RE: The Proof of Claim filed by Woodbridge Company Limited, Woodbridge International Holdings Limited and Woodbridge International Holdings SA (collectively "**Woodbridge**") against Abitibi-Consolidated Inc. – Claim Reference: **5842**

and

The Notice of Dispute of Woodbridge of the Notice of Revision or Disallowance, dated June 30, 2010, issued by Ernst & Young Inc. in its capacity as Court-appointed Monitor of Abitibi-Consolidated Inc. and Bowater Canadian Forest Products Inc., *et al.*

In the Matter of the Plan of Compromise or Arrangement of AbitibiBowater Inc. and Abitibi-Consolidated Inc. *et al.* Superior Court, Province of Quebec, District of Montreal, no. 500-11-036133-094

DETERMINATION

(December 13, 2010)

Joseph R. Nuss
Claims Officer

The Context

[1] The Augusta Newsprint Company is a Georgia partnership ("**Augusta Partnership**") between Abitibi-Consolidated Sales Corporation ("**ACSC**") and Woodbridge Company Limited, Woodbridge International Holdings Limited and Woodbridge International Holdings SA (collectively "**Woodbridge**").

[2] Woodbridge indirectly holds a 47.5% interest in the Augusta Partnership while ACSC holds the remaining 52.5% interest.

[3] Woodbridge acquired its interest in the Augusta Partnership by a purchase from Thomson Newsprint Inc. in 2001.

[4] The Augusta Partnership owns a 416,000 metric ton capacity newsprint mill in Augusta, Georgia (the "**Augusta Mill**").

[5] Abitibi-Consolidated Inc. ("**ACI**") guaranteed the obligations of ACSC under a Call Agreement (described hereafter at paragraph 10)

[6] On April 17, 2009, ACI, Bowater Canadian Holdings Inc. ("**BCHI**") and other companies in the AbitibiBowater group of companies, pursuant to a Motion filed in the Superior Court, District of Montreal, came under the protection of the *Companies' Creditors Arrangement Act*[1] ("**CCAA**") by virtue of an Order issued by Gascon J. as amended by an Order on May 6, 2009 ("**Initial Order**")[2].

[7] On the previous day, April 16, 2009 AbitibiBowater Inc. ("**ABH**") and certain of their direct and indirect US and Canadian subsidiaries including ACSC filed voluntary petitions for relief under Chapter 11 of the US Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware.

[8] In addition to the Call Agreement, two other contracts, the Partnership Agreement and the Sales Agreement, are relevant to the issue before me. In the submission of ACI, ABH and BCHI (sometimes collectively referred to as "**AbitibiBowater Group**") these three agreements are described as follows:

[9] **The Partnership Agreement**

8.1 The predecessors of ACSC and Woodbridge entered into a partnership agreement governing the Augusta Partnership on August 17, 1981 as amended on September 6, 2001 (**"Partnership Agreement"**).

8.2 The following provisions of the Partnership Agreement are relevant to the present matter:

a) Distributions to the partners require the consent of both partners;

b) The Predecessor of ACSC and the Augusta Partnership were to and did enter into a sales agreement;

c) The Augusta Mill will be operated at a minimum of 90% of capacity for each calendar year.

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1 RSC,. 1985, c. C-36
2 S.C.M. 500-11-036133-094

[10] **Sales Agreement between ACSC and the Augusta Partnership**

9.1 The Predecessor of ACSC and the Augusta Partnership entered into a sales agreement on December 14, 1981, as amended on October 28, 1994 ("**Sales Agreement**").

9.2 Pursuant to the Sales Agreement, ACSC is obligated, as long as it is a party to the Augusta Partnership, to purchase all of the production of the Augusta Mill ("**Purchase Obligation**").

9.3 The purchase price charged by the Augusta Partnership to ACSC is equal to the price at which ACSC resells the newsprint to its customers, less delivery costs, and ACSC's commission (currently US$8.50 per tonne).

