any basis to be claiming post-filing supplies to a non-filing entity (BPCL) under the claims process;

These issues - relative to the claims required to be filed under the claims process and dealt with by the Claims Officer - are separate and distinct from the various matters which you have indicated you wish to bring in a separate motion. We will work diligently to narrow and resolve these issues regardless of the outcome of your motion as and when it is brought.

"4. Our unsecured claim was allowed contingent on providing evidence as to the assignment of the Guarantee, which we provided. We have not had confirmation that the information provided is sufficient and would appreciate confirmation in that regard. "

As indicated, we are satisfied with the evidence provided on this issue.

"5. We need to discuss what sort of process we envisage to resolve the issues in dispute, but that very much depends on getting your position as to what is in dispute. "

As noted, the Claims Procedure governs the main issues raised in your filed claim described generically in item (3) above. These will be determined by the Claims Officer. The other matters - oppression, claim for superpriority status etc - are reserved to the motion which you have indicated you will be filing. Obviously, if there is no order providing the relief you have indicated you will be seeking in that motion, then our position will be that the releases to be provided for in the Plan and Sanction Order as well as the Claims Bar orders made will govern.

"6. We have some informational requirements. In particular, we would like to receive the following documentation:

a. Backup to substantiate 14.7 transfer charge deduction of Monitor for value of power plant. "

The Monitor has provided you with a description of its methodology.

"b. Support Commitments from Abitibi Group to BPCL to continue trading from April 17, 2009 until Feb. 2, 2010 and any amendments thereto, as well as Abitibi Bowater group materials and communications relating to whether to provide such a commitment and the terms and effect thereof"

Npower is a creditor of BPCL who is in administration. Any claims that BPCL may have against ACI or others along the lines of the allegations raised belong to BPCL and not to its creditors directly. Our position is thus that Npower has no standing to request or review these documents which in any event relate to the intended motion and not directly to any claims under the Guarantee.

"c. Abitibi group Board meeting minutes and board and management materials relating between June to Sept 2009 surrounding (a) the Support Commitment and approval thereof and (b) ACI decision to terminate financial support for BPCL"

Npower is a creditor of BPCL who is in administration. Any claims that BPCL may have against ACI or others along the lines of the allegations raised belong to BPCL and not to its creditors directly. Our position is thus that Npower has no standing to request or review these documents which in any event relate to the intended motion and not directly to any claims under the Guarantee.

"d. E and Y report to BPCL board on or around July 2009 re restructuring options for BPCL and Abitibi Group internal communications and memos concerning same."

Npower is a creditor of BPCL who is in administration. Any claims that BPCL may have against ACI or others along the lines of the allegations raised belong to BPCL and not to its creditors directly. Our position is thus that Npower has no standing to request or review these documents which in any event relate to the intended motion and not directly to any claims under the Guarantee. Further, it is our understanding that much of what you seek relates to negotiations towards a restructuring undertaken between BCPL and Npower - negotiations which your client was obviously privy to.

"e. Board meeting minutes and board and management materials of the Abitibi Group relating to the decision to transfer a substantial portion of BPCL s liquid assets to a newly created ACI entity on the eve of BPCLs shutdown"

We have advised you that the transfer of accounts receivable to which you appear to be making reference was done pursuant to a Court order in Abitibi's CCAA process and that the receivables were all subject to security held by the Term Lenders. For further information on the transaction, we would direct you to the court file on the matter which is available on the Monitor's web site. Further, Npower is a creditor of BPCL who is in administration. Any claims that BPCL may have against ACI or others along the lines of the allegations raised belong to BPCL and not to its creditors directly. Our position is thus that Npower has no standing to request or review these documents which in any event relate to the intended motion and not directly to any claims under the Guarantee.

"f. Board meeting minutes of Abitibi Group and BPCL and board and management materials relating to the decision to shut down BPCL and to file for administration on or about February 2010"

Npower is a creditor of BPCL who is in administration. Any claims that BPCL may have against ACI or others along the lines of the allegations raised belong to BPCL and not to its creditors directly. Our position is thus that Npower has no standing to request or review these documents which in any event relate to the intended motion and not directly to any claims under the Guarantee.

