

Judge approves ABCP restructuring plan

AVOIDS COSTLY LAWSUIT NIGHTMARE

Will be converted into long-term notes, resulting in substantial losses for investors

JOHN GREENWOOD
CANWEST NEWS SERVICE

TORONTO – The biggest workout in Canadian history passed a key hurdle yesterday after an Ontario Superior Court judge approved the restructuring of

\$32 billion of frozen asset-backed commercial paper:

In a 40-page decision, Justice Colin Campbell said he's satisfied the plan is designed to benefit all note-holders, and that failure to approve it will almost certainly trigger huge losses and a

cascade of lawsuits.

"We are gratified that the court has approved the restructuring plan and determined that it was fair," said Purdy Crawford, the head of an investors committee that mapped out the restructuring.

"After nine months of arduous negotiations with, and compromise among all stakeholders, we are poised to bring this process to a successful conclusion."

The restructuring could be completed as early as the end of June if there are no appeals,

Crawford said.

The plan calls for the ABCP, which seized up when the credit crunch hit nearly 10 months ago, to be converted to long-term notes.

However, even if the restructuring is successful, investors will likely face substantial losses. What is most galling to many of them is a provision that provides blanket legal immunity to firms that made the stalled paper and other market participants. Proponents of the restructuring recently agreed to a so-called "carve-out" under which limited

fraud claims could go to court, but critics say it is so narrow that only a few claims could go forward.

Dozens of corporate note-holders are opposed, arguing that their right is more valuable than their ABCP.

"This doesn't fit into the law," said Allan Sternberg, a lawyer for Montreal businessman Hy Bloom and one of the most vocal critics. In a telephone interview, Sternberg called the plan a case of economic expediency.

James Woods, a lawyer for a group of mostly Quebec compa-

nies, including drugstore chain **Jean Coutu**, claimed that some serious fraud cases might not come to light for several months, precluding them from going to court.

According to Woods, the court does not have the jurisdiction to grant the broad legal releases.

"We have already received instructions from our clients to appeal," he said in a telephone interview.

Claimants have 21 days to launch an appeal, which would be heard on an expedited basis.

FINANCIAL POST



PIERRE OBENDRAUF THE GAZETTE

John Weaver (left), outgoing executive chairman of AbitibiBowater, and David Paterson, the firm's chief executive, talk to reporters before the firm's annual meeting yesterday in Montreal. Weaver said the combined company has "come a long way in a short time."

ABITIBI \$1.4-billion financing was completed

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The second phase is under way, he said, but though there are currently no plans for more mill closings or machine shutdowns, "we can't rule further action out ... it will depend on the market."

John Weaver announced his retirement as executive chairman as of July 1, but he stays on as non-executive chairman and a director until March 31, 2009.

"It's the right thing to do," he said. "We've come a long way in a short time as a combined company and we've got the right

team in place to overcome the challenges ahead."

He took over as CEO of the former Abitibi-Consolidated in 1999 and led it through a tumultuous merger with **Donohue Inc.** and the "perfect storm of adversity" that followed – the soaring Canadian dollar, record high fuel and fibre costs and sinking demand for newsprint in North America.

Paterson said North American demand for newsprint might drop eight to 10 per cent this year, following a 10-per-cent fall last year, while groundwood papers and specialties are more stable. AbitibiBowater is busy

converting machines to higher-value products. It exports 40 per cent of its newsprint overseas.

But half of the firm's lumber capacity is shut down because of low prices and poor demand because of the U.S. housing slump.

North American list prices for newsprint – big users pay less – stand at about \$690 U.S. a tonne, up \$100 since the 2007 bottom. Producers are trying to push through increases this month and in July and August. This would bring list prices to \$770 to \$790 U.S., if the increases stick, analysts said.

"We've just got to make our

newsprint business profitable ... or it'll just go out of business," Paterson said.

AbitibiBowater on May 8 reported a first-quarter loss of \$215 million U.S., or \$3.74 a share, excluding special items, as a combined company. Sales totalled \$1.7 billion U.S. Newsprint losses were reduced slightly, coated papers improved, pulp was flat and lumber was weak.

Financing of \$1.4 billion was completed to handle maturing long-term debt and liquidity needs.

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Bedding wares ward off allergens

WICKS AWAY MOISTURE FROM BODY

Airlines, cruise firms, VIA Rail interested

MIKE KING
THE GAZETTE

Their mission was to bring comfort to menopausal women through specially designed natural bedding products, but soon everyone from airline and cruise ship passengers to race car drivers might also benefit from the local innovation.

The 100-per-cent silk-filled duvets, pillow and mattress protectors created by **SmartSilk Canada Inc.** have been scientifically proven to be an effective barrier to allergens, including dust mites and pet dander.

"It's more of a body protector than a pillow protector," said Yair Altman, who co-founded the company with life/business partner Nira Kolender and longtime textile industry associate Harry Walker.

The product, which took about three years to perfect, has only been on the market since the end of February, but is already enjoying impressive sales – particularly through word of mouth.

Kolender noted that more than 1,000 of the pillow protectors were sold in just over four minutes on the U.S.-based QVC home-shopping television channel Wednesday night, while 200 mattress protectors were sold on the program the night before.

The bulk of the sales have been online, where nearly 4,000 of the items have been purchased to date, with some retailers like the **Linen Chest** carrying the product in its outlets across Quebec and Ontario.

In December, SmartSilk received the registered asthma

and allergy friendly certification mark through a program developed and launched here by an international research organization, **Allergy Standards Ltd.** of Dublin, in partnership with the Asthma Society of Canada.

"It's not a cure (for allergies), but an aid," Kolender said.

