

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Chapter 11
AbitibiBowater, Inc., .
et al., .
Debtors. . Bankruptcy #09-11296 (KJC)
.....

Wilmington, DE
May 27, 2009
3:30 p.m.

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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1 THE CLERK: All rise. Be seated please.

2 THE COURT: Good afternoon.

3 MS. MORGAN: Good afternoon, Your Honor, Pauline
4 Morgan from Young Conaway Stargatt & Taylor on behalf of
5 AbitibiBowater and its affiliated Debtors. Your Honor, as
6 indicated in the Amended Notice of Agenda that we filed
7 yesterday I believe, we are going forward today to seek final
8 approval of the -- of our continuation of the Securitization
9 Facility that the Court approved at the First Day Hearing.
10 That's Item #1 on the agenda. I am pleased to report that we
11 have worked out the limited objections that are set forth, and
12 I'd like to cede the podium to Alice Eaton at Paul Weiss
13 Rifkind Wharton & Garrison, who will walk the Court through the
14 changes. Your Honor, before I do that also, on the Chapter 15,
15 as indicated, we also have an agreement to adjourn the only
16 matter that was set to go forward in that case, the Motion of
17 the Term Loan Lenders for Adequate Protection, and that is
18 basically coupled with Item 2 on our agenda, which we've also
19 agreed to adjourn. And we've had some discussions with your
20 Chambers about scheduling, and I guess we'll address that at
21 the end of the hearing if we can. But for now, I'll turn the
22 podium over to Ms. Eaton.

23 THE COURT: You mean negotiations with Chambers were
24 not yet successful?

25 MS. MORGAN: They were -- I think they were

1 successful, we just wanted to confirm.

2 THE COURT: All right.

3 MS. MORGAN: Thank you.

4 MS. EATON: Good afternoon, Your Honor, Alice Eaton
5 with Paul Weiss Rifkind Wharton & Garrison on behalf of the
6 Debtors. I'll start by providing you with a brief update of
7 where we are with the existing securitization and the Debtors'
8 efforts to refinance that securitization program. As you may
9 recall from the first day, that securitization program is set
10 to expire on June 1st, and since the first day, the Debtors have
11 been working, working to obtain a new program. And as you may
12 have seen from the papers filed that are going to be heard at a
13 later date, the company has selected Citibank and Barclays to
14 arrange and syndicate an Amended and Restated Securitization
15 Program. The timing -- it's taking a little bit longer to get
16 to completion on the amended and restated program, and Citibank
17 has agreed to provide an extension of the existing
18 securitization program to June 15th. And in connection with
19 that extension, Citibank has -- Citibank and the Debtors have
20 executed an amendment, which we will be prepared to file with
21 the Court this afternoon, and has been circulated to the Term
22 Lenders, the U.S. Trustee, and the Creditors Committee. In
23 connection with this extension, and in connection with the
24 final order, the Debtors have agreed with the ACCC Term
25 Lenders, those are the secured term lenders who have secured

1 claims against the Donahue Corporation Debtors in the United
2 States. We've agreed with those Term Lenders that the company
3 will continue to provide the adequate protection package that
4 was agreed at the First Day Hearing. And that adequate
5 protection will continue until the refinance and replacement of
6 the existing securitization program. We are in the process of
7 documenting a stipulation and the final points that were open
8 have been resolved and we expect to get that stipulation on
9 file within the next day or so. So in light of this agreement
10 on adequate protection, the objection that was filed by the
11 Term Lenders in connection with our First Day Hearing, I
12 believe, has been resolved. As reference, I'll go on to talk
13 about the Committee's limited objection, which is also
14 resolved. The Committee had raised some technical points about
15 the proposed final order. And what we have done is we've
16 agreed on some language to address those points. And I have an
17 interim version from the draft that was filed last Thursday
18 that reflects those changes, and I'll just walk you through
19 those changes. May I approach?