9.4 The purchase price is payable on the 15th day of the month for all newsprint shipped in the previous month.

9.5 In the event that ACSC ceases to be a partner in the Augusta Partnership, the Sales Agreement would automatically terminate.

[11] **Call Agreement between ACSC, ACI and Woodbridge**

10.1 ACSC and Woodbridge are parties to an Amended and Restated Call Agreement dated July 1, 2004 ("**Call Agreement**").

10.2 ACI is the guarantor of the obligations of ACSC under the Call Agreement.

10.3 Under the Call Agreement, there are the following scenarios:

a) Under sections 2 and 3, ACSC had a call right, until December 31, 2009, to purchase Woodbridge's interest in the Augusta Partnership at a specified price ("**Call Right**");

b) If ACSC does not exercise its Call Right by December 31, 2009, ACSC has the option, until December 31, 2010, to sell the entire Augusta Partnership, including the portion owned by Woodbridge (**"ACSC Forced Sale")**; and

c) If the ACSC Forced Sale does not occur by December 31, 2010, Woodbridge has the option, until December 31, 2011, to sell the entire Augusta Partnership, including the portion owned by ACSC (**"Woodbridge Forced Sale").**

10.4 The price to exercise the Call Right is in excess of US$200 million ("**Option Price**").

10.5 Upon an ACSC Forced Sale or a Woodbridge Forced Sale, Woodbridge is entitled to the first approxirnately US$215 million of sale proceeds (**"Forced Sale Amount")** and ACSC would only be entitled to the balance of the sale proceeds, if any.

[12] On May 5, 2009, Woodbridge informed ACSC at a Partners Committee meeting that it would not consent to any further distributions mentioned in the Call Agreement.

The Rejection of the Call Agreement

[13] On June 15, 2009 ACSC filed a motion in the Chapter 11 proceedings seeking authority to reject the Call Agreement.

[14] On October 27, 2009 the US Bankruptcy Court issued an order confirming the rejection by ACSC of the Call Agreement.

[15] On November 25, 2009, Woodbridge filed a Proof of Claim in the amount of US$213M against ACSC, arising from the rejection of the Call Agreement, in the Chapter 11 proceedings in the United States.

[16] On the same date, Woodbridge filed a Proof of Claim against ACI in which it claims that the latter is indebted to it in the amount of US$213M (to be adjusted)[3] because of its guarantee of ACSC's obligation under the Call Agreement. This was later changed to US$110M.

[17] By Notice of Revision or Disallowance dated June 30, 2010, Ernst & Young Inc. in its capacity as Court-appointed Monitor of Abitibi-Consolidated Inc. and Bowater Canadian Forest Products Inc., *et al.*, revised the claim to US$9M. The reasons, in part, read:

> **Estimated Value of the Call Agreement**
>
> AbitibiBowater Inc's ("**ABH**") financial advisors prepared a valuation analysis of the Augusta Partnership based on a valuation date of March 30, 2009, which approximates ACI's CCAA filing, using ABH's financial forecast at that point in time. The valuation assumes that the Augusta Partnership continues as a going concern and that ACSC continues to purchase all of the Augusta Partnership's production on existing business terms who, in turn, sells it to ABH's customers. Based on this valuation date, the value of the Augusta Partnership is estimated to be US$170M (the "Going Concern Filing Date Value"). The value of Woodbridge's partnership's interest (47.5%) based on this valuation estimate is approximately US$81M (the "Woodbridge Partnership Value – Filing Date").

3 The Woodbridge submission notes "In its Proof of Claim, Woodbridge recognized that the amount of the claim might be subject to reduction based on the value of Woodbridge's interest in the Partnership. This, in fact, is the basis on which Woodbridge has proceeded.

