

UNITED STATES BANKRUPTCY COURT
DELAWARE DISTRICT OF DELAWARE

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In the Matter of:

ABITIBIBOWATER, INC.,

Debtor.

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U.S. Bankruptcy Court
824 North Market Street
Wilmington, Delaware

July 1, 2009

1:00 PM

B E F O R E:

HON. KEVIN J. CAREY

U.S. BANKRUPTCY JUDGE

Omnibus Hearing

ECR Operator: Brandon McCarthy

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Orion Group International Motion to reconsider

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P R O C E E D I N G S

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THE CLERK: All rise. You may be seated.

THE COURT: Good afternoon, everyone.

MR. GREECHER: Good afternoon, Your Honor. For the record, Sean Greecher of Young Conaway on behalf of the debtors. Your Honor, turning to the amended agenda that was filed and which would've been sent to chambers this morning, matters 1 through 9 have been adjourned or alternatively resolved. With respect to matters 10 through 16, certifications of counsel or certifications of no objection were filed and Your Honor has acted upon each of those certifications and entered orders for which we thank Your Honor.

Matter number 17 is the debtors' application for an order authorizing an employment and retention of Croco as the debtors' restructuring advisor. Your Honor, there were informal responses to this retention application from the Creditors Committee as well as from the Office of the United States Trustee. The parties have agreed to a revised form of order which was submitted yesterday to Your Honor under certification of counsel.

THE COURT: I have not seen it but if you have a form of order, I'll consider it now.

MR. GREECHER: Your Honor, if I may approach?

THE COURT: Thank you.

1 MR. GREECHER: Your Honor, I'll just briefly walk
2 through the issues that were raised. The principle change was
3 a modification to the retention under 327. The parties
4 consulted and it was agreed that retention would be sought
5 under Section 363 and Croco would comply with what's known as
6 the J. Alix Protocol in connection with its retention. The
7 form of order therefore reflects that change.

8 THE COURT: The order has been signed.

9 MR. GREECHER: Thank you, Your Honor. The next
10 matter, matter number 18 is the debtors' application for an
11 order approving the retention of Blackstone. Mr. Saferstein
12 will address the Court with respect to that matter.

13 THE COURT: All right.

14 MR. SAFERSTEIN: Good afternoon, Your Honor. Jeffrey
15 Saferstein from Paul, Weiss, Rifkind, Wharton & Garrison on
16 behalf of the debtors. Your Honor, this is the debtors'
17 application approving the retention and employment of
18 Blackstone Advisory Service, LP, as financial advisor to the
19 debtors. Your Honor, we've received one objection and one
20 joinder from the debtors' prepetition lenders.

21 We also received comments from the U.S. Trustee and
22 from the committee and I'm pleased to report that we've
23 resolved all objections. The banks and the committee sought
24 certain clarifications and modifications to Blackstone's fees.
25 We're working on a revised form of engagement letter which

1 we'll circulate to all the parties with a form of order that
2 we'll then submit to the Court after everybody signs off on it.

3 Just briefly, the clarifications that we've made and
4 the modifications to Blackstone's fees. Your Honor, Blackstone
5 has agreed to reduce its monthly fee. For the first six month
6 they will receive 375,000 dollars. Thereafter, it will be
7 reduced to 275,000. Your Honor, the restructuring fee set out
8 in the engagement letter has been reduced from eleven million
9 to ten million. And then, Blackstone would then only get a
10 further transaction fee upon the sale of any assets.
11 Blackstone has agreed to credit fifty percent of any
12 transaction fees over five million dollars in fees in the
13 aggregate against the restructuring fee and if there's a sale
14 of all or substantially all of the assets, they will credit one
15 hundred percent of the transaction fee against the
16 restructuring fee.

17 Finally with respect to the capital raise fee set
18 forth in the engagement letter which we have been referring to
19 as sort of the exit fee, raising capital in connection with an
20 exit, Blackstone has agreed that they will credit fifty percent
21 of that fee against the restructuring fee and one hundred
22 percent of that fee if the exit financing is provided by
23 Wachovia or Bank of Nova Scotia or current prepetition lender
24 led rollover of their existing debt into an exit.