"g. Proofs of claim of Abitibi Group creditors in the BPCL administration process and in CCAA process. "

We have indicated that we are not in a position to discuss resolving Npower claims vs ACI by discussing possible compromises of claims that other members of the Abitibi group of companies may have in the BPCL proceedings. We would direct your further questions in that regard to the Administrators of BPCL.

Sean Dunphy
Tel : (416) 869-5662
sdunphy@stikeman.com

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5300 Commerce Court West, 199 Bay Street, Toronto, ON, Canada M5L 1B9
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TORONTO MONTREAL OTTAWA CALGARY VANCOUVER NEW YORK LONDON SYDNEY

From: Besant, Chris
Sent: Saturday, August 07, 2010 11:40 PM
To: 'Sean Dunphy'
Cc: 'Leanne Williams'; 'Joseph Reynaud'; 'Stephen W. Hamilton'; 'Sophie Rossignol'; Spizzirri, Frank; Salvi, Lydia
Subject: COgen re ACI- Disclosure/Issue -- Request, Response + Reply

Hi Sean and Joseph
cc ALL

Point 1 and 2 - Motion re Post Filing Supply/Interim Relief --
We would like to arrange with you to have the motion put before the court on Sept 1 for scheduling and interim relief to ensure that the motion is not rendered nugatory by the plan. We are proposing to circulate that motion to you in draft next week as you requested. We understand that as long as the motion is served about a week before the Sept 1 scheduling hearing date, that this will be sufficient time to ensure it is on the docket to be dealt with. If we can work on interim terms with you in the meantime, the Sept 1 appearance will be shortened.

Point 3 - Issues
I agree that the discussion was helpful as is your email

> ***On point 3a,(Deduction re Plant residual Value)*** please note that our position is not simply that the value of the deduction is the issue, but whether as a matter of contractual interpretation, any deduction is required at all.
> The carbon credit information was provided today.

With respect to your general comment about the status of the Post filing Supply claim, we have not conceded that it is not within the claims process, and the claims officer while expressing hesitation has not ruled on the point. The uncertainty over whether the claims officer will deal with it is one reason why the motion is being brought. A second is interim relief. A third is that aspects of the i9mplementation of the ultimate relief sought may require court orders.

As a general matter, we should highlight that the running through your summary of the COgen claim is that it is a guaranty claim. It is not simply a guarantee claim. It is also a tort claim, by way of oppression and otherwise and against directors as well as the company. A number of your responses to the document requests are predicated on what we think is too narrow a characterization of the claim - i.e. missing the second limb of the claim - tortious conduct. We feel that the documents requested are directly relevant to the alleged tortious conduct, and that COgen is a directly injured party with status to request them.

Point 4 - Assignment
Your confirmation that this issue is now officially off the table is greatly appreciated as it simplifies the materials we are preparing to deliver to you by August 10 under the claims procedure.

Point 5 - Procedure
As noted above, we have not conceded that the post filing claims issues are outside the claims process and the claims officer has not yet ruled on the point, but we agree a motion is also desirable and will be filing one and circulating a draft to you next week. We have not yet decided if this really makes any difference, but we don't want to concede the point before we have had sufficient time to consider our view and the nuances of the orders etc. With the effort at complying with the relatively short Aug 10 claims argument deadline and getting you a draft motion, we will likely not get to a view on that p[oint before we file our materials in the claims process on August 10, but we can discuss it after that.

Point 6 - Disclosure Requests

As a general matter, we do not agree with your positions on declining to make disclosure of the documents requested in points b through g and reserve the right to rely on negative inferences arising from non disclosure, as well as to seek relief in respect thereof.

To the extent that the post filing supply issue is part of the claims process if at all, this could also potential cause a delay in the ability of the claims officer to deal with that part of the case on August 26 and 27 while disclosure is being sorted out. it may be helpful to further discuss this next week.

