

CANADA

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No. : 500-11-036133-094

SUPERIOR COURT

Commercial Division  
(Sitting as a court designated pursuant  
to the  
*Companies' Creditors Arrangement Act*,  
R.S.C., c. C-36, as amended)

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IN THE MATTER OF THE PLAN OF  
COMPROMISE OR  
ARRANGEMENT OF:

ABITIBIBOWATER INC.,

And

ABITIBI-CONSOLIDATED INC.,

And

BOWATER CANADIAN HOLDINGS  
INC.,

And

the other Petitioners listed herein

Petitioners

And

ERNST & YOUNG INC.,

Monitor

MOTION FOR THE ISSUANCE OF ORDERS RELATED TO THE  
TRANSFER OF PROPERTY LEASED TO BOWATER CANADIAN FOREST  
PRODUCTS INC. BY THE FORT WILLIAM FIRST NATION CORP.

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT,  
SITTING IN COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL  
DISTRICT OF MONTRÉAL, THE ABITIBI PETITIONERS RESPECTFULLY  
SUBMIT THE FOLLOWING:

A. PREAMBLE

1. On April 17, 2009, this Honourable Court issued an order (as amended and restated, the "**Initial Order**") pursuant to the *Companies' Creditors Arrangements Act* (the "**CCAA**") in respect of (i) Abitibi-Consolidated Inc. ("**ACI**") and subsidiaries thereof (collectively with ACI, the "**Abitibi Petitioners**")<sup>1</sup>, (ii) Bowater Canadian Holdings Inc. and subsidiaries thereof (collectively, the "**Bowater Petitioners**")<sup>2</sup> and (iii) certain partnerships.<sup>3</sup>
2. On April 16, 2009, AbitibiBowater Inc. ("**ABH**"), Bowater Inc. and certain of their U.S. and Canadian subsidiaries filed voluntary petitions for relief under Chapter 11 of the U.S. Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "**Chapter 11 Proceedings**"), and on April 17, 2009, ABH and the certain Petitioners (collectively with ABH, the "**18.6 Petitioners**")<sup>4</sup> obtained orders under s. 18.6 of the CCAA in respect of the Chapter 11 Proceedings.
3. The Abitibi Petitioners, the Bowater Petitioners and the 18.6 Petitioners (collectively, the "**Petitioners**") are all direct or indirect subsidiaries of ABH

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<sup>1</sup> The Abitibi Petitioners are Abitibi-Consolidated Inc., Abitibi-Consolidated Company of Canada, 3224112 Nova Scotia Limited, Marketing Donohue Inc., Abitibi-Consolidated Canadian Office Products Holdings Inc., 3834328 Canada Inc., 6169678 Canada Incorporated., 4042140 Canada Inc., Donohue Recycling Inc., 1508756 Ontario Inc., 3217925 Nova Scotia Company, La Tuque Forest Products Inc., Abitibi-Consolidated Nova Scotia Incorporated, Saguenay Forest Products Inc., Terra Nova Explorations Ltd., The Jonquière Pulp Company, The International Bridge and Terminal Company, Scramble Mining Ltd. and 9150-3383 Québec Inc.

<sup>2</sup> The Bowater Petitioners are Bowater Canadian Holdings Incorporated., Bowater Canada Finance Corporation, Bowater Canadian Limited, 3231378 Nova Scotia Company, AbitibiBowater Canada Inc., Bowater Canada Treasury Corporation, Bowater Canadian Forest Products Inc., Bowater Shelburne Corporation, Bowater LaHave Corporation, St. Maurice River Drive Company Limited, Bowater Treated Wood Inc., Canoxel Hardboard Inc., 9068-9050 Québec Inc., Alliance Forest Products (2001) Inc., Bowater Belledune Sawmill Inc., Bowater Maritimes Inc., Bowater Mitis Inc., Bowater Guérette Inc. and Bowater Couturier Inc.

<sup>3</sup> The partnerships are Bowater Canada Finance Limited Partnership, Bowater Pulp and Paper Canada Holdings Limited Partnership and Abitibi-Consolidated Finance LP.