25 So again, we are working on a revised form of

1 engagement letter which we'll circulate to the parties who have
2 been involved in those discussions but I hope that we'll be
3 able to reach agreement quickly and submit that to the Court.

4 THE COURT: Is anyone to get 330 review?

5 MR. SAFERSTEIN: Your Honor, what we've set forth in
6 the order is 330 review for the U.S. Trustee and 328(a) with
7 respect to everybody else.

8 THE COURT: Okay. When is it expected that you would
9 have that revised order for me?

10 MR. SAFERSTEIN: Your Honor, we'll circulate it right
11 after Court today and as soon as we can get everybody to sign
12 off on it, we would submit the order.

13 THE COURT: Okay. The reason I say that is that today
14 is my last day in the office until July 13th. Is it important
15 that the order be entered before I return?

16 MR. SAFERSTEIN: I think we'd like to get it entered
17 but we'll do our best. If we can't get it to you -- I think
18 this is an agreement of all the parties, it's just working out
19 the language.

20 THE COURT: And as you described it -- I reviewed the
21 application and the objections and as you described the
22 resolutions, I'm content to act on it without further hearing.

23 MR. SAFERSTEIN: Okay. Thank you, Your Honor.
24 There's one other --

25 THE COURT: I'm sorry, someone else wishes to be

1 heard.

2 MR. SAFERSTEIN: There was one other statement that
3 I'd like to make which I think is going to -- I wasn't done.

4 THE COURT: Okay.

5 MR. SAFERSTEIN: Your Honor, there was some issue --
6 there were issues raised with respect to professionals that
7 were retained both in the U.S. and then retained in Canada and
8 a number of the parties sought some clarification with respect
9 to who would be paying those fees etcetera. So, there's going
10 to be a paragraph put in the order that essentially states that
11 the Canadian financial advisor to the debtor will be paid by
12 the Canadian CCAA debtors and not by the Chapter 11 debtors.
13 There's some other language that we've put in there regarding
14 intercompany transfers so that we don't get caught up in who --
15 you know, because cash is fungible -- about who's paying but
16 the intent is that they're being engaged in Canada, they will
17 be paid by the Canadian CCAA debtors and not by the Chapter 11
18 debtors. So there'll be some language in there. They'll also
19 be some reciprocal language with respect to Blackstone that
20 they will be paid by the Chapter 11 debtors and not by the CCAA
21 debtors. So you'll see those -- that paragraph or paragraphs
22 in the order as well.

23 THE COURT: Well, let me ask for the record whether
24 anyone else wishes to be heard in connection with this
25 application.

1 MR. DESPINS: Your Honor, if I can just talk to
2 counsel over there for one second?

3 MR. SAFERSTEIN: Sorry, Your Honor. One second.
4 There are two further clarifications that I missed. One is
5 Blackstone has clarified that their DIP fee is one million
6 thirty thousand dollars not two million sixty thousand, so it's
7 half of, I think, what some people had thought it might be.
8 The other clarification is on the Canadian financial advisor
9 that's being retained or engaged up in Canada. There was a
10 concession made by them as well which I'll just -- for the
11 record -- just so Your Honor's aware of it. Their conflation
12 fee is reduced from forty-five basis points to forty basis
13 points on total ACI debt which they've agreed shall be no more
14 than 4.5 billion dollars. So I think that's one concession.
15 Sorry -- I think that is the concession.