We also have the following specific responses in addition to anything we may assert in the claims process submissions and a - **Plant Residual Value Documentation** - we think we understand what your position is, but our concern is a practical one. As we have to file materials first, if there is some document you are going to rely on to support your claim, we think it should be provided now as the time to file reply is extremely short. otherwise it might cause a delay in the hearing schedule for August 26 and 27.

b and c. Support Commitments and related Documentation:
As noted above, your definition of the claim as arising solely from a guarantee rather than also sounding in tort and being against both the company and directors is in our view too narrow a definition of the issues raised in the proof of claim. The requested documents are directly and materially relevant to the tortious claim asserted. As you will see from our claims submission, the BPC Administrator has indicated that ACI support was not withdrawn until January 22, 2010, leading the board to file for Administration on Feb 2.

d. EY Reports:
The CCAA debtors appear to have misconceived the request. The BPCL Administrator (EY-UK) has revealed in a report filed publicly that a specific report was commissioned by the BPCL board in July 2009. That was not a negotiation between BPCL anc COgen, but a report to BPCL by EY-UK prior to it having any formal role in the administration of BPCL. We would like that report produced. It is reasonable to infer that the CCAA debtors have a copy, and that they can also request and obtain one from the BPCL administrator. We also would like production of the related correspondence, between any of the CCAA filing entities and BPCL Management and/or directors, concerning the request for the report, production of the report and the report itself and action to be taken in response to it, which we believe is similarly in the possession of or obtainable by the CCAA debtors.

There are further reports in October and December referred to in the BPCL Administration. We would like all of the EY UK report prior to its formal appointment, and the related correspondence. That material is directly relevant to the tortious claim asserted, including without limitation to the interpretation of the effect scope and status of the Nov 10, 2009 order transferring BPC UK assets to an Abitibi newco.

e. Materials re Asset Assignment to Abitibi Newco:
See our comments on points b through d. COgen is asserting a tort claim and has direct status as a result. We have read what i in the court file re the Nov 10, 2009 motion. There is a reasonable basis for inferences about the objectives and conduct of BPCL and ACI and their respective directors in that process.
Our clients request concerns information not in those Nov 10 court materials, the existence of which has been revealed through other sources, including reports of the UK Administrator of BPCL.

f. Materials re Shutdown Decision
See the responses to b through e.
COgen has direct standing to assert a claim sounding in tortious conduct and to obtain documentary evidence reasonably and materially relevant to that claim. The materials requested satisfy that threshold.
The BPCL Administrator reveals that EY-UK was retained by BPCL to do a restructuring assessment in July, a contingency planning report in October and an "options analysis" in December. These materials are represented in board minutes publicly file to have been specifically considered and relied on by the BPCL board at the end of January 2010 when it resolved to place the company in administration. The board minutes specifically also rely on the termination of ACI support for BPCL..
The requested materials appear to exist, are directly and materially relevant to the claim, and it is reasonable to infer that the CCAA Debtors have them or can obtain them from the Administrator.

g. Claims filed by CCAA Debtors against BPCL during the Administration
The claims are in the possession of the CCAA Debtors. They are directly relevant to a tortious claim asserted. They are not secret documents, and are filed in a UK Administration of a sister company of the CCAA Debtors with the sister company of the CCAA Monitor. Whether or not the CCAA Debtors agree with the claim asserted, there is no doubt they are relevant to that clain Making disclosure is not an admission of the validity of the claim. It is simply making information available with respect to the issues raised by each side.

I hope this is of some assistance. We hope that our submissions will assist in refining and narrowing the issues. We look forwar to continue the dialogue arising from our call which we thought, notwithstanding the areas of difference noted above, was quite productive.

Best regards,
Chris

Chris Besant
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Fax: +1 416 863 6275

From: Sean Dunphy [mailto:SDunphy@stikeman.com]
Sent: Friday, August 06, 2010 3:04 PM
To: Besant, Chris
Cc: 'Leanne Williams'; Joseph Reynaud; Stephen W. Hamilton; 'Sophie Rossignol'
Subject: Npower Cogen Claim vs ACI

Chris - I set forth below our response on behalf of the Company to the points raised in the email below (and discussed in our call on Tuesday of this week):

"1. The Claims Process Order requires that the Monitor first attempt to explore resolution of the claim. That has not happened ye
"

As discussed, we view the process of establishing the claim of Npower against ACI under the Claims Procedure Orders as being the only matter before us at this time. We shall work with you of course to resolve or schedule the hearing you have mentioned regarding alleged priority status arising from allegations of regarding post-filing matters. We continue to co-operate with the Monitor in trying to narrow and resolve outstandin issues.

