

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

B E T W E E N:

THE JEAN COUTU GROUP (PJC) INC., DOMTAR INC., DOMTAR PULP AND PAPER PRODUCTS INC., GIRO INC./LE GROUPE EN INFORMATION ET RECHERCHE OPÉRATIONNELLE, RGR SPORTSWEAR INC., 131519 CANADA INC., AIR JAZZ LP, SERVICES HYPOTHÉCAIRES LA PATRIMONIALE INC., TECSYS INC., PETRIFOND FOUNDATION COMPANY LIMITED, PETRIFOND FOUNDATION MIDWEST LIMITED, SOCIÉTÉ GÉNÉRALE DE FINANCEMENT DU QUÉBEC, VIBROSYSTEM INC., JURA ENERGY CORPORATION, IVANHOE MINES LTD., WEBTECH WIRELESS INC., WYNN CAPITAL CORPORATION INC., HY BLOOM INC., CARDACIAN MORTGAGE SERVICES INC. and SABRE ENERGY LTD.

APPLICANTS
(Appellants)

— and —

THE INVESTORS REPRESENTED ON THE PAN-CANADIAN INVESTORS COMMITTEE FOR THIRD-PARTY STRUCTURED ASSET-BACKED COMMERCIAL PAPER LISTED IN SCHEDULE “B” HERETO, METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS II CORP., METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS III CORP., METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS V CORP., METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS XI CORP., METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS XII CORP., 4446374 CANADA INC. AND 6932819 CANADA INC., TRUSTEES OF THE CONDUITS LISTED IN SCHEDULE “A” HERETO, BANK OF AMERICA N.A., CITIBANK N.A., CITIBANK CANADA, IN ITS CAPACITY AS A CREDIT DERIVATIVE SWAP COUNTERPARTY AND NOT IN ANY OTHER CAPACITY, DEUTSCHE BANK A.G., HSBC BANK CANADA, HSBC BANK USA, NATIONAL ASSOCIATION, MERRILL LYNCH INTERNATIONAL, MERRILL LYNCH CAPITAL SERVICES, INC., SWISS RE FINANCIAL PRODUCTS CORPORATION, UBS AG, ERNST & YOUNG INC., IN ITS CAPACITY AS MONITOR PURSUANT TO THE INITIAL ORDER, THE AD HOC COMMITTEE OF NOTEHOLDERS, THE AD HOC COMMITTEE OF RETAIL NOTEHOLDERS, BANK OF MONTREAL, CANADIAN IMPERIAL BANK OF COMMERCE, ROYAL BANK OF CANADA, THE BANK OF NOVA SCOTIA, THE TORONTO-DOMINION BANK, CIBC MELLON TRUST COMPANY, COMPUTERSHARE TRUST COMPANY OF CANADA, BNY TRUST COMPANY OF CANADA

RESPONDENTS
(Respondents)

**RESPONSE OF THE AD HOC COMMITTEE OF RETAIL NOTEHOLDERS
TO THE APPLICANTS’ APPLICATIONS FOR LEAVE TO APPEAL**
Pursuant to Rule 27(1) of the Rules of the Supreme Court of Canada

SCHEDULE "A"
Conduits

Apollo Trust

Apsley Trust

Aria Trust

Aurora Trust

Comet Trust

Encore Trust

Gemini Trust

Ironstone Trust

MMAI-I Trust

Newshore Canadian Trust

Opus Trust

Planet Trust

Rocket Trust

Selkirk Funding Trust

Silverstone Trust

Slate Trust

Structured Asset Trust

Structured Investment Trust III

Symphony Trust

Whitehall Trust

SCHEDULE "B"
Applicants

ATB Financial

Caisse de Dépôt et Placement du Québec

Canaccord Capital Corporation

Canada Mortgage and Housing Corporation

Canada Post Corporation

Credit Union Central Alberta Limited

Credit Union Central of British Columbia

Credit Union Central of Canada

Credit Union Central of Ontario

Credit Union Central of Saskatchewan

Desjardins Group

Magna International Inc.

