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DATE: **Le 5 mars 2010**

DESTINATAIRE/TO: **Me Jean Fontaine et Me Mathew Liben / 514-397-3487**
Me Louis Gouin / 514-286-5474
Me Sylvain Vauclair / 514-875-6246
Me Sandra Abitan / 514-904-8101

OBJET: **In the matter of the plan of arrangement and compromise of :**
White Birch Paper Holding Co. et al
C.S.M.: 500-11-038474-108

Madame et Messieurs les procureurs,

Veuillez trouver ci-joint copie des motifs de jugement dans le dossier précité.

Salutations distinguées.

Nombre de pages: 17 (incluant celle-ci)
Number of pages: (including this one)

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Manon Quesnel, adjointe de l'Honorable Robert Mongeon, j.c.s.

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-11-038474-108

DATE: March 4, 2010

UNDER THE PRESIDENCY OF: THE HONOURABLE ROBERT MONGEON, J.S.C.

-and-
STADACONA GENERAL PARTNER INC.
-and-
BLACK SPRUCE PAPER INC.
-and-
F.F. SOUCY GENERAL PARTNER INC.
-and-
3120772 NOVA SCOTIA COMPANY
-and-
ARRIMAGE DE GROS CACOUNA INC.
-and-
PAPIER MASSON LTÉE
Petitioners
-and-
ERNST & YOUNG INC.
Monitor
-and-
STADACONA LIMITED PARTNERSHIP
-and-
F.F. SOUCY LIMITED PARTNERSHIP
-and-
JM1836 **F.F. SOUCY, INC. & PARTNERS, LIMITED PARTNERSHIP**
Mis en Cause

REASONS FOR JUDGMENT
ON PETITIONERS' MOTION FOR THE ISSUANCE OF AN INITIAL ORDER
Sections 11 and following Companies Creditors' Arrangement Act ("CCAA")

[1] On February 24, 2010, I granted the Petitioners' Motion for the Issuance of an Initial Order pursuant to Sections 11 and following of the CCAA, with reasons to follow.

[2] Here are my reasons.

I. INTRODUCTION

(A) PETITIONERS

[3] Petitioner White Birch Paper Company ("**WB**") is a Nova Scotia company with holdings principally situated in the Province of Québec;

[4] WB is owned by a partnership, White Birch Partners L.P., which in turn is fully owned (both directly and through further intermediaries) by Petitioner White Birch Paper Holding Company ("**WB Holding**");

[5] WB is the parent company of Petitioners Stadacona General Partner Inc. ("**Stadacona GP**"), F.F. Soucy General Partner Inc. ("**FF Soucy GP**"), Black Spruce Paper Inc. ("**Black Spruce**") and 3120772 Nova Scotia Company ("**3120772**");

[6] Bear Island Paper Company LLC ("**Bear Island**"), a Virginia company, is also a subsidiary of WB, but is not a Petitioner hereunder as its assets and operations are located in the United States;

[7] WB is also the ultimate parent company of Petitioners Papier Masson Ltée ("**Papier Masson**") and Arrimage de Gros Cacouna Inc. ("**Arrimage**");

[8] The Mises en Cause, Stadacona Limited Partnership ("**Stadacona LP**"), F.F. Soucy Limited Partnership ("**FF Soucy LP**") and F.F. Soucy, Inc. & Partners, Limited Partnership ("**FF Soucy & Partners LP**") (referred to collectively herein as the "**Partnerships**") are not petitioners in these proceedings;

[9] WB and the other Petitioners seek to have the stay of proceedings sought hereunder extended to the Partnerships as they form an integral and intimately interconnected part of the business of the Petitioners. They represent that the operations of the Partnerships are so integral to and intertwined with those of the Petitioners that failure to extend the stay to them would have a negative impact on the

value of the Petitioners and would make it impossible to the Petitioners to successfully restructure;

[10] WB, Stadacona GP, FF Soucy GP, Black Spruce, Papier Masson, 3120772, Arrimage, Bear Island and the Partnerships will be referred to collectively herein as the "**WB Group**";

[11] WB Holding is privately owned and has its executive office in Greenwich, Connecticut, U.S.A.;