"2. We have previously advised the Monitor and ACI counsel of our wish to schedule a motion regarding the interim protection of our claim to ensure that it is not affected by the release in the plan if it is not finally resolved before plan implementation, and to ensure that there are funds set aside to pay the claim if it is successful. We need to discuss this generally as it affects the claims hearing process. "

See above. As discussed, we invite you to provide a draft of your motion when you are ready and we can seek to narrow issues as appropriate. Justice Gascon is next sitting re Abitibi matters at the end of August and we would expect that a motion served before that time returnable on a da to be fixed by Justice Gascon can be delivered reasonably in advance of that hearing with a view to requesting scheduling.

"3. We do not really have any definition of the issues. The Disallowance Notice was very sketchy outside of quantum and the status of the guarantee, and we have no response to the Dispute Notice defining the issue. It would be helpful if we could have a more complete response and a narrowing of the issues. "

I think our discussion has narrowed the issues greatly. As previously noted, we have reviewed the information provided by you regarding the assignment of the guaranty and indicated our satisfaction with it. The issues appear to resolve to a relatively small number:

a) the residual value of the plant which reduces the "liquidated damages" claimed - the Monitor has described its methodology in arriving at that value and listened to your clients explanations for a potentially different value. The Monitor shall be doing follow up investigations to determine whether its view has changed on the matter and communicate directly in due course. There does not appear to be a significant dispute about whether the residual value is relevant so much as a dispute as to that value and the Monitor will continue to review the matter in light of the representations made. In this regard, the Monitor was awaiting information from your client regarding the carbon credit issue in order to update its valuation.

b) whether "take or pay" claims can be added to the liquidated damages number or are subsumed within it (we clearly take the former view - the issue would appear to be primarily a narrow one);

c) whether there is any basis to be claiming post-filing supplies to a non-filing entity (BPCL) under the claims process;

These issues - relative to the claims required to be filed under the claims process and dealt with by the Claims Officer - are separate and disti from the various matters which you have indicated you wish to bring in a separate motion. We will work diligently to narrow and resolve th issues regardless of the outcome of your motion as and when it is brought.

"4. Our unsecured claim was allowed contingent on providing evidence as to the assignment of the Guarantee, which we prov We have not had confirmation that the information provided is sufficient and would appreciate confirmation in that regard."

As indicated, we are satisfied with the evidence provided on this issue.

"5. We need to discuss what sort of process we envisage to resolve the issues in dispute, but that very much depends on gett your position as to what is in dispute."

As noted, the Claims Procedure governs the main issues raised in your filed claim described generically in item (3) above. These will be determined by the Claims Officer. The other matters - oppression, claim for superpriority status etc - are reserved to the motion which you ha indicated you will be filing. Obviously, if there is no order providing the relief you have indicated you will be seeking in that motion, then ou position will be that the releases to be provided for in the Plan and Sanction Order as well as the Claims Bar orders made will govern.

"6. We have some informational requirements. In particular, we would like to receive the following documentation:

a. Backup to substantiate 14.7 transfer charge deduction of Monitor for value of power plant.

The Monitor has provided you with a description of its methodology.

"b. Support Commitments from Abitibi Group to BPCL to continue trading from April 17, 2009 until Feb. 2, 2010 and any amendments thereto, as well as Abitibi Bowater group materials and communications relating to whether to provide such a commitment and the terms and effect thereof"

Npower is a creditor of BPCL who is in administration. Any claims that BPCL may have against ACI or others along the lines of the allegatio raised belong to BPCL and not to its creditors directly. Our position is thus that Npower has no standing to request or review these document which in any event relate to the intended motion and not directly to any claims under the Guarantee.