The Monitor has prepared a valuation of the Augusta Partnership under a hypothetical scenario whereby Woodbridge exercised its rights under the Call Agreement and forced a sale of the Augusta Partnership. Based on this scenario, the Monitor estimates the total enterprise value to be approximately USD$90M (the "Third Party Sale Value"). This valuation is based on the Monitor's assessment of the discounted value of the Augusta Mill based on the following assumptions:

- the sole customer of the Augusta Partnership is ACSC. In the event of a sale to a third party, ACSC would reallocate the volumes purchased form the Augusta Partnership to the other mills in the ABH mill network to the extent of ABH's excess capacity and purge its unprofitable customers' orders to create the remaining capacity needed to meet ACSC's requirements. Therefore the Augusta Partnership would be sold, effectively, as an idle plant in any sale to a third party purchaser;
- Given the declining demand for newsprint in North America and over capacity in the market, the sale value to a third party purchaser of the Augusta Mill would be driven principally by the attractiveness of the cost structure of the Augusta Mill versus other newsprint mills in North America. It is assumed that a third party purchaser will only pay the discounted value of the incremental cost savings achieved by moving production from an existing more inefficient mill to the Augusta Mill; and
- The likelihood that there are a very limited number of potential prospective buyers who have the financial ability or strategic desire to purchase the Augusta mill.

Conclusion

Based on estimates of value noted above, the Third Party Sale Value exceeds the Woodbridge Partnership Value – Filing date by US$9M and as a result, the Call Agreement has a value of US$9M.

[18] Woodbridge filed a Notice of Dispute of the Monitor's Notice of Revision in which it contests the revision by the Monitor.

[19] A Dispute package was delivered to me in my capacity of Claims Officer on August 18, 2010.

[20] The Monitor and the AbitibiBowater Group filed separate submissions. The AbitibiBowater Group also filed an affidavit of Mr. Pierre Rougeau, the Executive Vice President Operations and Sales of AbitibiBowater Inc.

[21] Woodbridge filed a submission as well as a supplementary submission. In addition, it filed affidavits by Mr. Gregory J. Dart, Vice President of Woodbridge[4], and Mr. Stephen Mitchell of RBC Dominion Securities ("**RBC**") who filed a document entitled "*Value Assessment Report* Regarding Augusta Newsprint Company" ("**RBC Report**").

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4 Mr. Dart is the Vice President of Woodbridge Company Limited and Woodbridge International Holdings Limited. He is a Director of Woodbridge International Holdings SA.

[22] A hearing was held on September 17, 2010.

[23] Woodbridge called Mr. Michael Penn of RBC and Mr. Gregory J. Dart of Woodbridge as witnesses. Mr. Penn is a member of the team at RBC which prepared the RBC Report filed in evidence. Mr. Dart, in addition to his position with Woodbridge, is a member of the Partners Committee of the Augusta Partnership.

[24] AbitibiBowater Group called Mr. Rougeau as a witness. He, in addition to being the Executive Vice President Operations and Sales, is also a member of the Partners Committee of the Augusta Partnership.

[25] The Monitor called Mr. Morrisson, a Senior Vice President of Ernst & Young Inc. and one of the signatories of its submission, as a witness.

The Position of Woodbridge

[26] Woodbridge submits that the value of its claim should be measured as the difference between the value of its 47.5% interest in the Augusta Partnership, without the Call Agreement in place, and the value of its partnership interest with the Call Agreement in place. It submits that without the Call Agreement and the mechanism it provided for the sale of the Augusta Partnership, Woodbridge is in an illiquid minority interest position. Furthermore, that at the date of valuing such interest (April 16, 2009), the majority interest partner (ACSC) was in financial difficulty, the newsprint industry was in a poor state and the financial markets were under stress.

[27] Woodbridge asserts that without the Call Agreement, taking these factors into account, a discount of 30% should apply to the 47.5% interest value (base value)[5] and thus the value of its partnership interest as at April 16, 2009 is between US$45M and US$60M.

[28] If the Call Agreement were in place, Woodbridge assumes that there would be no sale of the Augusta Partnership until it exercises its right to effect a Forced Sale commencing January 1, 2011. It projects a scenario whereby there would be a Woodbridge Forced Sale on June 30, 2011 and evaluates the sale price at between US$145M and US$180M for the entire Augusta Partnership. Since the Call Agreement provides that Woodbridge would be entitled to all amounts under approximately US$215M (the "**Forced Sale Amount**"[6]). Woodbridge would receive the entire proceeds of the sale.