[12] The WB Group operates three pulp and paper mills in the province of Québec, which, together with a fourth mill situated in Virginia and operated by Bear Island, collectively have a yearly production capacity of 1.3 million metric tons of newsprint and directory paper with up to 50% recycled content;

[13] Each of the Petitioners and Partnerships has its chief place of business in the Province of Québec;

(B) ORDER SOUGHT

[14] The Petitioners seek, *inter alia*, the following conclusions:

a) a declaration that Petitioners are companies to which the CCAA applies;

b) a declaration that the protection of the CCAA extends to the Partnerships;

c) a declaration authorizing each of the Petitioners or the WB Group as a whole to file a plan of arrangement under the CCAA;

d) a declaration ordering that all proceedings against the Petitioners, the Partnerships and their assets be stayed and suspended;

e) a declaration authorizing the borrowers set out in the Interim Financing Credit Agreement to borrow a maximum amount of USD$140 million under an interim financing facility secured by a priming charge;

f) the appointment of Ernst & Young Inc. ("Ernst") as monitor (the "Monitor") pursuant to Section 11.7 of the CCAA;

g) such further order and/or relief as this Court may deem just.

II. OPERATIONS

(A) OVERVIEW

[15] The WB Group is a major owner and operator of newsprint mills, principally in the province of Québec;

[16] As of December 31, 2009, it has the second-greatest newsprint production capacity in North America, with a market share of approximately 12%;

[17] It has annual net sales of approximately US$667 million as of December 31, 2009;

[18] As of January 2010, the WB Group has approximately 1,278 employees;

[19] The WB Group's Canadian newsprint mills are situated at Québec City (the "**Stadacona Mill**"), Rivière-du-Loup (the "**Soucy Mill**") and Masson-Angers, Québec (the "**Papier Masson Mill**"), and its United States mill is situated in Ashland, Virginia (the "**Bear Island Mill**");

[20] Stadacona LP also owns and operates a sawmill, under the name of Scierie Leduc ("**Leduc Sawmill**");

(B) THE STADACONA MILL

[21] The Stadacona Mill was purchased by the WB Group in 2004, and is owned and operated by Stadacona LP;

[22] It features five (5) paper machines capable of producing 410,000 metric tons of newsprint per year, 95,000 tons per year of directory paper and 45,000 tons per year of paperboard;

[23] The workforce at the Stadacona Mill has recently been significantly reduced, from a total of 1,014 in 2004 to a current total of 585 employees;

(C) LEDUC SAWMILL

[24] The Leduc Sawmill is located in St-Émile, Québec and employs approximately 20 people;

(D) THE SOUCY MILL

[25] The Soucy Mill was acquired by the WB Group in 1973, and is jointly owned and operated by FF Soucy LP and FF Soucy & Partners LP;

[26] The Soucy Mill features two (2) newsprint machines, which together have an annual newsprint production capacity of 265,000 metric tons;

[27] The Soucy Mill also produces uncoated ground wood specialty paper;

[28] The Soucy Mill currently employs 231 people;

(E) ARRIMAGE GROS CACOUNA

[29] Arrimage provides stevedoring services, specializing in paper products, at the Gros-Cacouna Seaport, near Rivière-du-Loup, Québec;

[30] Its primary purpose is to load WB Group paper products on ships, for marine shipment to foreign clients;

(F) THE PAPIER MASSON MILL

[31] The Papier Masson Mill was purchased by the WB Group in 2006, and is owned and operated by Papier Masson;

[32] The Papier Masson Mill has one newsprint machine capable of producing 245,000 metric tons of newsprint per year;

[33] Following WB Group's acquisition of the Papier Masson Mill, the workforce was significantly reduced from 287, and currently stands at 186 employees;

(G) THE BEAR ISLAND MILL

[34] The Bear Island Mill was built by the WB Group in 1979;

[35] It is owned by Bear Island, which is not a Petitioner in the present proceedings;

[36] It operates a single newsprint paper machine, which has a capacity of 235,000 metric tons per year;

[37] The Bear Island Mill currently employs 199 people;

(H) EMPLOYEES

[38] As stated above, the WB Group presently employs 1,278 people.