16 MR. DESPINS: And, Your Honor, if I could just be
17 heard for a second?

18 THE COURT: Go ahead.

19 MR. DESPINS: Luc Despins with Paul Hastings on behalf
20 of the committee. Your Honor, the only points we wanted to
21 make is this correctly reflects the consensual resolution of
22 the Blackstone retention but as counsel for the debtor
23 mentioned, other debtors that are not before this Court but are
24 in -- Canadian debtors but are before this Court until Chapter
25 15 and decided to retain another firm, Bank of Montreal, the

1 committees concerns as expressed to the debtor was not that
2 Blackstone in and of itself was necessarily out of range but
3 Blackstone combined with Bank of Montreal was really out of
4 range and we want to make sure that the only thing that's
5 happening today is Blackstone's getting retained. No --
6 committee's right, whatever they may be, are preserved visa the
7 other matters. It's only Blackstone that's being retained
8 today and that's the only thing that the Court is approving and
9 I don't want any implications that anything else is being
10 approved other than Blackstone today. Thank you.

11 THE COURT: Very well. Thank you. Does anyone else
12 wish to be heard?

13 MS. SUMMERS: Good afternoon Your Honor. Angel
14 Summers from Allen & Overy on behalf of E&Y's Canadian monitor.
15 I don't have too many comments. I just want to point out that
16 there was the concession that the use of funds to pay either
17 the Canadian professionals of the U.S. professionals would be
18 reciprocal and the monitor would like to see that in the
19 revised order. And just a request that the revised order be
20 served on the monitor before it be submitted to the Court.

21 MR. SAFERSTEIN: Your Honor, we'll attempt to
22 circulate that to the monitor as well.

23 THE COURT: Very well. Anything --

24 MR. SAFERSTEIN: Your Honor --

25 THE COURT: I'll await submission of an order then.

1 MR. SAFERSTEIN: Thank you very much.

2 MR. SAFERSTEIN: Your Honor, the next matter on the
3 agenda is a final order with respect to the debtors'
4 securitization facility. Your Honor, a certificate of no
5 objection is filed this morning. All of the objections have
6 been resolved. The order has been agreed to by all the parties
7 that have objected. We have a form of order, as well, here in
8 the courtroom.

9 THE COURT: Does anyone else wish to be heard in
10 connection with the financing motion? I hear no response.
11 Now, are we done with financing? That orders been signed.

12 MR. SAFERSTEIN: Thank you very much, Your Honor.

13 THE COURT: Now we can move on to other things,
14 hopefully.

15 MR. SAFERSTEIN: Yes. Your Honor, the next two
16 matters on the agenda are the committee's applications to
17 retain Lazard Freres and FTI Consulting. I believe that the
18 parties have been discussing potential settlement of the
19 objections that have been filed. I think they've asked if we
20 could push that off to the end of the hearing.

21 THE COURT: That's fine.

22 MR. SAFERSTEIN: I'll turn the podium back to Mr.
23 Greecher.

24 THE COURT: If anyone has -- excuse me.

25 MR. SAFERSTEIN: Sure.

1 THE COURT: If anyone has a active PDA on this side of
2 the bar, let me ask you to turn it off. Sometimes it
3 interferes with our audio system. Thank you.

4 MR. SAFERSTEIN: Okay. Thank you, Your Honor.

5 THE COURT: All right. So we'll pass 20 and 21 for
6 now.

7 MR. GREECHER: Thank you, Your Honor. Again, Sean
8 Greecher, for the record. The last matter on the agenda was a
9 letter that was submitted to the Court to which the Court
10 indicated that a hearing should be held. This is a letter from
11 Orion Group International in connection with prepetition
12 invoices that were unpaid. I don't know, Your Honor, if anyone
13 from Orion Group International is here or on the telephone.

14 THE COURT: Well, let's ask for the record whether
15 anyone is present or on the telephone on behalf of Orion Group
16 international. I hear no response. As you can tell from my
17 handwriting on the letter, I did have this docketed and
18 scheduled for hearing as a motion for reconsideration but in
19 the absence of any appearance on behalf of the movant, I will
20 deny the motion and you can submit a form of order if you like,
21 I'll sign it.

22 MR. GREECHER: Thank you, Your Honor. And just for
23 the record, to be clear, the debtors will certainly work with
24 Orion Group International to the extent that they reraise this
25 request.