[29] To determine the loss incurred by the rejection of the Call Agreement, Woodbridge's 47.5% interest in the Augusta Partnership (US$45M to US$60M), without the Call Agreement in place, is subtracted from the assumed Purchase Price of the entire Augusta Partnership which would result from a Woodbridge Forced Sale if the Call

5 Which the RBC Report values at between US$145 and US$180M.
6 See Para. 11 (10.5) above.

Agreement were in place (US$145M to US$180M). Thus, Woodbridge claims the amount of approximately US$110M (US$145M to US$180M – US$45M to US$60M).

The Position of the Monitor

[30] The Monitor uses the same general formula as Woodbridge for establishing the damages incurred by Woodbridge resulting from the rejection of the Call Agreement, namely that damages are determined by assessing the (hypothetical) Purchase Price of the entire Augusta Partnership resulting from a Forced Sale pursuant to the Call Agreement and subtracting from that amount the value of Woodbridge's 47.5% interest in the Augusta Partnership as at April 16, 2009 without the Call Agreement. The key assumptions, including the date of the Forced Sale, however are different from those of Woodbridge resulting in a markedly different evaluation of the damages.

[31] The Monitor supports the AbitibiBowater Group's submission that if the Call Agreement were in place the latter's interest would be to proceed with a Forced Sale of the Augusta Partnership at the earliest opportunity, which is as soon as possible after January 1, 2010, for the following reasons:

a) Woodbridge has refused to give its consent to the distribution of cash, which is therefore accumulating for the sole benefit of Woodbridge, because the latter will almost certainly receive all the benefit of the sale price, it being highly improbable that the sale price would exceed US$215M (the Forced Sale Amount[7]) as adjusted.

b) All the purchasers of newsprint from the Augusta Mill are customers of the AbitibiBowater Group. The customers could be supplied from other mills which are owned entirely by the AbitibiBowater Group and which have an excess capacity. If supplied from other mills the profit goes to the AbitibiBowater Group.

[32] At the time of the Forced Sale the Partnership Agreement and the Sales Agreement would terminate and AbitibiBowater Group would not be required to operate the Augusta Mill nor to purchase all of its production. The Augusta Mill would become an idle plant, without customers, without a sales force, without the advantages of the AbitibiBowater Group's purchasing power and without the other advantages flowing from its involvement in the Augusta Partnership[8].

[33] As at April 16, 2009, the Monitor, assuming that the Forced Sale would be of a Standalone Operation and taking into account the condition of the newsprint industry, the closure of mills, the cutback in production, the significant decrease in demand, the

7 See Para. 11 (10.5) above.

8 Such as a commission on sales of around US8.50 per tonne, which is less than the going rate charged by third party brokers, and the payment of purchases by the fifteenth day of the following month.

lack of potential purchasers, and the recent sale price of other mills, establishes the value of the Augusta Mill at US$90M.

[34] With respect to the value of Woodbridge's 47.5% interest in the Augusta Partnership as at April 16, 2009, without a Call Agreement, the Monitor refers, *inter alia*, to the report prepared by its financial advisors who evaluated all the mills of the AbitibiBowater Group at the end of March 2009. It fixes the value of the Augusta Mill at US$170M. The Monitor establishes the Woodbridge interest at US$81M being 47.5% of US$170M. It contends that no minority interest discount is justified because the evaluation is made on the basis of the discounted cashflow. Thus, the damages resulting to Woodbridge from the rejection of the Call Agreement is fixed by the Monitor at US$9M (US$90M – US$81M).

The Position of the AbitibiBowater Group

[35] The AbitibiBowater Group, in general, supports the submission of the Monitor but adds, that in its view, the purchase price for the Augusta Partnership would not be higher than the US$81M which it accepts as the value of Woodbridge's 47.5% interest in the Augusta Partnership as at April 16, 2009.