[39] With the exception of the Bear Island staff, all such employees are situated in the Province of Québec, such that the Petitioners and Partnerships employ approximately 1,100 people in Québec. These employees are, for the most part, unionized.

[40] Unionized employees of the Stadacona Mill, the Soucy Mill and the Papier Masson Mill are members of the Communications, Energy and Paperworkers Union:

a) For the Stadacona Mill: Locals 137, 200, 250 and 299;

b) For the Soucy Mill: Locals 625, 627 and 905;

c) For the Papier Masson Mill: Locals 11 and 1104;

[41] The unionized employees of Stadacona LP's Leduc Sawmill are members of a distinct union, the Syndicat Démocratique des Salariés de la Scierie Leduc;

[42] At Arrimage, the unionized employees are members of the Syndicat des Employés d'Arrimage Gros-Cacouna;

III. FINANCIAL SITUATION

A) OVERVIEW AND CAUSES OF FINANCIAL DIFFICULTIES

[43] The Petitioners and the Partnerships are currently confronted with an unprecedented combination of negative circumstances;

[44] In addition to the worldwide economic downturn, the newsprint industry is experiencing a particular harsh decline in demand as electronic alternatives replace printed media;

[45] Newsprint prices dropped nearly $330 per metric ton from the fourth quarter of 2008 until August 2009, a negative impact of approximately $380 million for the WB Group, on the basis of full capacity operation;

[46] Moreover, the increased strength of the Canadian dollar and the weakness of the United States dollar has exacerbated the negative impact of the decline, as most of the WB Group's clients are in the United States and remit payment in United States currency, while most expenses are payable in Canadian currency;

[47] In sum, the Petitioners' and Partnerships' financial and operational challenges are principally attributable to the following factors :

a) the overall decline in the world economy and its impact on demand for and price and inventories of newsprint;

b) fundamental decline in demand for newsprint as consumers move away from print media;

c) increased strength of the Canadian dollar and corresponding weakness of the American dollar;

d) significant debt service obligations;

e) the detrimental effect of low floating interest rates on the WB Group's position in certain major interest rate swap transactions;

[48] These factors have led to a significant liquidity shortfall, such that the Petitioners and Partnerships are unable to respect their debt service obligations;

[49] EBITDA (earnings before interest, taxes, depreciation and amortization) will not be sufficient to service the Petitioners' and Partnerships' debt and to fund required expenditures within the upcoming months;

[50] This liquidity crisis demands an urgent solution, in light of the following payments that became due on September 30, 2009 and which remain unpaid:

(a) interest payment on the First Term Loan Facility: US$3,666,672.19;

(b) interest payment on the Second Term Loan Facility: US$1,380,000.00;

(c) accelerated payments under the Swap Agreements (as defined below): approximately US$58,000,000;

[51] In addition, between February 24 and March 31, 2010, the Petitioners and the Partnerships would have to make a total of approximately Cdn$4,391,000[1] in pension fund contributions;

[52] Of this amount, a significant amount relates to "past service cost contributions" (also known as "special payments" or "amortization payments"), in light of the existence of solvency deficits, as set out in a report detailing such deficits prepared by Mercer (Canada) Ltd. ("**Mercer**"), and filed as **Exhibit P-2**;

[53] Indeed, in 2009, a total of Cdn$1,413,110 per month is attributable to such amortization payments, as appears from an actuarial report also prepared by Mercer, and also forming part of Exhibit P-2;

[54] In light of their significant liquidity shortfall, and the size of the amounts currently due as set out above (as well as all other current operational obligations, notably payroll and payment of utilities and raw materials expenses), the Petitioners and Partnerships are not in a position to make such payments;

[55] In view of the above, the Petitioners and the Partnerships are now insolvent;

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[1] Representing payments for January 2010, due at the end of February and for February 2010, due at the end of March

B) INDEBTEDNESS

[56] The WB Group's principal debt obligations consist of three major credit facilities:

a) A First Lien Term Loan facility under which a total of approximately US$438 million in principal and interest are owing;

b) A Second Lien Term Loan facility under which a total of approximately US$104 million in principal and interest are owing;

c) A Revolving Asset-Based Facility under which US$50 million in principal and interest are outstanding;