"c. Abitibi group Board meeting minutes and board and management materials relating between June to Sept 2009 surrounding the Support Commitment and approval thereof and (b) ACI decision to terminate financial support for BPCL"

Npower is a creditor of BPCL who is in administration. Any claims that BPCL may have against ACI or others along the lines of the allegatio raised belong to BPCL and not to its creditors directly. Our position is thus that Npower has no standing to request or review these documents which in any event relate to the intended motion and not directly to any claims under the Guarantee.

"d. E and Y report to BPCL board on or around July 2009 re restructuring options for BPCL and Abitibi Group internal communications and memos concerning same."

Npower is a creditor of BPCL who is in administration. Any claims that BPCL may have against ACI or others along the lines of the allegation raised belong to BPCL and not to its creditors directly. Our position is thus that Npower has no standing to request or review these documents which in any event relate to the intended motion and not directly to any claims under the Guarantee. Further, it is our understanding that much what you seek relates to negotiations towards a restructuring undertaken between BCPL and Npower - negotiations which your client was obviously privy to.

"e. Board meeting minutes and board and management materials of the Abitibi Group relating to the decision to transfer a substantial portion of BPCL s liquid assets to a newly created ACI entity on the eve of BPCLs shutdown"

We have advised you that the transfer of accounts receivable to which you appear to be making reference was done pursuant to a Court order in Abitibi's CCAA process and that the receivables were all subject to security held by the Term Lenders. For further information on the transacti we would direct you to the court file on the matter which is available on the Monitor's web site. Further, Npower is a creditor of BPCL who is i administration. Any claims that BPCL may have against ACI or others along the lines of the allegations raised belong to BPCL and not to its creditors directly. Our position is thus that Npower has no standing to request or review these documents which in any event relate to the intend motion and not directly to any claims under the Guarantee.

"f. Board meeting minutes of Abitibi Group and BPCL and board and management materials relating to the decision to shut down

BPCL and to file for administration on or about February 2010"

Npower is a creditor of BPCL who is in administration. Any claims that BPCL may have against ACI or others along the lines of the allegatio raised belong to BPCL and not to its creditors directly. Our position is thus that Npower has no standing to request or review these documents which in any event relate to the intended motion and not directly to any claims under the Guarantee.

"g. Proofs of claim of Abitibi Group creditors in the BPCL administration process and in CCAA process. "

We have indicated that we are not in a position to discuss resolving Npower claims vs ACI by discussing possible compromises of claims that other members of the Abitibi group of companies may have in the BPCL proceedings. We would direct your further questions in that regard t Administrators of BPCL.

Sean Dunphy
Tel : (416) 869-5662
sdunphy@stikeman.com

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TORONTO MONTREAL OTTAWA CALGARY VANCOUVER NEW YORK LONDON SYDNEY

Karolia, Shaheen

From: Salvi, Lydia

Sent: Wednesday, November 10, 2010 4:15 PM

To: Karolia, Shaheen

Subject: FW: Cogen Supplemental Document Request - Cogen Motion

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From: Besant, Chris
Sent: Thursday, September 30, 2010 7:11 PM
To: Elizabeth Pillon; Salvi, Lydia
Cc: Joseph Reynaud; Spizzirri, Frank
Subject: Cogen Supplemental Document Request - Cogen Motion

Dear Liz and Joseph;

Further to yesterday's court appearance, Cogen also requests, in addition to the document requests specified in Exhibit 17 of the Cogen Motion, production of the following documents from Abitibi:

All documents in the possession custody or control of Abitibi relevant to the issues in the motion, including without limitation the documents enumerated below. in this request the terms "documents" and "communications" includes papers, memoranda, messages, letters, emails, notes, contracts, agreements, and any attachments to same, and any drafts of same, both internal and to third parties, in any form whether hard copy or electronic. "Post filing" refers to the time period from and after April 17, 2009. Defined terms used herein, unless otherwise specified, shall have the same meaning as used in the Cogen Proofs of Claim, Cogen Claims and Reply Submission, and the Cogen Motion.