National Bank Financial Inc./National Bank of Canada

NAV Canada

Northwater Capital Management Inc.

Public Sector Pension Investment Board

The Governors of the University of Alberta

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the Initial Order**

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TAB ONE

PART I — CONCISE STATEMENT OF FACTS

Overview

1. The Ad Hoc Committee of Retail Noteholders (the “Retail Noteholders Committee”) opposes the applications for leave to appeal to this Honourable Court from the Judgment of the Court of Appeal for Ontario rendered on August 18, 2008 (the “Ontario Court of Appeal Judgment”) which dismissed an appeal from the order of the Honourable Mr. Justice Colin L. Campbell of the Ontario Superior Court of Justice dated June 5, 2008 (the “Sanction Order”).
2. The Sanction Order approved a Plan of Compromise and Arrangement proposed by The Pan-Canadian Investors Committee for Third-Party Structured Asset-Backed Commercial Paper (the “Pan-Canadian Investors Committee”) pursuant to the *Companies’ Creditors Arrangements Act*, R.S.C. 1985, c. C-36 (the “CCAA”).
3. The Retail Noteholders Committee supports the position of the Pan-Canadian Investors Committee in opposing the applications for leave to appeal herein and adopts its arguments in support of that position, adding the comments below.

Adoption of Concise Statement of Facts of the Pan-Canadian Investors Committee

4. The Retail Noteholders Committee adopts and relies on the Concise Statement of Facts of the Pan-Canadian Investors Committee and states further as follows.

Further Facts

5. By order of the Honourable Mr. Justice Campbell dated April 15, 2008, counsel were appointed to represent the Retail Noteholders Committee on the CCAA application brought by The Pan-Canadian Investors Committee. That order provided, in part, that:

“the Representative Counsel shall represent the interest of all persons, family trusts, or personal holding corporations that purchased ABCP from a retail brokerage and shall advise those on whose behalf they are hereby appointed in all aspects of these proceedings, without any obligation to consult with or seek individual instructions from those on whose behalf they have been appointed to represent unless otherwise ordered by the Court.”

By number, these persons, family trusts and personal holding corporations constitute the majority of creditors holding ABCP.

**Order re Appointment of Representative Counsel dated April 15, 2008, ¶ 3
Response of the Retail Noteholders Committee, Tab 2, p. 8**

6. The largest groups of retail noteholders are the clients of Canaccord Capital Corporation (“Canaccord”) and the clients Credential Financial Inc. (“Credential”). Canaccord’s clients comprise over 1,450 of the estimated 2,000 holders of ABCP, and most of them are retail noteholders who hold less than \$1 million worth of ABCP. Credential operates in partnership with credit unions across Canada, and has approximately 350 clients who hold ABCP.

**Eighth Report of the Monitor dated May 28, 2008, ¶¶ 13 and 21
Application for Leave to Appeal of The Jean Coutu Group(PJC) Inc., et al.,
Volume IX, pp 1719 and 1722**

7. Both Canaccord and Credential have made offers to eligible retail holders of ABCP who purchased it through their respective firms (referred to herein as, respectively, the “Canaccord Relief Plan” and the “Credential Relief Plan” and, collectively, as the “Relief Plans”). These Relief Plans are outside the Plan of Compromise and Arrangement. Under the Canaccord Relief Plan, clients who held ABCP of \$1 million or less could sell the notes they receive under the Plan of Compromise and Arrangement and would receive the face value of their ABCP plus interest; clients who held between than \$1 million and \$1.31 million would receive \$1 million plus interest and reimbursement of restructuring expenses. The Credential Relief Plan is materially the same.

**Eighth Report of the Monitor dated May 28, 2008, ¶¶ 18-19 and 25
Application for Leave to Appeal of The Jean Coutu Group(PJC) Inc., et al.,
Volume IX, pp 1721-23**

8. Both of the Relief Plans are conditional on the Plan of Compromise and Arrangement proposed by The Pan-Canadian Investors Committee being implemented in a form acceptable to Canaccord and Credential.