[57] In addition, the WB Group is party to various interest rate swaps, which are out of the money to the extent of approximately US$58 million in total as of the present date, which swaps rank *pari passu* to the lenders under the First Term Loan Facility;

C) PENSION PLANS AND RETIREMENT BENEFITS

[58] The WB Group has created and contributes to various pension plans for its unionized and non-unionized employees;

[59] It has also established Supplement Executive Retirement Plans ("**SERP's**") for certain management employees;

[60] In addition, the Petitioners fund certain Other Post-Employment Benefits ("**OPEB's**");

[61] Many of the plans are currently in a position of significant solvency deficit;

[62] As stated, the Petitioners and Partnerships are in a major and urgent liquidity crisis and are therefore not in a position to make all payments due under the pension and retirement plans, in particular, those which are in respect of pre-filing obligations;

[63] In view of this fact, the Petitioners and Partnerships seek an order suspending payment of amounts relating to "past service cost contributions" (i.e. amortization payments), which account for approximately Cdn$1,413,110 per month, including any amounts accrued prior to the present CCAA filing[2];

[64] The Petitioners submit that such an order is justified during the stay period, as all available liquidity must be utilized to sustain the operations of the Petitioners and Partnerships, and to meet their ongoing post-filing obligations;

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[2] I am informed that all pension contributions, for either past service or current service have been made up to December 31st, 2009

[65] Consequently, the Petitioners In view of this fact, the Petitioners and Partnerships seek an order and Partnerships propose to continue making all current contributions to pension plans, SERP's and OPEB's;

D) UTILITIES AND TRADE CREDITORS

[66] The Petitioners and Partnerships, in addition to employee expenses and debt-service obligations, have monthly expenses of approximately Cdn$40 million, including approximately Cdn$10.5 million in utilities expenses (principally electricity, natural gas and steam);

V) INTERIM FINANCING ("DIP")

[67] In order to continue to operate, the WB Group, therefore, needs significant additional liquidity. To this end, the WB Group retained the services of Lazard Frères & Co LLC as financial advisors, who were able to convince a group of First Term Loan lenders to advance and cover said liquidity requirements in the form of a "DIP" loan secured by a priming charge. A copy of the Interim Financing Credit Agreement was filed as Exhibit P-3 (the "DIP Loan").

[68] Essentially, the DIP Loan is for an aggregate amount of US$140 million, from which an amount of approximately US$50 million will be deducted and applied to the full payment and discharge of the Asset Based Revolving Credit Facility.

[69] After earmarking a further amount of approximately US$16 million[3] to cover the Administrative and D&O priming charge (as explained below), the DIP Loan will provide some US$74 million in additional liquidity which, according to the Monitor, should permit a orderly and appropriate restructuring. The DIP Loan will bear interest at the rate of approximately 17.5% to 19% per annum and is entirely supported by the Monitor (see Monitor's Initial Report Exhibit P-4).

[70] After reviewing the allegations of paragraphs 128 to 159 of the Petition as well as the evidence of the representative of the Petitioners and the Monitor, the undersigned is satisfied that:

[3] The D&O charge is for an amount of US$10 million and a further amount of US$3 million may have to be reserved to cover the liability of employers pursuant to sections 81.3 and 136(1)(d) BIA. Finally, a US$3 million Administrative Charge is also required.

d) the priming charge will not secure any obligations that were owing prior to the filing;

e) the interim financing proposed is intended to permit the WB Group to restructure over a period of approximately nine to twelve months;

f) the interim financing is crucial to the survival of the Petitioners and Partnerships over the said restructuring period;

g) the sizing of the interim financing, cost of borrowing and fees are reasonable and have been minimized in order to reduce the impact on all other secured creditors;

h) the interim financing will enhance the prospects of a viable restructuring;

[71] Furthermore, I am advised that management has the confidence of its major creditors and shall remain in place over the restructuring period;

[72] As a result, I am prepared to approve same.

VI) DIRECTORS' INDEMNIFICATION AND CHARGE

[73] A successful restructuring of the Petitioners and Partnerships will only be possible with the continued participation of the Petitioners' directors and officers. These executives are essential to the ongoing viability of the Petitioners' and Partnerships' businesses, and the successful restructuring thereof;

[74] Even though the Petitioners intend to comply with all applicable laws and regulations, the Petitioners' directors and officers may nevertheless be concerned about the potential for their personal liability in the context of the present restructuring;

[75] Given the allegations of paragraphs 162 to 167 of the Petition, I am also satisfied that the D&O Charge sought is reasonable and in the best interests of the Petitioners. Accordingly, I am prepared to approve same.