<sup>4</sup> The 18.6 Petitioners are AbitibiBowater Inc., AbitibiBowater US Holding 1 Corp., Bowater Ventures Inc., Bowater Incorporated, Bowater Nuway Inc., Bowater Nuway Mid-States Inc., Catawba Property Holdings LLC, Bowater Finance Company Inc., Bowater South American Holdings Incorporated, Bowater America Inc., Lake Superior Forest Products Inc., Bowater Newsprint South LLC, Bowater Newsprint South Operations LLC, Bowater Finance II, LLC, Bowater Alabama LLC and Coosa Pines Golf Club Holdings LLC.

(collectively, with its subsidiaries, the "**ABH Group**").

**B. ORDERS SOUGHT**

4. The Petitioners hereby seek the issuance of various orders which, if granted, will permit, subject to the obtaining of other approvals, the following to take place:
  - (a) the transfer of certain lands in the District of Thunder Bay described as Parts 7, 11, 19, 27, 28, 29, 30 and 32 on Reference Plan 55R-11689 (the "**Lands**") by Fort William First Nation Development Corp. ("**FWFN Corporation**") to Her Majesty the Queen in right of Canada (the "**Crown**") to be immediately thereafter held for the use and benefit of the Fort William First Nation ("**FWFN**") as a "Reserve" within the meaning of The *Indian Act*, R.S.C. 1985, c. 1-5 (The "**Indian Act**");
  - (b) the execution of a Lease Surrender Agreement by Bowater Canadian Forest Products Inc. ("**BCFPI**"), the Crown, the FWFN, the Fort William First Nation, LP ("**FWFNLP**") and the FWFN Corporation, pursuant to which the current tenure of BCFPI under its freehold lease is surrendered to the FWFN Corporation so that the transfer of the Lands referred to in the above mentioned paragraph may take place;
  - (c) the passage of the Fort William First Nation Sawmill Regulations by the Crown under the *First Nations Commercial and Industrial Development Act*, S.C. 2005, c. 53 (the "**FNCIDA**");
  - (d) the execution of a Permit Agreement (the "**Permit Agreement**") by the FWFN, BCFPI and the Minister of Indian Affairs and Northern Development (the "**Minister**"), pursuant to subsection 28(2) of the *Indian Act*, providing, *inter alia*, for BCFPI's occupancy of the Lands;
  - (e) the execution of a lease in respect of the Lands between the Crown as lessor, and FWFNLP as lessee, and the execution of a sub-lease by and between FWFNLP as lessor, and BCFPI as sub-lessee;
  - (f) the replacement of the Permit Agreement with the aforementioned lease and sub-lease if a successful designation for lease is held by the FWFN and accepted by the Crown pursuant to the *Indian Act*;
  - (g) the provision by BCFPI of a release of liability to the Minister with respect to the execution of the Permit Agreement; and
  - (h) the execution of a Right of Way Agreement and of an Option Agreement by and between BCFPI and FWFN Corporation.

C. BACKGROUND

5. In 2001, BCFPI explored possible sites for the location of a new proposed sawmill facility. At that time, it commenced negotiations with the FWFN Corporation, a corporation wholly-owned by FWFN.
6. The Fort William First Nation Reserve (the "**Reserve**") is located near the BCFPI pulp mill situated in Thunder Bay, Ontario.
7. At the time, FWFN had concluded its negotiation with Canadian National Railway Company ("**CN**") for the return of former reserve lands ("**Returned Lands**") that had been acquired by CN's predecessor in title through the expropriation provisions of the *Indian Act* in the early 1900s.
8. In 1999, the Returned Lands were taken in freehold title by FWFN Corporation pending the formal steps required to reincorporate the Returned Lands into the Reserve.
9. On October 22, 2001, the FWFN Corporation and BCFPI executed a Lease Agreement (as amended from time to time and referred to as the "**Freehold Lease Agreement**") for a term of twenty years plus renewals with respect to the Lands, those being a portion of the Returned Lands held by FWFN Corporation. BCFPI and the FWFN had the full support of the Minister of the day for an expedited process for consideration of the return of the Lands to reserve status under the *Indian Act*. However, it was acknowledged by the FWFN and BCFPI that the return of the Lands was at all times within the discretion of the Governor in Council. The Freehold Lease Agreement was amended on September 24, 2002 and October 20, 2003. Copies of the Freehold Lease Agreement and amendments thereto are communicated as **Exhibit R-1**.
10. Following the execution of the Freehold Lease Agreement, FWFN erected a building (the "**Building**") on the Lands that was suitable for the installation of sawmill equipment and machinery. BCFPI took occupancy of the Building in 2003 and began operations shortly thereafter.
11. It was the intention of all the parties that the original occupancy by BCFPI would be pursuant to a freehold lease by FWFN Corporation and that, if the Lands were returned to reserve status, FWFN would request a permit and the Minister would then issue a permit, allowing for a continued occupancy by BCFPI pending a community vote of FWFN's Band Members to allow the Lands to be leased in accordance with the provisions of the *Indian Act*. Such seamless occupancy was referenced in a Memorandum of Understanding dated October 22, 2001 among FWFN, FWFN Corporation, Bowater Pulp and Paper Canada Inc. (the predecessor of Bowater Canadian Forest Products