Enumerated Documents Requested:

MANAGED SHUTDOWN DISCUSSIONS PRE FILING
1. any documents pertaining to the prefiling negotiations with Cogen over the proposed managed shutdown of the BPCL facility and the Non Disclosure Agreement related thereto

RESTRUCTURE OF COGEN/BPCL RELATIONSHIP
2. any documents pre and post filing pertaining to the negotiations between BPCL and/or Abitibi pertaining to the proposed restructuring of the BPCL/Cogen relationship

3. any communications post filing between Abitibi and its secured lenders concerning the proposed restructure of the Cogen/BPCL relationship, including without limitation requests for their consent to same

PURPORTED REPUDIATION OF ACI GUARANTEE OF ESC
4. any documents pertaining to the decision to issue the July 7, 2009 notice purporting to repudiate the Abitibi Guarantee of the BPCL obligations under the ESC, including any documents pertaining to the planning of that decision

5. any documents illustrating the analysis of the benefit to Abitibi and or its CCAA restructuring process, of the repudiation of the Cogen Guarantee

6. any documents evidencing the approval by the CCAA Monitor of the repudiation of the ACI Guarantee of the ESC>

FINANCIAL STATUS and REPORTING
7. any reports or communications post filing from BPCL to inter alia ACI on its affairs, financial status, efforts to

restructure, potential shutdown and requests or needs for financial support

8. Any Abitibi's internal policy and/or standard forms regarding reporting procedures required of its direct and indirect subsidiary companies, including any policy specifically with respect to BPCL.

9. Any reports or documents prepared by John Melkerson or Jacques Vachon post filing commenting upon BPCL or upon its affairs, financial status, efforts to restructure, potential shutdown and requests or needs for financial support, or its relationship with Cogen

FINANCIAL SUPPORT OF BPCL

10. All communications post filing between Abitibi and BPCL and/or any of its directors and officers concerning requests or need for financial support for BPCL from Abitibi, and requests for financial support commitments from Abitibi, including without limitation, any that reference Cogen.

11. All drafts of any financial support commitment from ACI to BPCL and or its directors and officers, and any other documents concerning any such financial support commitment, including without limitation, any that reference Cogen. (the financial support commitments themselves have already been requested)

12. All internal communications, and all communications between BPCL and/or any of its officers and directors, concerning communications with Cogen regarding the financial status of BPCL ,and Abitibi's financial support for BPCL, including without limitation, any that reference Cogen.

13. internal requisitions for payments of financial support to BPCL post filing, including any supporting detail re payments of financial support to BPCL, and including without limitation, any that reference Cogen.

14. All internal communications, and all communications between BPCL and/or any of its officers and directors, concerning communications with Cogen regarding the possibility of terminating financial support Abitibi's financial support for BPCL, including without limitation, any that reference Cogen.

15. A copy of any communications from Abitibi to BPCL and/or any of its officers and directors advising of the termination of Abitibi's financial support for BPCL and any communications in response and/or resulting from same, including without limitation, any that reference Cogen.

16. Any post filing documents of ACI referencing the UK Insolvency Act 1986 in relation to BPCL

SHUTDOWN PLANNING RE BPCL POST FILING

17. All internal communications, and all communications with Ernst & Young, BPCL and/or any of its officers and directors or any other third party, post filing regarding the considerations of options, proposals, planning, costs and/or decisions to shut down BPCL and re the implementation of any such decisions, including without limitation any that reference Cogen;

18. internal analyses calculating and/or discussing or commenting upon post filing the projected financial impact of the shutdown of BPCL, including any that reference Cogen or Abitibi;

19. any internal communications or communications post filing with Ernst and Young and /or BPCL and/or any of its officers and directors, concerning proposals and/or plans and/or procedures and/or costs to transfer assets out of BPCL, including the transfers which resulted in the November 10, 2010 motion and order in the CCAA proceedings concerning BPCL asset transfers; including without limitation any that reference Cogen;