Analysis

[36] All the parties agree on the formula for determining the damages incurred by Woodridge as a result of the rejection of the Call Order, namely:

The difference between:

1. The sale proceeds resulting from a Forced Sale of the Augusta Partnership pursuant to the Call Agreement (up to approximately US$215M) and;

2. The value of Woodbridge's 47.5% interest in the Augusta Partnership without a Call Agreement in place.

[37] The parties also agree that the date for evaluating the Woodbridge claim is the US filing date of April 16, 2009.

[38] The Monitor and the AbitibiBowater Group rely on a report prepared by ABH's financial advisors which evaluated, as at April 16, 2009, all the assets of ABH (including the Augusta Mill) for the purpose of developing ABH's restructuring plan for inclusion in the US Disclosure Statement. The Monitor states in its submission that the value of the Augusta Partnership is estimated by ABH's financial advisors to be US$170M as at April 16, 2009. This amount is more than the mid way point of the range submitted by Woodbridge (RBC Report) (US$145M – US$180M) and furthermore was accepted by a group of US creditors in the Chapter 11 proceedings.

[39] Consequently, I am of the view that it is fair and reasonable to assess the value of Woodbridge's 47.5% interest in the Augusta Partnership, with no Call Agreement in place, and without taking other factors into consideration, at US$81M[9] (47.5% of US$170M).

[40] Woodbridge submits that a minority discount of 30% should be applied to the base value (US$81M) of Woodbridge's 47.5% interest in the Augusta Partnership, without the Call Agreement because:

i) Absent the mechanism provided in the Call Agreement, Woodbridge's interest was and is an illiquid minority interest and;

ii) At the time of valuing such interest in 2009, the majority partner was in significant financial difficulty, the newsprint industry was in a poor state and the financial markets were under stress.

[41] Woodbridge, relying on the RBC Report, submits that the value of Woodbridge's 47.5% applying the 30% discount is between US$45M and US$60M.

[42] The Monitor notes that the value of the Augusta Partnership is calculated by both parties on a discounted cashflow basis. That cashflow, it asserts, is not affected by the rejection of the Call Agreement, neither is it affected by the minority position of Woodbridge in the Augusta Partnership. The cashflow and Woodbridge's share of it are protected by the Partnership Agreement and the Sales Agreement. All agree that the Augusta Mill is a good mill. There is no reason to grant a discount.

[43] I am in general agreement with the reasoning of the Monitor on the issue of the minority interest discount and that the discounted cashflow is the basis for establishing the value. However, the Call Agreement had some value for Woodbridge in providing the possibility of forcing a sale of the Augusta Partnership for a one year period starting January 1, 2011 and thus enabling it to cash in on its asset. I am of the view that a discount of US$5M would be fair and reasonable in the circumstances.

[44] Thus, I conclude that the value of Woodbridge's 47.5% interest in the Augusta Partnership without a Call Agreement, as at April 16, 2009, is US$76M (US$81M – US$5M).

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9 I sometimes refer to the 47.5% interest without the Call Agreement and without taking other factors into account as the base value.

What is the amount which (hypothetically) would be the purchase price if the Call Agreement were not rejected?

[45] The determination of the proceeds of a (hypothetical) Forced Sale is difficult to assess. The parties proceed on the basis of different assumptions. The Woodbridge scenario initially was that ACSC would not exercise its right to carry out a Forced Sale, as of January 1, 2010[10] and that Woodbridge would proceed with the Forced Sale, when it had a right to do so (January 1, 2011) according to the Call Agreement. It assumed a Forced Sale on June 30 of that year. It proceeded on the basis that the Augusta Mill could be sold on a Going Concern Basis or a Standalone Basis. It evaluates that a purchaser would pay between US$145M and US$180M for the asset. Also amongst its assumptions is that the price of newsprint would rise appreciably by 2014 and that it could, with the current availability of personnel in the newsprint industry, organize a qualified staff and sales force.