**Eighth Report of the Monitor dated May 28, 2008, Appendix “C”, Condition Precedent 3 and Appendix “D”, first highlight
Application for Leave to Appeal of The Jean Coutu Group(PJC) Inc., et al.,
Volume IX, p. 1752 and p. 1754**

9. One of the issues raised before Campbell J. by many of the applicants was the classification of creditors. One of the arguments was that, by virtue of the incentive to support the Plan of Compromise and Arrangement arising from the Relief Plans, the retail noteholders of ABCP who were eligible for one of the Relief Plans should not be included in the same voting class as other noteholders. However, even when the votes were tabulated on the basis of excluding those retail noteholders (alongside others), the Plan of Compromise and Arrangement was strongly supported by a double majority: specifically, the Plan of Compromise and Arrangement was supported by 80.5% in number and 81.2% in value.

**Reasons for Decision of Campbell J. dated June 5, 2008, ¶¶ 23-27
Application for Leave to Appeal of The Jean Coutu Group (PJC) Inc., et al.,
Volume I, pp 81-82**

PART II — CONCISE STATEMENT OF THE QUESTIONS IN ISSUE

10. The Retail Noteholders Committee adopts and relies on the Concise Statement of Facts of the Questions in Issue of the Pan-Canadian Investors Committee.

PART III — CONCISE STATEMENT OF ARGUMENT

11. The Retail Noteholders Committee adopts and relies upon the Concise Statement of Argument of the Pan-Canadian Investors Committee and, in addition, states as follows.

12. At paragraphs 25 of its Memorandum of Argument, Ivanhoe Mines Limited (“Ivanhoe”) argues that:

“...it was not the attractiveness of the Plan itself that won the mandatory ‘double majority’ of votes required by the CCAA. The 2/3rds majority in *number of creditors* required by the CCAA was secured by **entirely collateral, 11th hour offers made by two retail dealers to their clients**. These offers (‘The Canaccord Relief Program’ and ‘The Credential Securities Relief Program’), *made outside the Plan*, to a group of over 1,800 so-called ‘retail’ clients individually holding \$1 million or less in ABCP, provides for the repurchase of their ABCP at 100% face value plus interest. **It is respectfully submitted that, as there are only an estimated 2,000 holders of ABCP in total, the resulting approval may properly be characterized as a ‘bought vote’.**” [Emphasis in italics in original; emphasis in bold added.]

13. This argument is unfounded. Aside from the provocative language employed by Ivanhoe, it is incorrect that the double majority was secured by the Relief Plans. As is noted at paragraph 9, above, at the instance of certain of the applicants Mr. Justice Campbell asked the Monitor to tabulate the votes excluding those who qualified under the Relief Plans and — even then — the statutory double majority was secured.

14. Because the conclusion in paragraph 25 of Ivanhoe’s argument — that there was a ‘bought vote’ — is without foundation, its arguments of public policy and fairness found at paragraphs 54 to 57 and 58(e) are also without foundation. The statutory double majority was achieved even when the votes of these retail noteholders were not counted; therefore the existence of these Creditor Relief Plans, which will benefit the retail noteholders who may need help most, cannot lead to any unfairness. Ivanhoe’s arguments found at these paragraphs do not and cannot support the applications for leave to appeal herein.