ACI FINANCIAL RELATIONS WITH BPCL POST FILING

20. Any running balances generated post filing (and if one has not been generated in hard copy, a hard copy output of that information covering the period from April 17, 2009 to February 2, 2010) showing the extensions of credit in any form, including through the supply of goods to, and payments to ACI from BPCL (and if one has not been generated in hard copy, a hard copy output of electronic information covering the period from April 17, 2009 to February 2, 2010)
(the proofs of claim filed by Abitibi and its affiliates in the BPCL Administration have already been requested)

REPRESENTATIONS TO COGEN BY BPCL AND/OR ABITIBI

21. any documents generated internally by Abitibi or BPCL, or communications by Abitibi or BPCL with third parties concerning any representations made post filing by BPCL or Abitibi or any of its officers or directors concerning
-- the financial status of BPCL,
-- Abitibi's post filing financial support for BPCL,
-- Abitibi's financial support commitment to BPCL and/or its directors
-- any assurances that any shutdown of BPCL would be a managed shutdown
-- any assurances that Cogen would be paid in respect of its post filing supply of Abitibi
-- communications referencing discussions,m whether oral or in document form, between any of: Abitibi, BPCL, any director or officer so of BPCL, Allan Dea, John Melkerson, Thor Thorsteinson, Andrew Cunningham, Close Brothers, Barry Benson, Paul Doyle, Jean Francois Guillot; and any representative of Cogen concerning the post filing future of BPCL, BPCL's financial position, plans to continue BPCL operations into 2010, the impact of the proposed transactions which became the subject of the November 10, 2009 motion, any potential shutdown of BPCL, Abitibi's financial support for BPCL, any Abitibi financial support commitment for BPCL, and the funding of any of BPCL's post filing supply obligations to Cogen

22. any documents generated internally by Abitibi or BPCL or John Melkerson or Jacques Vachon, or communications by Abitibi or BPCL with third parties, reporting or commenting upon the matters in 14.

REPORTS BY ERNST & YOUNG UK

23. Any documents or communications referencing any engagements by BPCL of Ernst & Young in or after July 2009 (the resulting reports have already been requested)

24. Any documents or communications referencing the work being done by Ernst & Young UK for BPCL and or its directors and officers at any time after July 1, 2009

25. Any communications sent by Ernst & Young to Abitibi, BPCL or any of their officers or directors or employees.

26. Any documents or communications referencing any engagements by BPCL of Ernst & Young in or after July 2009

BPCL JAN 2010 SHUTDOWN BOARD MEETING

27. Any reports by Abitibi or BPCL or any director or officer or employee of either, or of any other person in attendance at, upon the January 22 and 25 board meetings of BPCL reporting on such meeting s or what transpired at such meetings, or upon the materials put before the board at such meetings, both on the record and off the record; (the minutes and board papers have already been requested)

28. The documents engaging and or instructing Ernst & Young to perform such work

29. Any documents of Abitibi prepared in anticipation of such meetings or in consequence of those meetings.

ABITIBI SUPPORT COMMITMENT TO THE BPCL ADMINISTRATOR

30. the Abitibi Financial Support Commitment given to the BPCL administrator

We reserve the right to amend, correct, or supplement the request to the extent permitted by the applicable rules of procedure, the schedule and the court.

We would be pleased to clarify specific requests if you are uncertain as to their import.

Best regards,
Chris

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Tel: +1 416 865 2318
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From: Amy Sevigny [mailto:ASevigny@stikeman.com] **On Behalf Of** Elizabeth Pillon
Sent: Thursday, September 30, 2010 4:22 PM
To: Besant, Chris; Salvi, Lydia
Cc: Elizabeth Pillon; Joseph Reynaud
Subject: Abitibi Doc Request - Cogen Motion

Please see the attached correspondence.

