

Mining firm digs in on ABCP ruling

By KEN MARK

Asset backed commercial paper (ABCP) investors may face yet another delay before seeing any money. Ivanhoe Mines Inc. will go before the Supreme Court of Canada in a bid to overturn the restructuring deal sanctioned by the Ontario Court of Appeal.

The restructuring will be further delayed if the Supreme Court agrees to hear the appeal. But if it turns down the request, the provincial judgement stands and the ABCP note restructuring will begin.

For the moment, lawyers for corporate investors are girding for another possible court battle. However, accountants will again be sitting on the sidelines waiting for the next judicial shoe to drop.

For practitioners, it will be steady as she goes.

"With the likelihood of further legal proceedings, auditors will have to soldier on trying to use appropriate methods of valuing such investments as they have in the past year," says Peter Martin, Toronto-based director of accounting standards for the Canadian Institute of Chartered Accountants (CICA). "It has been a difficult time establishing fair value for ABCP investments without a functioning market setting prices. What they need to do is to continue applying the existing standards in the CICA handbook."

But now the guessing game begins. Will the Supreme Court agree to hear the matter?

"When the court considers the



"These securities have not traded for more than a year without disrupting the overall financial markets."

Howard Shapray, lawyer

request, two issues will guide its decision," says Ivanhoe Mines' Vancouver-based lawyer, Howard Shapray.

"One is that the request relates to a matter of national interest and the other is that there are conflicting views of two provincial appellate courts — Ontario and Quebec — regarding the CCAA (Companies' Creditors Arrange-

ment Act), a federal statute."

Toronto lawyer Philip Anisman says the dollar amount involved in the case is not an element in the court's decision. "It may be relevant, however, if there are broader implications involved, such as market structure," he says. "For example, the recent BCE decision was considered to be major issue since it involved the

window after the Ontario Court of Appeal decision. "What the court has to decide is the significance of the appeal hearing," says Anisman. "If it concludes that it is indeed a matter of national importance, it can expedite its hearing."

Shapray said the Supreme Court set a precedent with its decision to speed up the recent

"These securities have not traded for more than a year without disrupting the overall financial markets." He estimates that the total value of the ABCP held by corporate investors is between \$1-1.2 billion.

According to Mississauga, Ont.-based independent financial analyst Diane Urquhart, had the Canadian banks originally taken back the ABCP investments they sold there would never had been a massive restructuring problem.

"Based on my research, they would have taken as much as a 25 per cent hit to their balance sheets," she says. "But they still would have been able to handle it. They all had the balance sheet capacity to accept substantial losses. No bank would have needed to be bailed out."

Whatever the Supreme Court decides, the financial markets will eventually have deal with the ABCP \$32 billion pool of assets.

Like ancient Gaul, the outstanding ABCP pool of assets can be divided into three parts. "The most highly prized group consists of traditional securitized assets, credit card, car loans and conventional residential mortgages," says Daryl Ching, Toronto based vice-president of Canadian Hedge Fund Watch. Their values are relatively high and stable.

"The second involves CDOs (collateralized debt obligations) leveraged financial derivatives that can be broken down in sub-categories A1 and A2 indicating different levels of quality."

Since many investors have simply lumped all CDOs together, initially some of them will attract very low bids. Other investors believe that if held to maturity — seven to nine years — they will pay out fully, along with accrued interest.

Ching estimates that the best CDOs might eventually fetch 80 cents to 90 cents on the dollar. Initially, sophisticated risk-takers will target an acceptable rate of return and discount their bids accordingly.

However, more mainstream investors such as insurance companies and pension funds are likely to wait at least a year for the market to develop a track record.

Then, there is the subprime segment. "This class appears to be totally toxic," says Ching. "Recently in the U.S., Merrill Lynch cleared out its inventory of such investments at 22 cents on the dollar."

And finally as Canadian investors await the Supreme Court decision, what is on their minds? "The public is now much more sophisticated about such things," says Urquhart. "They expect to see remedies when tainted food enters supermarkets or toxic chemicals enter the water supply. ABCP is simply tainted investments that got into the money system."



Could YOUR ORGANIZATION benefit from a CPA membership?

- ⚡ Front-Line Information
 - Payroll InfoLine telephone and e-mail "hotline"
 - The CPA's website at www.payroll.ca, including JobConnect™, Payroll Tip of the Week and other members-only resources
 - Member publications like *DIALOGUE* magazine and the *CPA E-Source*™ newsletter.
- ⚡ Certification

The CPA's certification program offers two certifications: the Certified Payroll Manager (CPM) and the Payroll Compliance Practitioner (PCP).
- ⚡ Advocacy

The CPA is your advocate at the federal, provincial and territorial levels; we work with senior government officials to represent employers' payroll interests.
- ⚡ Networking

Make valuable industry contacts by joining a community of over 12,800 organizations and individuals committed to the advancement of the payroll profession.

Professional Development Series (PDS)
The CPA holds more than 400 PDS seminars and workshops across Canada each year to address key payroll topics.

Conferences
June 9 - 12, 2009 at the Fairmont Empress Hotel in Victoria, BC.

National Payroll Week (NPW)
Held September 8 - 12, 2008, NPW recognizes the mission-critical role payroll professionals have in *Keeping Canada Paid*™—Today, Tomorrow and Every Day.

The Canadian Payroll Association
1600 - 250 Bloor Street East
Toronto, ON M4W 1E6

THE CANADIAN PAYROLL ASSOCIATION **CPA** L'ASSOCIATION CANADIENNE DE LA PAIE **ACP**

www.payroll.ca

Toll-free: 1-800-387-4693
Tel: 416-487-3380
Fax: 416-487-3384

Certification | ext. 272 | cpm@payroll.ca
Payroll Infoline | ext. 773 | infoline@payroll.ca
Membership | ext. 118 | membership@payroll.ca

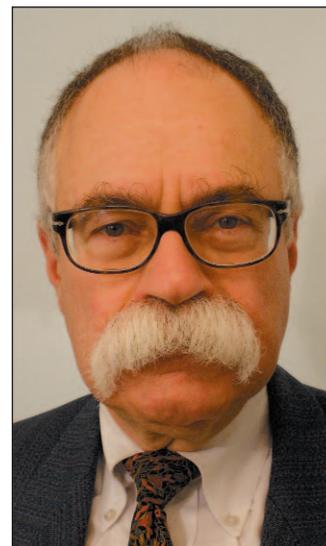


SHAPRAY

responsibility of directors and by implication, shareholders and employees."

The key legal issue centres on relieving all third parties of liability regarding the sale of ABCP, except for clear cases of fraud. The Ontario Court of Appeal ruling concluded said that while such legal releases may be "distasteful", they can be used when necessary for the greater good, to have a restructuring proceed.

When the Supreme Court will hear the matter is uncertain. Ivanhoe Mines filed its petition well within the eight-week



ANISMAN

BCE hearing.

If the Supreme Court grants leave to hear the appeal motion, the resulting delay may encourage firms that sold ABCP to start discussions with corporate investors about repurchasing the investments. "In the past, it put pressure on others to react responsibly to meet investors' demands," says Shapray. "Right now, the situation remains very dynamic"

If the Supreme Court overturns the Ontario decision, will it lead to chaos in Canadian financial markets? "That statement is way overblown," says Sharpray.