VII) QUESTIONS OF PARTICULAR INTEREST

[76] Three questions raised by the present proceedings require more particular comment.

A) Confidentiality of certain documents

[77] The first issue has to do with the WB Group's request to put all sensitive financial information filed in support of its Petition to be put under seal. More particularly, the WB Group seeks the protection of its financial statements and cash flow statements from general access by the public in general and by the Group's competitors in particular.

[78] Paragraphs 170 to 175 of the Petition outline the factual basis for such order.

[79] I note two specific allegations which are pertinent:

a) the fact that the WB Group is privately owned and that it does not wish to share this information with its competitors;

b) the fact that the public disclosure of such sensitive information would be very prejudicial to the Group because of its potential use by its competitors in a manner which may jeopardize the restructuring.

[80] These allegations are not supported with additional detailed facts. Consequently, I raised the question of sufficiency of these arguments to grant the requested confidentiality order.

[81] I quote from the *2010 Annotated Bankruptcy and Insolvency Act* of Houlden, Morawetz and Sarra at pages 1125 and 1126:

> **..."There had been some issue over what information should or should not be sealed during a CCAA proceeding.**
>
> **The Supreme Court of Canada[4] considered the confidentiality of commercial information in context of judicial proceedings, finding that a confidentiality order should only be granted when such an order is necessary in order to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonably alternative measures will not prevent the risk... The Court held that the risk in question must be real and substantial, in that the risk is well grounded in the evidence, and poses a serious threat to the commercial interest in question. In order to qualify as an "important commercial interest", the interest in question cannot merely be specific to the party requesting the order... "Reasonably alternative measures" requires the judge to consider not only whether reasonable alternatives to a confidentiality order are available, but also to restrict the order as much as is reasonably possible while preserving the commercial interest in question.**
>
> **In another judgment[5], the Supreme Court of Canada held that the "administration of justice thrives on exposure to light, and withers under a cloud of secrecy"...**
>
> **(underlining added)**

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[4] *Sierra Club of Canada v. Canada (Minister of Finance)* [2002], 2002 CarswellNat 822, 2002 CarswellNat 823, [2002] 2 S.C.R. 522. See also *Marcotte c. Banque de Montréal* (2008), 2008 CarswellQue 8627 (Que. S.C.).

[5] *Toronto Star Newspapers Ltd. v. Ontario* (2005), 2005 CarswellOnt 2613, 2005 CarswellOnt 2614, [2005] 2 S.C.R. 188 (S.C.C.).

[82] The burden of establishing that the order is necessary bears upon the applicant.

[83] However, section 10(3) CCAA now reads as follows (in force since September 18, 2009):

> **3) Publication ban – The court may make an order prohibiting the release to the public of any cash-flow statement, or any part of a cash-flow statement, if it is satisfied that the release would unduly prejudice the debtor company and the making of the order would not unduly prejudice the company's creditors, but the court may, in the order, direct that the cash-flow statement or any part of it be made available to any person specified in the order on any terms or conditions that the court considers appropriate.**
>
> **(underlining added)**

[84] In the present instance, I was not convinced that the allegations of the Petition were elaborate and complete enough to meet the tests enunciated in "Sierra Club" and "Toronto Star Newspapers". It seems that a Petitioner seeking such order would have to explain in more detail the necessity of derogating from the general rule imposing publicity and public access to all evidentiary material in CCAA proceedings. In short, the exception of confidentiality (now codified in section 10(3) CCAA) will always have to be restrictively interpreted and applied only when the underlying facts are strong enough to warrant such an order.

[85] But for the comments stated below, and if I were to base by decision only upon the contents of the Petition, I would have denied this request on the basis of incomplete and insufficient evidence to support it.

[86] However, the Petitioners have suggested in paragraph 175 of the Petition, that the said financial information could be made available to "certain creditors upon signature of a confidentiality agreement".