[46] Woodbridge asserts that if the Augusta Partnership were put up for sale it would anticipate bidding and would envisage associating itself with a producer who could operate the Augusta Mill. In the scenario advanced by Woodbridge, supported by the RBC Report, if the Augusta Mill was a Standalone Operation, the purchaser would anticipate a ramp-up period of approximately 12 months. It would counter the problem of no order book or customers by offering discounts of approximately $30 a metric tonne which it anticipates, given that the Augusta Mill is an efficient operation, would result in the creation of a profitable client base by the end of one year. Woodbridge has the solid finances which would allow for the support of the operation during the ramp-up period. Woodbridge criticized the approach of the Monitor in not looking beyond North America to identify any potential producers. It submits that there may be potential purchasers in Europe or elsewhere, although none were specifically mentioned.

[47] The Monitor proceeds on the basis of the following assumptions. With the Call Agreement in place, ACSC would proceed with a Forced Sale at the earliest opportunity which is January 1, 2010. Thus it contemplates a sale in early 2010. The assessment of the market and the industry, as at April 16, 2009, looking forward to 2010 is expressed as follows in its submission:

> **<u>The Newprint Market</u>**
>
> 17. ...there has been a dramatic decrease in the demand for newsprint in North America because of the continued expansion of the internet, electronic data transmission and storage, and negative trends in newspaper advertising and circulation, as well as the downturn in the global economy. The effect has been a significant drop in newsprint demand in North America from approximately 11.6 million tons in 2001 to 5.8 million tons in 2009.

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10 All parties agree that the ACSC would not exercise its right to purchase Woodbridge's interest in the Augusta Partnership by December 31, 2009 (the Call Right).

> 21. ...newsprint prices have been trending downward long term, having only been stabilized by capacity withdrawals. Additional capacity reductions and production transitions are likely to be needed to achieve sustainable current price levels without significant growth overseas.
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> 22. As a result of this declining demand, excess production capacity and declining price environment, the North American newsprint industry has gone through a dramatic restructuring with the insolvency filings of many of its largest producers, including ABH, White Birch Holding Company ("**White Birch**") and Fraser Papers Inc. ("**Fraser Papers"**). In this context, the value of newsprint mills has been significantly depressed.
>
> 25. ...pursuant to the Sales Agreement, ACSC is contractually obligated, as long as it is party to the Partnership Agreement, to purchase all of the production of the Augusta Mill. The Augusta Mill has no third party customer order book. In the event of a forced sale of the Partnership this obligation is automatically terminated and ABH would reallocate the volumes produced by the Augusta Mill for ABH's customers to other mills in the ABH mill network to the extent of its excess capacity in the network and purge any unprofitable customer orders to create the remaining capacity needed in the circumstances to meet its customers' demands (that were originally filled by production from the Augusta Mill). Therefore, the Augusta Mill would be sold as an idle plant if it were to be sold to a third party purchaser with no customer order book.
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> 28. ...the Augusta Mill appears to be a relatively efficient mill and could be attractive to a buyer who has an inefficient or higher cost mill in its network, although as described further below, there are likely limited buyers who would have the financial ability or strategic desire to purchase the Augusta Mill.
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> 29. For the purpose of the Monitor assessing a value that may be offered by a third party purchaser for the Augusta Mill as an idle mill, without a customer base, the Monitor has made the following assumptions:
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> - ABH will shift production it currently receives from the Augusta Mill to other mills in the ABH mill network to the extent of its excess capacity and purge its unprofitable customer orders to create the remaining capacity needed to satisfy all existing demand currently produced from the Augusta Mill.
> - as there continues to be overcapacity in the newsprint market, a purchaser will not be able to « buy » an order book as other producers will match newsprint price reductions and/or the profitability of the Augusta Mill will decline as a result of declining gross margins;
> - that a purchaser will be prepared to only pay an amount for the Augusta Mill based on the Mill Cost savings achieved by moving production from an existing inefficient mill to the Augusta Mill (the «**Contribution Margin**»); and
> - that a purchaser who may be interested in Augusta from a conversion viewpoint (i.e. convert from a newsprint mill to other higher value paper products) will be prepared to only pay an amount based on the Contribution margin given the additional capital expenditure that will be required to carry outthe conversion.