20 THE COURT: Yes.

21 (The Court receives document)

22 THE COURT: Thank you.

23 MS. EATON: So highlighting the important changes,
24 because the changes to the order, to the final order, are
25 largely conforming to reflect that it's a final order rather

1 than an interim order, and in paragraph 10, we added language
2 that permits the parties to enter into non-material amendments
3 to the securitization program documents, as well as extend the
4 existing securitization program termination date. The redline
5 that you see adds the ACC Term Lenders and the U.S. Trustee as
6 noticed parties for those amendments. Moving on to paragraph
7 13 and the carve-out, at the request of the Term Lenders, we
8 have deleted what was really clarifying language with respect
9 to ACI. ACI is a Chapter 15 Debtor, and this order does not
10 impact ACI, but we had added in carve-out -- we proposed to add
11 in carve-out language to make it easier for the reader to
12 understand what impacts ACI, but at the request of the Term
13 Lenders, we decided to delete that language. So that's the
14 change on paragraph 13. In paragraph 24 -- this is the
15 paragraph that resolves the Committee's objections and we've --
16 the Debtors, Citibank, and the Committee have agreed to
17 clarifying language that addresses the scope of the Committee's
18 investigation and their ability to raise challenges to the
19 stipulations, admissions, and releases in paragraph 3 and 4 of
20 the order, and also extends, by a couple of weeks, a deadline
21 for the Committee to raise any objections. And then lastly,
22 paragraph 28, this was accidentally omitted from the redline that
23 was filed last week. This just clarifies that this final order
24 is supplemented by the record made at the interim hearing, as
25 well as this hearing, with the respect to the Debtors'

1 agreement to provide adequate protection to the term lenders.
2 And with the changes that are set forth in the order, this
3 resolves -- it's my understanding this resolves the Committee's
4 objection. I also understand from the Creditors Committee,
5 that they, as raised in their limited objection, they continue
6 to reserve their rights with respect to the application of any
7 adequate protection payments made to the Term Lenders, but they
8 are reserving those rights and will raise them in connection
9 with the amended and restated securitization program, to the
10 extent there's any agreement with respect to the application of
11 those payments in a go-forward fashion. And with that, I will
12 -- just checking my notes -- I'll cede the podium to anyone
13 else who wants to address the Court.

14 THE COURT: All right, thank you, let me ask if anyone
15 else wishes to be heard in connection with the final Financing
16 Order?

17 MR. LANDIS: Thank you, Your Honor, for the record
18 Adam Landis from Landis Rath & Cobb on behalf of the ACCC Term
19 Lenders. Ms. Eaton described things accurately. We are
20 satisfied with the changes in the order. In particular, Your
21 Honor, the omission of paragraph 28, which supplements the
22 order, in connection with the adequate protection that was
23 ordered on the record. We're happy to see that back in, but as
24 we typically do, we want to make sure that we get the
25 stipulation providing that adequate protection into a separate

1 document and approved by Your Honor. To that end, Ms. Eaton
2 described that we all believe that the stipulation is done.
3 We're hoping that it'll be submitted under Certification of
4 Counsel, and Your Honor will see fit to approve it shortly
5 thereafter. But we wanted to make sure that that process was
6 okay with Your Honor before we went ahead and did it.

7 THE COURT: So, I'm being asked to sign this order
8 today, but supplemented by what will come in later?

9 MR. LANDIS: That's correct with -- in connection with
10 the adequate protection stipulation.

11 THE COURT: All right, I take it that process has the
12 consent of those involved?

13 MR. LANDIS: I believe that's the case, Your Honor. I
14 think it's been --

15 THE COURT: Including the U.S. Trustee?

16 MR. LANDIS: -- quite some time, it's been circulated
17 around. I will ask Ms. Eaton to confirm that it's gone to the
18 United States Trustee. To the extent it hasn't, we'll have to
19 do that before we can submit a certification saying that it
20 has.

21 THE COURT: Okay, thank you. Does anyone else care to
22 be heard?

23 MS. EDMONSON: Good afternoon, Your Honor, Jamie
24 Edmonson of Bayard on behalf of the Official Committee of
25 Unsecured Creditors. Ms. Eaton's representations are correct.

1 We are reserving our rights with respect to the additional
2 securitization facility --

3 THE COURT: All right.

4 MS. EDMONSON: -- but we do agree with the Form of
5 Order.

6 THE COURT: Thank you. Does anyone else care to be
7 heard? I hear no further response. All right, I've reviewed
8 the blackline. I don't have any questions. Now, when would
9 you anticipate getting to me the stipulation?