Inc.) and Her Majesty the Queen, a copy of which is communicated as **Exhibit R-2**.

12. For various reasons the return of the Lands to reserve status has become the subject of lengthy and complex negotiations.
13. Because the lands were being removed from provincial jurisdiction and placed under the federal jurisdiction of the *Indian Act*, the negotiations included both the federal and provincial governments.
14. In 2005, the Federal Government passed the *FNCIDA*. Subject to certain conditions, the *FNCIDA* allows any Indian Band to opt in for the purpose of facilitating commercial or industrial development on Indian reserves.
15. In this context, regulations that are site-specific to the Lands (the "**Regulations**") were developed in the course of negotiations with both the federal and provincial governments, especially in relation to environmental concerns. The form of the Regulations has now been approved and will be published immediately upon the Lands being returned to reserve status.
16. The negotiations have now essentially been concluded and the parties thereto have reached an agreement in principle (the "**Agreement**") as to the form and content of several critical documents, which have received the approval of the Ontario Region of the Department of Indian Affairs and Northern Development ("**INAC**"). Draft copies of the key agreements are communicated, *en liasse*, as **Exhibit R-3**.
17. Prior to the BCFPI filing pursuant to the CCAA, the matter had essentially been set for submission to the national level of INAC and Cabinet approval was expected to be sought on the basis of the Agreement reached by the parties thereto.

**D. GROUND FOR THIS MOTION**

18. The Initial Order may be interpreted as preventing INAC, BCFPI, FWFN, FWFN Corporation or FWFNLP from executing and implementing the Agreement or as preventing INAC from seeking approval of the transaction described herein. All parties seek clarification of their ability to execute and implement the Agreement and to proceed with the transaction.
19. INAC has indicated to BCFPI that the prospect of a successful submission for the return of the Lands to reserve status would be diminished unless all doubts were removed as to whether the Initial Order prevented the approval and implementation of the Agreement. The above-mentioned orders are being sought in order to clarify BCFPI's status.

20. If FWFN's proposal for the return of the Lands to reserve status is rejected, this would have serious repercussions for the Petitioners' relationship not only with the FWFN, but with other First Nations elsewhere in Canada.
21. At this stage of the CCAA proceedings, BCFPI intends to continue its operations in Thunder Bay, and in particular intends to obtain the benefits of having its sawmill operations located on a reserve.
22. This initiative has been held up as a model for future Regulations under the *FNCIDA* and it will be the first one to be completed in Canada.
23. It is in BCFPI's best interests to proceed with such initiative, and to achieve the desired benefits from its long-standing negotiations.
24. The present petition is well founded in fact and in law.

**WHEREFORE, MAY THIS COURT:**

**GRANT** the present Motion;

**DECLARE** that nothing in the Initial Order dated April 17, 2009 as amended and restated (the "**Initial Order**") shall prevent or otherwise interfere with the execution of agreements by any person, legislative or executive action by Her Majesty (in right of Canada or any province), including the passage of the Fort William First Nation Sawmill Regulations under the *First Nations Commercial and Industrial Development Act*, S.C. 2005, c. 53, or the taking of any other steps, each as may be required in connection with the negotiation among Bowater Canadian Forest Products Inc. ("**BCFPI**"), the Fort William First Nation ("**FWFN**"), the Fort William First Nation Development Corp. ("**FWFN Corporation**"), Her Majesty the Queen in right of Canada (the "**Crown**"), and the Fort William First Nation, LP ("**FWFNLP**") in respect of the FWFN's proposal that certain lands in the District of Thunder Bay described as Parts 7, 11, 19, 27, 28, 29, 30 and 32 on Reference Plan 55R-11689 (the "**Lands**"), currently leased to and occupied by BCFPI, be transferred to the Crown and set apart as a "**Reserve**", as defined in the *Indian Act*, R.S.C., 1985, c. 1-5 ("**Indian Act**"), for the use and benefit of the FWFN;