Elizabeth Pillon
Tel : (416) 869-5623
lpillon@stikeman.com

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BY E-MAIL

November 5, 2010
File No.: 041053.1170

Christopher W. Besant
Lydia Salvi
Frank Spizzirri
Baker & McKenzie LLP
BCE Place
181 Bay Street, Suite 2100
P.O. Box 874
Toronto ON M5J 2T3

Dear Counsel:

Re: AbitibiBowater Inc. et al. /NPower Cogen Ltd. ("Cogen")
Cogen Motion - Document Requests

On July 27, 2010, Mr. Besant wrote to Stikemans seeking various documents - Exhibit 17 to the Cogen motion. The parties discussed these productions requests prior to the claims hearing before Justice Nuss and thereafter. Mr. Dunphy's earlier emails to you - attached as Exhibit 17 - outline Abitibi's position on these production requests. We note that some of the requested documents and information have now been provided directly from the Monitor or through productions attached to Abitibi's Contestation and Supporting Affidavits.

During our conference call on September 29, 2010, Mr. Besant raised the possibility of a supplementary document request being made. We understood and discussed the limitations of such a supplementary request to be matters which were new - not matters which could have otherwise been raised in the months prior to the Cogen Claim being pursued before the Court. We then received Mr. Besant's email of September 30, 2010. In our view this supplementary request was excessive and exceeded the parameters of our original discussions.

Productions have been made as part of the Contestation and Affidavit materials filed that should be adequate for Cogen to pursue its claim and the Court to determine the issues before it. Such disclosure included the financial assurances letters from Abitibi to BPCL and emails/notes from Mr. Dea in respect of his conversation with Mr. Piddington which Cogen has raised as an issue in this matter, as well as other documentation.

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In respect of any outstanding document requests, our position is as follows:

- Cogen has not yet persuaded Abitibi or more importantly the Court overseeing Abitibi's CCAA proceedings that Cogen has standing to bring its claim, *effectively* on behalf of BPCL and its Administrator, and therefore its entitlement to the documentation and information being requested. Until such time as that precondition has been met, Abitibi is not prepared to incur the expense of further discovery, nor ask its management, who remain focused on the restructuring efforts of Abitibi, to incur any further time in searching their historical records in this regard;

- In respect of the derivative nature of Cogen's claim, we note that the Claim filed by Cogen into the BPCL estate reflects that no priority or secured claim has been sought; nor any wrongful trading or misrepresentation claims made as against BPCL and/or its directors. Cogen has for some reason instead chosen to pursue such allegations by way of an indirect route in pursuing its claims against Abitibi. Having failed to raise these issues with BPCL - so that its Administrator could respond and, if necessary, address any concerns it had with Abitibi - it is difficult for Abitibi to voluntarily agree to incur the costs and time of accommodating Cogen's excessive production requests;

- BPCL is itself in Administrative proceedings in the UK. BPCL's books and records are with its Administrator. As such, any relevant requests for documentation relating to BPCL should be made by Cogen directly to the Administrator of BPCL;

- The issues involving the Guarantee and quantification of a potential claim relating thereto have already been addressed by Justice Nuss in his determination of Cogen's claim. As such, in our view, no further productions in respect of the repudiation of the Guarantee is required;

- Matters involving pre-filing discussions relating to potential restructuring of the ESC. While Cogen has raised this historical time period in its materials, in our view this time period is irrelevant to the matters in issue before the Court;

- Post filing negotiations between Cogen and BPCL regarding the ESC. As is clear from the evidence before the Court, Cogen was actively involved in negotiations of a restructured ESC. As such, Cogen is in as good a position as any to supply information it believes to be relevant regarding this issue to the Court;

- Reports supplied by E&Y UK to BPCL are the property of E&Y UK. Furthermore, such reports and information specifically have confidentiality requirements and privilege attached to them, and as such neither BPCL nor Abitibi are at liberty to produce these documents;

- Abitibi Group Board Minutes. Minutes were not finalized in respect of Abitibi meetings during the relevant timeframe;

- Matters involving the transaction involving BPCL's accounts receivable in late 2009. This matter was placed before the CCAA Court for approval in November 2009 and at that time Cogen had access to the information available to the public and the Court in approving this transaction. Cogen did not oppose the motion. The transaction was approved. Given this history, Abitibi will not provide documentation relating to these historical events.

As noted above, we believe Cogen's claim can proceed to the hearing before Justice Gascon on the basis of productions to date. We will proceed on this basis to the November 16 and 17 hearing.

Yours truly,

Elizabeth Pillon

EP/as