10 MS. EATON: I expect it would -- we are circulating it
11 among the parties. It's -- I believe it's been to the U.S.
12 Trustee, but it has been quite some time, and we are also
13 circulating it to our -- to the Canadian monitor as well, so I
14 would expect that by the end of the day tomorrow, the
15 stipulation could be presented to the Court.

16 THE COURT: Yes, I mean the reason I ask is that it's
17 my fervent hope not to be in the office on Friday. So if you
18 need something this week, you'll need to get it to me, you
19 know, by, say, mid-afternoon on Thursday. I will be in Monday.

20 MS. EATON: Understood. I -- that schedule's fine with
21 the Debtors.

22 MR. LANDIS: I can see Your Honor looking my way, so I
23 want to say that we'll be content to get it signed up by the
24 parties and submitted to Your Honor, and I'm sure Your Honor
25 will have the opportunity to see it, if not before Friday, on

1 Monday.

2 THE COURT: Okay.

3 MR. LANDIS: Thank you, Your Honor.

4 THE COURT: Anything further for today?

5 MS. EATON: I -- two additional items --

6 THE COURT: But we have to confirm the date.

7 MS. EATON: Yes, we have to confirm the date for, I
8 believe it was June 11th at 2:30 p.m.

9 THE COURT: That's correct.

10 MS. EATON: Okay. And that will be for both the
11 Debtor's Motion with respect to the Amended and Restated
12 Securitization Program, as well as the Term Lender's Chapter 15
13 Motion. Okay --

14 THE COURT: That's correct.

15 MS. EATON: -- great. And one other additional
16 housekeeping item, as Your Honor knows, we are -- will be
17 appearing before you on June 4th, in connection with a variety
18 of matters for our Omnibus Hearing, including the Bowater --
19 final approval of the Bowater D-I-P Facility, and I -- the
20 D-I-P Lenders had asked me to advise the Court that the
21 parties, the pre-petition lenders, the Creditors Committee, the
22 Debtors, have all agreed that the final hearing could go
23 forward on the 4th. As drafted in the interim order, there was
24 an expiry date of June 1st, for the interim period subject to
25 further agreement by the parties, and all the parties have

1 agreed that we could take a few extra days, so we can have the
2 Bowater D-I-P heard at the Omnibus Hearing.

3 THE COURT: Very well.

4 MS. EATON: And that's all from the Debtors.

5 MR. LANDIS: I think that the last piece of this, now
6 that we know we have that June 11th hearing, I think we need an
7 objection deadline in connection with our Motion for Adequate
8 Protection and don't know what Your Honor's thoughts would be
9 on that, but our feeling was that if we had that objection
10 deadline set June 4th, a week before, we at least have
11 sufficient time to hopefully see what objections are there and
12 maybe try to resolve them, to the extent we can. I just heard
13 from Ms. Eaton that given the scheduling of the hearing on June
14 4th, June 5th would be their suggestion. I don't think we have
15 any problem with that at all, if that's okay with Your Honor.

16 THE COURT: I'm all right with that. Anyone have a
17 comment?

18 MR. LANDIS: Thank you, Your Honor.

19 MS. EATON: Thank you.

20 THE COURT: All right, anything further for today?

21 MS. EATON: Nothing, Your Honor.

22 THE COURT: All right, that concludes this hearing.
23 Court will stand in recess.

24 (Court adjourned)

25

CERTIFICATION

1
2 I certify that the foregoing is a correct transcript from the
3 electronic sound recording of the proceedings in the above-
4 entitled matter.
5

6 *Lewis Parham*

6/8/09

7
8 _____
Signature of Transcriber

Date

**UNITED STATES BANKRUPTCY COURT
District of Delaware**

In Re:

AbitibiBowater Inc.
1155 Metcalfe Street, Suite 800
Montreal
Quebec, H3B 5H2
CANADA
EIN: 98-0526415

Chapter: 11

Ernst & Young, as Monitor

Case No.: 09-11296-KJC

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