**AUTHORIZE** BCFPI, the Crown, FWFN, FWFN Corporation and FWFNLP to enter into the Lease Surrender Agreement (Exhibit R-2) pursuant to which the current tenure of BCFPI under its freehold lease is surrendered to the FWFN Corporation;

**AUTHORIZE** BCFPI, the FWFN and the Minister of Indian Affairs and Northern Development (the "**Minister**") to enter into the Permit Agreement (Exhibit R-2),

allowing BCFPI to continue occupancy of the Lands under section 28(2) of the *Indian Act*;

**AUTHORIZE** the Crown as lessor, and FWFNLP as lessee, to enter into the Lease Agreement (Exhibit R-2), and FWFNLP as lessor, and BCFPI as sub-lessee, to enter into the Sub-lease Agreement (Exhibit R-2), both in respect of the Lands and in substitution of the Permit Agreement, if a successful designation for lease vote is held by the FWFN and accepted by the Crown pursuant to the *Indian Act*;

**AUTHORIZE** BCFPI to provide a release of liability to the Minister with respect to the execution of the Permit Agreement;

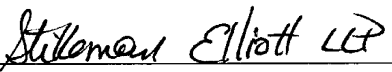
**AUTHORIZE** BCFPI, FWFN and the FWFN Corporation to enter into a Right of Way Agreement and Option Agreement.;

**AUTHORIZE** BCFPI, the Crown, FWFN, FWFN Corporation and FWFNLP to enter into and execute any ancillary agreements, undertakings and documents as are required to give effect to the above;

**ORDER** the provisional execution of this Order notwithstanding any appeal and without the necessity of furnishing any security.

**THE WHOLE WITHOUT COSTS**, save and except in case of contestation.

Montréal, June 11, 2009

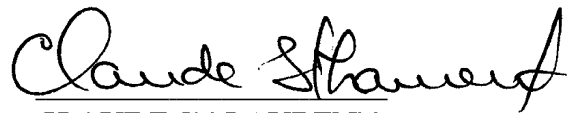
  
Stikeman Elliott LLP  
Attorneys for the Petitioners

**AFFIDAVIT**

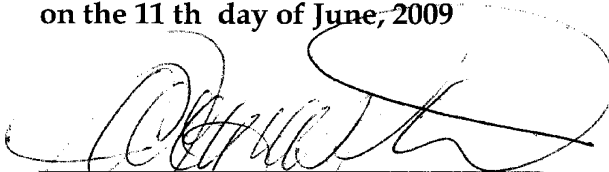
I, the undersigned, Claude St-Laurent, Lawyer, having my principal place of business at Suite 800, 1155 Metcalfe Street, Montréal, Quebec, H3B 5H2 solemnly declare the following:

1. I am a Senior legal counsel of Bowater Canadian Forest Products Inc.;
2. All the facts alleged in the *Motion for the issuance of orders related to the transfer of property leased by Bowater Canadian Forest Products Inc. to the Fort William First Nation* are true.

**AND I HAVE SIGNED**

  
**CLAUDE ST-LAURENT**

**Solemnly declared before me at Montréal,  
on the 11 th day of June, 2009**

  
Commissioner for oaths

## NOTICE OF PRESENTATION

**TO:** The Service List

**TAKE NOTICE** that the *Motion for the issuance of orders related to the transfer of property leased to Bowater Canadian Forest Products Inc. by the Fort William First Nation Corp.* will be presented for adjudication before the honorable Justice Clément Gascon of the Superior Court, sitting in commercial division for the District of Montreal, in a room to be announced of the Montréal Court House, 1 Notre-Dame St. East, on a date and hour to be determined by Justice Gascon.

**DO GOVERN YOURSELVES ACCORDINGLY.**

MONTREAL, June 11, 2009

  
STIKEMAN ELLIOTT LLP  
Attorneys for the Petitioners