Reasons for Decision of Campbell J. dated June 5, 2008, ¶ 27

**Application for Leave to Appeal of The Jean Coutu Group (PJC) Inc., et al.,
Volume I, p. 82**

PART IV — SUBMISSIONS CONCERNING COSTS

15. The Retail Noteholders Committee makes no submissions concerning costs of the application for leave to appeal.

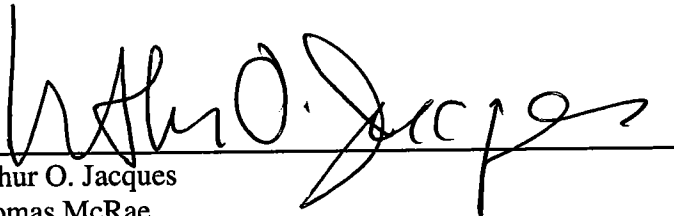
PART V — ORDER SOUGHT

16. The Retail Noteholders Committee respectfully requests that the applications for leave to appeal the Ontario Court of Appeal Judgment dated August 18, 2008 be dismissed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED,

Dated at Toronto, Ontario this 5th day of September 2008

SHIBLEY RIGHTON LLP and JUROVIESKY AND RICCI LLP

A handwritten signature in black ink, appearing to read 'Arthur O. Jacques', is written over a horizontal line.

Arthur O. Jacques

Thomas McRae

Henry Juroviesky

Eliezer Karp

Of Counsel for the Ad Hoc Retail Noteholders Committee

PART VI — TABLE OF AUTHORITIES

None.

PART VII — STATUTORY PROVISIONS

None.

TAB TWO

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**THE HONOURABLE
MR. JUSTICE CAMPBELL**

) **TUESDAY, THE 15th DAY**
)
) **OF APRIL, 2008**



**IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985 c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE AND ARRANGEMENT
INVOLVING METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS II
CORP., METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS III
CORP., METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS V
CORP., METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS XI
CORP., METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS XII
CORP., 4446372 CANADA INC. AND 6932819 CANADA INC., TRUSTEES OF
THE CONDUITS LISTED IN SCHEDULE "A" HERETO**

BETWEEN:

**THE INVESTORS REPRESENTED ON THE PAN-CANADIAN INVESTORS
COMMITTEE FOR THIRD-PARTY STRUCTURED ASSET-BACKED
COMMERCIAL PAPER LISTED IN SCHEDULE "B" HERETO**

Applicants

- and -

**METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS II CORP.,
METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS III CORP.,
METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS V CORP.,
METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS XI CORP.,
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4446372 CANADA INC. AND 6932819 CANADA INC., TRUSTEES OF THE
CONDUITS LISTED IN SCHEDULE "A" HERETO**

Respondents

**ORDER
(RE APPOINTMENT OF REPRESENTATIVE
COUNSEL)**

THIS MOTION MADE by the Ad Hoc Retail Holders Committee (the "AHRHC") of Holders of Non-Bank Sponsored Asset-Backed Commercial Paper ("ABCP") for an order appointing representative counsel, in these proceedings was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the AHRHC dated the 15th day of April, 2008 and the affidavits of Eliezer Karp, Henry Juroviesky and Edwin Cohen, affirmed the 11th day of April, 2008 and affirmed/sworn on the 13th day of April, 2008 (the "Karp Affidavit", the "Juroviesky Affidavit" and the "Cohen Affidavit") filed, and on hearing the submissions of counsel for the Committee.

1. **THIS COURT ORDERS** that all parties entitled to notice of this motion have been served with notice of this motion and that the time for service is hereby abridged such that service effected on the parties served with notice of this motion shall be good and sufficient notice of this motion.

2. **THIS COURT ORDERS** that (a) Juroviesky and Ricci LLP ("JR") and (b) Shibley Righton LLP ("SR") are appointed in these proceedings to represent the Ad Hoc Retail Holders Committee (collectively JR and SR are referred to herein as "Representative Counsel") but nothing in this paragraph shall impair the right, if any, of any individual holder of ABCP to retain and instruct counsel in these proceedings on his, her or its own behalf.

3. **THIS COURT ORDERS** that, subject to further order of the Court, the Representative Counsel shall represent the interest of all persons, ^{family} trusts, or ^{personal holding} corporations that purchased ABCP from a retail brokerage and shall advise those on whose behalf they are hereby appointed in all aspects of these proceedings, without any obligation to consult with or seek individual instructions from those on whose behalf they have been appointed to represent unless otherwise ordered by the Court.