Besides being resistant to mold and mildew growth, it wicks away moisture from the body and is fire retardant. It also is machine washable and dryable.

Altman said the product has attracted the attention of airlines, cruise lines and Via Rail,

"It is more a body protector than a pillow protector."

CO-FOUNDER YAIR ALTMAN

which want to offer blankets to their passengers. The hospitality industry also is showing interest, including a new Montreal boutique hotel, **Hôtel Crystal de la Montagne**, which is using it for bedding.

"We want to expand into research to see what else we can do with things like clothing and protective suits for race car drivers, for example," Altman said.

"It would also be an amazing product in hospitals."

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STRICTLY LEGAL

New Quebec bâtonnier wants to expand role of ethics for lawyers

Tremblay also plans campaign to persuade bar members to resolve cases more quickly



KATHRYN LEGER

Gérald Tremblay, the new head of the professional order representing Quebec's 23,000 lawyers, plans to use pleading skills built up over 40 years in and out of the courtroom to persuade members of the provincial bar to make quick resolution of court cases part of their day-to-day work ethic.

The man who assumed the top job as bâtonnier of the Quebec Bar at last weekend's annual convention in Quebec City also vowed to promote quicker action by the order in any case of a lawyer found to be delinquent and to improve less-than-perfect relations with the government as it moves forward with planned reforms to Quebec's Code of Civil Procedure.

"I would like to expand the notion of ethics to more than just

"do not lie to the judge, do not say bad things about your opponents, do not use coarse language," Tremblay, a well-known Montreal litigator from one of the city's biggest law firms, said in an interview this week about how he will approach the job.

"I would like ethics to include an obligation (on the part of each lawyer) to cooperate for the fast administration of justice, efficient administration of justice and alternate dispute resolution when the matter does not merit a long or expensive trial," he said.

The needed sea change of mentality would require lawyers "right at the beginning of the process to get together with an objective in mind to resolve the matter without waiting for trial," said Tremblay.

He added that lawyers would first have to resort to mediation or conciliation procedures, perhaps under the guidance of provincial judges.

Many matters before the courts now take a minimum of two years – if not more – to reach the trial stage.

The cost of such delays, including lawyers' fees and judges on the public payroll, mean

many people cannot afford to seek justice, a reality that has spawned a desire by almost everyone involved somehow with the justice system to look for ways to ensure easier access.

Tremblay, a top-billing commercial litigator on loan from **McCarthy Tétrault LLP** in Montreal for the one-year mandate, concedes the goal he has chosen for himself to promote as bâtonnier is ambitious.

Quick resolution of cases does mean lower billings for lawyers. "But if you price yourself out of the market, you won't make any money anymore and if citizens feel that the system is too costly they won't use it period, so it is in everybody's interest," said Tremblay, voicing part of his pitch.

He also sees the only way any such commitment on the part of lawyers will work is if the Bar, the judiciary and the government through the justice ministry respect each other's turf – and independence – while actively looking for solutions together.

"If the system is not adequate, or understood or liked, it will fail," he said.

"If one of the three main pillars of our system, the government, the Bar or the judiciary, tries to impose its views against one of the other two, it won't work. The only way it could work is if the three together sit down, spend the hours it takes to



MC CARTHY TÉTRAULT

Gérald Tremblay says hostility has grown between the Bar and Quebec's Justice Department.

reconcile their different views.

"It is a very complex matter but we can achieve big improvements if we put our heads together rather than being enemies."

Tremblay said in the last few years "a climate of hostility, maybe that is a big word, a lack of trust," developed between the Bar and the Quebec Justice Department, "with each one privately thinking of his own constituency rather than the common good."

"The government was working and we were hearing people

saying the Bar does not want things to proceed and the Bar is slow in reacting, and the Bar is always against anything that we propose," said Tremblay. As tradition dictates, he served last year as vice-president before ascending to the post of bâtonnier, becoming acquainted with the 80 Bar committees and more than 1,000 volunteers he will oversee.

A movement in the right direction came at the weekend convention when Quebec Justice Minister Jacques Dupuis said he wants to reactivate a consultative round table that was put in place in 2006 but later abandoned, Tremblay said.

Working in Tremblay's favour is his reputation as a lawyer and a style that is described as collegial. "He is one of the pre-eminent litigators – has been for years – of the Montreal Bar," said George Hendy, head of litigation at the Montreal office of **Osler, Hoskin & Harcourt LLP**.

Tremblay, 64, has worked on top corporate files and litigation, including class actions for McCarthy Tétrault for the past 29 years, joining the firm after almost close to 10 years with crosstown rival **Stikeman Elliott LLP** and brief stints as a federal Crown prosecutor and, in the beginning, as a clerk to the Supreme Court of Canada.

He lost one famous case before the Supreme Court, represent-

ing multinational **Unilever** in its fight against Quebec butter producers for the right to colour margarine yellow.

But he won an equally famous case when he represented Quebec Justice Jean-Guy Boilard in an action taken against him by the Quebec government before an unprecedented inquiry by the Canadian Judicial Council over his decision to withdraw from the 2002 Hells Angels trial after millions of dollars had been spent on the hearings.

"He is very fair – any good litigator is going to be firm with his adversaries. His ethics are impeccable and he's collegial as well," Hendy said.

Tremblay himself is determined to be "at the head of the parade not at the end, a facilitator, a finder of solutions."

"I am a fighter but I am not a hater," he said. "Once I have spoken my mind, if there is disagreement, if the tone rises, the following second, I've got no hard feelings against anybody."

"My mantra has always been we are all passengers on the same boat going through the same voyage. Please let's try and accommodate each other rather than fight each other."

If you have any information to share about what is happening in the legal community, send it to: kleger@sympatico.ca