[48] The Monitor submits that the reason that the Augusta Mill is profitable is that the AbitibiBowater Group has seen to it that it is producing at approximately 90 to 98% of its

capacity and has undertaken to purchase all the production. The Augusta Mill, as such, has no customers. They are all customers of the AbitibitiBowater Group. The latter would close the Augusta Mill and move production to its other mills which have the required production capacity the production to service its customers. Thus, the Augusta Mill at the time of sale would have no customers, no sales force and would be idle at a time when the newsprint industry as a whole is in a fragile situation with demand and production barely approaching equilibrium. Casting oneself back to April 16, 2009, submits the Monitor, the situation is not bright and the prospects for 2010 are not appreciably better.

[49] The AbitibiBowater Group submits that the North American newsprint market is one in which plants are closing down or cutting back production. There are no producers who have the means and/or the interest in acquiring another mill. Because of the drastic reduction in demand over the last few years there has been an equally drastic reduction in production capacity. Production and demand are now at about the same level although there is still excess capacity. Prices have gone up somewhat over the last two years.

[50] At the hearing Woodbridge filed a supplementary submission and Revised Sales Value Summary (2010 Valuation Dates) prepared by RBC in which it asserts that regardless of whether the Forced Sale takes place in January or June 2010 or June 2011, the sales price, on a Standalone Basis, would be between US$135M and US$190M which when brought back to the value at April 16, 2009, would be between US$122M and US$163M.

[51] Amongst the persons who testified, the only one with experience in the day to day operation of newsprint mills is Mr. Rougeau. His affidavit sets out the important advantages and benefits the Augusta Partnership enjoys which flow from the Sales Agreement, the Partnership Agreement as well as the involvement of ABH, all of which would no longer exist in the Standalone situation of the Augusta Mill after a Forced Sale. He describes the considerable hurdles which a third party purchaser would face in operating the Augusta Mill as a Standalone Operation. When Mr. Rougeau testified at the hearing, he acknowledged that the Augusta Mill was "a good mill" and stated that the AbitibiBowater Group would be a natural for being a full owner and would very probably be amongst those bidding for it.

[52] I have concluded that if one places oneself back to April 16, 2009, having regard to the fact that Woodbridge refuses to consent to the distribution of any of the profits from the operation of the Augusta Mill, the AbitibiBowater Group would, at the earliest opportunity (January 1, 2010) proceed with a Forced Sale of the Augusta Partnership. Even taking into account that the Augusta Mill is one of the more cost-efficient mills in North America, the prevailing situation was one of cut backs in newsprint production and the closing of entire mills. In addition, newsprint producers were seeking protection under the insolvency statutes in both Canada and the United States. It could not be reasonably forecast that the situation would be appreciably better in early 2010

[53] The four largest customers who account for sales equivalent to 30% of the production of the Augusta Mill have long-term contracts with the AbitibiBowater Group. There are also long-term contracts with other customers. It is not likely that they would change their suppliers of newsprint. It should also be considered that the AbitibiBowater Group and other producers would likely react to counter any discount initiated by Woodbridge.

[54] I have also concluded that it is probable that the AbitibiBowater Group (ACSC) would, being the only purchaser of the entire newsprint production of the Augusta Mill, transfer to its other mills the production of newsprint ordered by its customers. Furthermore, the two key personnel of the Augusta Mill, the Mill Manager and Comptroller, were on loan from the AbitibiBowater Group and would no longer be with the Augusta Mill. Thus, as at the date of a Forced Sale, the Augusta Mill would have no customer base, no order book and no sales force.

[55] It is my view that, as at April 16, 2009, one would foresee an ACSC Forced Sale of the Augusta Mill in the early months of 2010 and that it would be sold as a Standalone Operation.