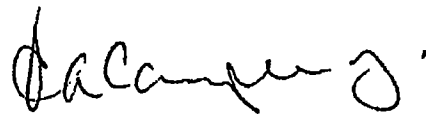
4. **THIS COURT ORDERS** that the Representative Counsel shall not be liable jointly or severally for any act or omission in respect of their appointment or the fulfillment of their duties in carrying out the provisions of this Order, and that no action or other proceedings shall be commenced against either of the Representative Counsel relating to their acting as such, except with prior leave of this Court, on at least 7 day's notice to the Representative Counsel, as may be applicable, and upon further Order in respect of security for costs, to be given by the plaintiff for the costs, on a substantial indemnity basis, of the Representative Counsel in connection with any such action or proceeding.

5. **THIS COURT ORDERS** that the Representative Counsel may from time to time apply to this Court for advice and directions in respect of their appointment or the fulfillment of their duties in carrying out the provisions of this Order, upon notice to the Applicants, to the CCAA Parties (as defined in the Initial Order in the instant matter) and to other interested parties, unless otherwise ordered by the Court.

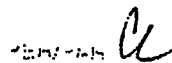
6. **THIS COURT ORDERS** that the Representative Counsel shall be given notice of all motions to which holders of ABCP are entitled in these proceedings and that they shall be entitled to represent those on whose behalf they are hereby appointed in all such proceedings.

7. **THIS COURT ORDERS** that Diane Urquhart be appointed as the Financial Analyst for the AHRHC and that she be paid her reasonable fees and disbursements by the CCAA parties from and after March 25th, 2008.

8. **THIS COURT ORDERS** that the paragraphs 32 and 34 of the Order of this Honorable Court dated March 17, 2008 are hereby amended effective March 25th, 2008 and are deemed from and after that time to include Representative Counsel as appointed herein among the parties who shall be paid their reasonable fees and disbursements in connection with these proceedings, in each case at their standard rates and charges, from and after March 25, 2008 and among those who benefit from the Professionals charge as defined therein.



APR 15 2008



SCHEDULE "A"

Conduit Trusts

APOLLO TRUST

APSLEY TRUST

ARIA TRUST

AURORA TRUST

COMET TRUST

ENCORI TRUST

GEMINI TRUST

IRONSTONE TRUST

MNIAI-I TRUST

NEWSHORE CANADIAN TRUST

OPUS TRUST

PLANET TRUST

ROCKET TRUST

SELKIRK FUNDING TRUST

SILVERSTONE TRUST

SLATE TRUST

STRUCTURED ASSET TRUST

STRUCTURED INVESTMENT TRUST III

SYMPHONY TRUST

WHITEHALL TRUST

SCHEDULE "B"

Applicants

ATB FINANCIAL

CAISSE DE DEPOT ET PLACEMENT DU QUEBEC

CANACCORD CAPITAL CORPORATION

CANADA MORTGAGE AND HOUSING CORPORATION

CREDIT UNION CENTRAL ALBERTA LIMITED

CREDIT UNION CENTRAL OF BRITISH COLUMBIA

CREDIT UNION CENTRAL OF ONTARIO

DESJARDINS GROUP

MAGNA INTERNATIONAL INC.

NATIONAL BANK FINANCIAL INC., NATIONAL BANK OF CANADA

NAV CANADA

NORTHWATER CAPITAL MANAGEMENT INC.

PUBLIC SECTOR PENSION PLAN INVESTMENT BOARD

UNIVERSITY OF ALBERTA

IN THE MATTER OF THE COMPANIES/CREDITORS
ARRANGEMENT ACTS, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE AND
ARRANGEMENT INVOLVING METCALFE & MANSFIELD
ALTERNATIVE INVESTMENTS II CORP., et al.

ONTARIO

SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST
Proceeding Commenced at Toronto

ORDER
(RE APPOINTMENT OF REPRESENTATIVE COUNSEL)

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