[87] At my suggestion, the WB Group agreed to furnish unfettered access to the said documentation to all creditors without further distinction or limitation, upon signing of a confidentiality agreement.

[88] Such a position is in line with the wording and intent of section 10(3) CCAA. Consequently, I was prepared to grant the WB Group's request and keep confidential and under seal the financial data filed by the Petitioners except for those creditors (regardless of their importance) who would be agreable to signing a confidentiality agreement in exchange for the said information. Such a "*modus operandi*" ensures that the confidentiality order and will not "unduly prejudice the company's creditors".

B) Past service pension contributions

[89] The second issue has to do with the Group's obligation to effect certain pension contributions.

[90] The WB Group takes the position that "past service pension contributions" are the result of a pre-filing obligation and requests a confirmation of this position.

[91] This issue is specifically covered in sections 103 to 110 of the Petition, which I have summarized in paragraphs 58 to 65 of the present Reasons. In addition, I have heard the testimony of Mr. Jay Epstein, Vice-President finance, of the WB Group.

[92] Mr. Epstein's testimony has clearly identified the nature and specificity of the payments which cannot be met at the present time and in respect of which the Group requests a stay of its obligations.

[93] The Group's monthly payments to the various pension funds and plans are approximately US$2.2 million per month. They consist mainly of "past service pension contributions" of approximately US$1.4 million per month and "current service pension contributions" of approximately US$800 000,00 per month.

[94] Past service contributions are due by the Group as a result of its obligation to make up for the actuarial deficit of the funds and/or plans. They are not the result of the Group's failure or negligence to pay its current service contributions or past service contributions, the said contributions having been paid by the Group up to December 31st, 2009. Past service contributions are calculated every year-end by Mercer, the Group's Advisor and Pension Plan Manager and Exhibit P-2 (A) and (B) establishes with greater accuracy the exact nature and amounts currently due.

[95] On the whole of the evidence presented before me, I am satisfied that the relief sought by the WB Group falls squarely within the definition of "past service contributions" or "cotisations d'équilibre", as those words were defined by my colleagues Madam Justice Danièle Mayrand in Re: *AbitibiBowater Inc.*[6] and Justice Paul Chaput in Re: *Papiers Gaspésia*[7]. Madame Justice Mayrand wrote:

> **[37] Aux termes de l'article 11(3) de la LACC, l'ordonnance initiale ne peut suspendre les droits ou créances qui résultent d'obligations relatives à la fourniture de services ou de biens <u>après</u> l'ordonnance initiale.**
>
> **[38] Les syndicats prétendent que les cotisations d'équilibre visent à combler des obligations qui découlent de services rendus par les employés après le dépôt de la demande initiale.**
>
> **[39] Avec respect, cet argument n'est pas fondé.**

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[6] [2009] QCCS, 2028 (CanLii)
[7] [2004] CanLii 40296 (QCCS)

[40] Les syndicats prennent appui sur un commentaire du juge Farley de la Cour supérieure de l'Ontario qui, dans la cause de *Ivaco*[8] en première instance, dit ce qui suit :

> **Notwithstanding that past service contributions could be characterized as functionally a pre-filed obligation, legally, the obligation pursuant to the applicable pension legislation is a "fresh obligation".**

[41] Avec égards, cette assertion n'est pas déterminante et a d'ailleurs été écartée par le juge Spence dans la cause de *Collins*[9], alors qu'il s'exprime ainsi :

> **The amount of the outstanding special payments in the present case appears to have been determined prior to the initial order based on information relating to the pre-filing period.**

[42] Plus loin, il ajoute :

> **It is not apparent that the continuation of the operation of the applicant in the post-filing period has given rise to the increase in the amount of the special payments from the amount that would otherwise have been applicable by reason of the pre-filing experience.**
>
> **Consequently, it seems tendentious to characterize the outstanding special payments as the cost of operating in the post-filing period.**

[43] Dans le présent dossier, les évaluations actuarielles, qui ont déterminé les montants des cotisations d'équilibre et dont on demande la suspension, sont toutes antérieures au dépôt de la demande initiale. D'ailleurs, l'évaluation actuarielle du « Régime de retraite applicable aux employés syndiqués de la compagnie *Abitibi-Consolidated du Canada* », de loin le plus important, date du 2 décembre 2006.