[56] I consider Woodbridge's assumption of acquiring a customer-base within 12 months, by giving discounts and turning a profit and the expectation of a rise in the prise of newsprint in 2013-2014 very speculative and overly optimistic.

[57] The US$170M evaluation of the Augusta Mill, submitted by the Monitor, represents its value when in operation with a customer base as at April 16, 2009. What would be the value of the Augusta Mill if the Sales Agreement and Partnership Agreement were not in place, if there were no customer base, no sales force and no order book? Woodbridge submits in its supplementary submission that the Standalone value as at January 1, 2010 would be between US$135M and $180M and as at June 30, 2010 it would be US$145M to $190M. When adjustments are made to bring those figures back to the value as at April 16, 2009, the range is between US$122M and US$163M.

[58] In my view the assessment by the Monitor is a more practical one based on the actual situation, on the ground, as it were, relying on experience in the newsprint industry, taking into account the current situation and the changes, if any, which one could (in April 2009) anticipate for early 2010. I find that the approach of Woodbridge, although well presented is, nonetheless a more theoretical one having the inherent weaknesses of forecasting future events in the economic sphere in a troubled industry.

[59] I have given weight to Woodbridge's submission that the AbitibiBowater Group, being one of the most important and experienced newsprint producers would not willingly allow one of its good mills, which is on the cost-efficient end of the spectrum, to go by the way side or be sold to a potential competitor. Neither would Woodbridge likely standby and not put in a bid which, if it were to result in its acquiring the Augusta Mill, would enable it to either attempt a resale at a higher price or associate itself with another newsprint

producer who would operate the Augusta Mill.

[60] Having regard to the fact that the AbitibiBowater Group is a very important producer in North America with vast expertise, I have concluded that if the Augusta Mill were put up for sale, it would very probably be a serious bidder. Woodbridge would also be a bidder in order to protect its investment and prevent the Augusta Mill from being sold for too low a price. It is to be kept in mind that any amount received from the sale of the Augusta Mill up to approximately US$215M would go entirely to Woodbridge.

[61] The Monitor's evaluation of the Augusta Mill on a Standalone Basis is in the context of a third party purchaser. In my view, it does not give sufficient weight to the particular interest of the AbitibiBowater Group in acquiring full ownership and the benefits (perhaps synergies) which would not be available to others. Mr. Rougeau testified at one point "*We saw ourselves as eventual owners of the facility*". The AbitibiBowater Group would also have to consider that Woodbridge would be bidding to protect its own interest to prevent a sale to a third party or the AbitibiBowater Group for what it would consider an unacceptably low price. In such circumstances, the AbitibiBowater Group would probably bid an amount higher than US$90M to acquire the full Augusta Partnership.

[62] It is my view that the Monitor's valuation of US$90M, although acceptable for third party purchasers, does not sufficiently take into account the particular and special interest of the AbitibiBowater Group to acquire the Mill nor the protective interest of Woodbridge.

[63] Having regard to the foregoing, I conclude that it is reasonable to add US$10M to the US$90M valuation set by the Monitor so that the value of the Augusta Partnership as at April 16, 2009 is established at US$100M.

Conclusions

[64] The damages incurred by Woodbridge because of the rejection of the Call Agreement is the difference, calculated as at April 16, 2009, between its 47.5% share in the Augusta Partnership, without the Call Agreement, which I assess at US$76M and US$100M which I evaluate it would have received if the Call Agreement were in place at an (hypothetical) ACSC Forced Sale in early 2010.That difference amounts to US$24M.

[65] Woodbridge's Contestation of the Monitor's Revision of its Proof of Claim should be allowed in part to modify the Revised Proof Claim of Woodbridge and establish it at US$24M.

For the these reasons:

[66] The Notice of Dispute of Woodbridge Company Limited, Woodbridge International Holdings Limited and Woodbridge International Holdings SA of the Notice of Revision or Disallowance by the Monitor dated June 30, 2010 is allowed in part and the Revised Proof of Claim is determined to be the amount of US$24M.

Montreal, Quebec, December 13, 2010

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Claims Officer

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