1 THE COURT: I read the response which invited
2 additional information and I take it none was forthcoming.

3 MR. GREECHER: Thank you, Your Honor.

4 THE COURT: Okay.

5 MR. GREECHER: I guess that puts us back to the
6 committee's retentions.

7 MR. DESPINS: Your Honor, would it be possible to have
8 a very short recess? I know lawyers do this all the time but I
9 know you have a very busy calendar but could we have a very
10 short recess to see if we can dispense with probably an hour of
11 the hearing?

12 THE COURT: Well, or more; I read the objections. I
13 will gladly cede the time to you. How much time do you think
14 you need? Just give me an estimate.

15 MR. DESPINS: Can we say fifteen minutes, Your Honor?

16 THE COURT: Certainly.

17 MR. DESPINS: Thank you.

18 THE COURT: All right. Court will stand in recess.

19 (Recess)

20 THE CLERK: All rise. You may be seated.

21 THE COURT: Is there a report?

22 MR. DESPINS: There is a report and I think it should
23 be a good start to your -- I don't know if it's a vacation or
24 your -- but --

25 THE COURT: My vacation.

1 MR. DESPINS: Your vacation? Good for you. There is
2 a consensual resolution. The first thing -- and it will be
3 described by counsel for Wachovia, one of the objectors. What
4 I wanted to mention to the Court is that we had reached a
5 resolution with the U.S. Trustee before and that's reflected in
6 our revised order giving them 330 review rights which is the
7 standard formulation. But let me yield the podium to counsel
8 for Wachovia who can describe the nature of the settlement that
9 was reached.

10 THE COURT: All right.

11 MR. ZELMANOVITZ: Thank you, Your Honor. Menachem
12 Zelmanovitz of Morgan Lewis on behalf of Wachovia, the agent
13 for the U.S. prepetition lenders. I'm sure anyone who
14 disagrees with how I'm going to state the terms as I understand
15 them will say so but as I understand it, they are as follows,
16 if I can read my own writing. With respect to Lazard, after
17 nine months, there will be a fifty percent credit against -- of
18 the monthly fee against the success fee up to a total credit of
19 750,000 dollars so that the -- there is a floor with respect to
20 their success fee of 2,250,000 dollars.

21 With respect to FTI, after nine month, there will be a
22 similar credit but a different percentage. The absolute amount
23 will also be 100,000 dollars per month, again, credited against
24 the -- in this case, the completion fee up to a total credit,
25 again, of 750,000 dollars. That would leave them a ground

1 floor of a completion fee of 1,250,000 dollars. The other
2 terms is that there will be only one success fee for each firm,
3 no more than one, or one completion in the case of FTI.
4 Neither one will be earned in case of a conversion so that
5 there will be no success fee nor will there be a completion fee
6 in case the case is converted.

7 And finally, there will be no success fee or
8 completion fee in the event of a liquidation sale of individual
9 assets. I think that is the terms of the settlement as I
10 understand it. Thank you.

11 THE COURT: All right. Thank you. Does anyone else
12 care to be heard? All right. Well, based on that resolution,
13 I'm prepared to approve the arrangements that the parties have
14 made. I'll await submission of orders under certification. Is
15 there anything else for today?

16 UNIDENTIFIED SPEAKER: I don't believe so, Your Honor.

17 UNIDENTIFIED SPEAKER: Nothing, Your Honor.

18 THE COURT: All right. Thank you very much. That
19 concludes this hearing. Court will stand in recess.

20 (End of Hearing)

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I N D E X

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C E R T I F I C A T I O N

I, Zipporah Geralnik, certify that the foregoing transcript is a true and accurate record of the proceedings.

Zipporah Geralnik
AAERT Certified Electronic Transcriber (CET**D-489)

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Date: July 9, 2009

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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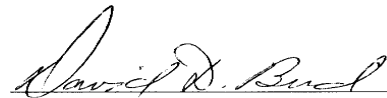
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Clerk of Court

Date: 7/9/09

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Case: 09-11296-KJC

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