[44] Tout comme dans les dossiers de *Papiers Gaspésia* et *Mine Jeffrey*, les cotisations d'équilibre suspendues ont été identifiées avant le dépôt de la demande initiale et ne sont pas dues pour des services rendus après le dépôt de celle-ci.

[96] See also Houlden Morawetz and Sarra. The *2010 Annotated BIA*, paragraph N§54, pages 1121 and 1122 on the same issue.

[97] The mere fact that those past service contributions are considered to be pre-filing obligations is, however, not the only issue to consider. I must also analyse if, in the absence of a consent of all affected stakeholders, I should authorize the suspension of past service contributions. In AbitibiBowater, the situation was relatively simple and clear: the past service contributions due, as at the date of the Initial Order, was close to $1.4 billion and monthly contributions to correct the situation were estimated at approximately $13 million per month. The Monitor was therefore able to convince the

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[8] Re: *Ivaco Inc.* [2005] 47 C.C.B.P. 62 Canada Inc. (ON. S.C.); [2006] 275 D.L.R. (4th) 132 (ON. C.A.)
[9] Re: *Collins & Aikman Automotive Canada Inc.* [2007] CanLii 45908 (ON. S.C.)

Court that it would be illusory to expect that AbitibiBowater would be able to complete a successful restructuring if it would remain obligated to continue to fund past service contributions during the period of restructuration. Accordingly, Madam Justice Mayrand exercised her discretion in favor of the suspension.

[98] In the present instance, there has been no debate before me on this specific question. Unlike *AbitibiBowater*, we are not talking about $13 million per month but approximately $1.4 million, or approximately $16.8 million per year. The total actuarial deficit is not nearly as high as $1.4 billion but closer to US$129 000 000,00.

[99] No evidence challenging the Group's position (that it would be unable to complete a successful restructuring and continue to pay past service contributions during the restructuring period) was submitted, despite the fact that the Petition was duly served upon all the Unions representing the unionized employees in Quebec[10]. Furthermore, I insisted that Petitioners' counsel attempt, during the lunch break of the hearing on February 24, 2010, to communicate with the said Unions and/or Union Representatives, to inquire as to their position. At the resumption of the hearing, no one appeared or manifested oneself[11].

[100] Faced with only a one-sided argument, albeit convincing and well supported by the jurisprudence (to which the decision of madam Justice Peppall of the Ontario Superior Court of Justice in Re: *Fraser Papers Inc. et al* (Court file CT-09-8241-OOCL dated 2009-06-30) must be added), I also chose to exercise my discretion in favor of the Petitioners' and Partnerships' requests. I also wish to point out that we are now more than a full week later and the stakeholders affected by this issue, namely the employees, have not indicated any willingness of intention to challenge the same.

C) <u>Extension of the initial order and protection of the CCAA to the partnerships</u>

[101] One last point: I am asked to extend the Initial Order not only to the Petitioner companies but also to the Partnerships. Although the CCAA does not deal with this issue specifically, I am prepared to exercise my discretion and to rely on the Court's inherent jurisdiction to grant a stay of proceedings against the partnerships, given that the structure of the WB Group is such that it would be impossible to proceed otherwise.

[102] See Re: *Calpine Canada Energy Ltd* (2006), [2006] Carswell-Alta 446; 19 C.B.R. (5th) 187. See also *Houlden Morawetz and Sarra, op.cit.* paragraph N§ 63, page 1135.

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[10] Syndicat canadien des communications, de l'énergie et du papier, Locals 200, 250, 137, 625, 905, 627, 1104 and 11; Fraternité nationale des forestiers et travailleurs d'usine, Local 299; Syndicat des employés d'Arrimage de Gros Cacouna Inc., Syndicat démocratique des salariés de la scierie Leduc.

[11] These Reasons are delivered more than one week after the hearing. To this date, no one has asked to be heard on this point.

CONCLUSION

[103] As for the rest of the conclusions sought, there seemed to be no major difficulties needing particular comment. in any event, any dissatisfied stakeholder may at any time avail itself of the "come back" clause if need be. The Order was therefore granted accordingly, without costs.

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