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)

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 TO OBTAIN THE APPROVAL OF CERTAIN AGREEMENTS TO BE ENTERED INTO BY THE PETITIONERS
(Section 11 of the *Companies' Creditors Arrangement Act* ("CCAA"))

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF MONTRÉAL, THE 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 Arrangement Act* (the "**CCAA**") in respect of (i) Abitibi-Consolidated Inc. ("**ACI**") and subsidiaries thereof (collectively with ACI, the "**Abitibi Petitioners**")[1]; (ii) Bowater Canadian Holdings Inc. and subsidiaries thereof (collectively, the "**Bowater Petitioners**")[2]; and (iii) certain partnerships.[3]

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 and on April 17, 2009, ABH and the certain Petitioners (collectively with ABH, the "**18.6 Petitioners**" and collectively with the Abitibi Petitioners and the Bowater Petitioners, the "**Petitioners**")[4] obtained orders under s. 18.6 of the CCAA in respect of the Chapter 11 Proceedings.

3. The present Motion seeks the Court's approval of the executing of certain agreements that the Petitioners entered into with Smurfit-Stone Container Canada Inc. ("**SSCCI**"), the whole as more fully described below.

B. BACKGROUND

4. Smurfit-Stone Container Corporation ("**SSCC**") is a holding company that conducts its business operations through it wholly owned subsidiary Smurfit-Stone Container Enterprises Inc. ("**SSCE**"). SSCCI is a wholly-owned subsidiary of SSCE.

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[1] 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.

[2] 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., Canexel 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.

[3] The partnerships are Bowater Canada Finance Limited Partnership, Bowater Pulp and Paper Canada Holdings Limited Partnership and Abitibi-Consolidated Finance LP.

[4] 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.

5. SSCCI owns 962,204 acres of timberlands (the "**Timberlands**") located between the Saguenay-Lac-St-Jean and Mauricie regions in the north central portion of the Province of Québec. The Timberlands are comprised of the following three parcels: (i) a continuous block of timberlands located North/Northeast of the Gouin Reservoir (the "**North Block**"); (ii) a continuous block of timberlands located East of the Gouin Reservoir (together with the North Block, the "**Optioned Land**"); and (iii) several smaller parcels of timberlands located along the St. Maurice River.

6. The Optioned Land represents approximately 98.72% of the total surface area of the Timberlands.

7. On June 15, 1994, Avenor Inc. ("**Avenor** "), a predecessor company of BCFPI, and St. Laurent Paperboard Inc. ("**St. Laurent**"), a predecessor company of SSCCI, entered into an *Asset Acquisition Agreement* in connection with the Optioned Land. A copy of this agreement is communicated as Exhibit **P-1**.

8. The *Asset Acquisition Agreement* provided a right of first refusal to Avenor in the event that St. Laurent desired to sell the Optioned Land. The *Asset Acquisition Agreement* also included a successor-in-interest provision that provided that the *Asset Acquisition Agreement* would inure to the benefit of, and be binding upon, the parties and their respective successors and assigns. BCFPI succeeded to Avenor's right of first refusal.

9. On September 30, 2008, Bowater Canadian Forest Products Inc. ("**BCFPI**") and SSCE and SSCCI signed a letter agreement (the "**Letter Agreement**"), in which BCFPI agreed to temporarily waive its right of first refusal in connection with any sale of the Optioned Land for a period of two years in exchange for, *inter alia*, an amount equal to fifty percent (50%) of the net proceeds received from the sale of the Optioned Land. A copy of the Letter Agreement is communicated as Exhibit **P-2.**

10. Pursuant to the Letter Agreement, SSCCI undertook to carry on the process for the marketing and sale of the Optioned Land.

11. On January 26, 2009, the Ontario Superior Court of Justice issued an initial order pursuant to the CCAA in respect of SSCCI and certain partnerships ("**Partnerships**"), Exhibit **P-3**. The order has been extended until September 30, 2009, or such later date as the Court may order, Exhibit **P-4**.

12. On January 26, 2009, SSCC et al. filed a voluntary petition for relief under Chapter 11 of the United States Code.

C. <u>MARKETING AND SALES EFFORTS</u>

13. In August 2008, SSCCI retained Scotia Capital Inc. to conduct an extensive marketing campaign of the Timberlands.

14. Scotia Capital's first step was to develop a comprehensive list of potential purchasers located in Canada, the United States, and elsewhere. This list consisted of (i) active players

in the market for North American timberlands with interest or presence in this geographic region, (ii) active players in the timberlands market with a lower probability of participating in an auction process, and (iii) financial investors known to have an interest in acquiring timberlands and who Scotia Capital believed could have an interest in the Timberlands and certain related assets and operations (the "**Timberland Assets**"). Scotia Capital's initial contacts included fifty-seven potential purchasers.

15. SSCCI and Scotia Capital then created marketing documents for the Timberland Assets. The first was a "teaser" document which provided a high-level overview of the Timberland Assets and was designed to assist potential purchasers in determining whether or not to proceed with an in-depth investigation of the opportunity. The second was a confidential information memorandum which contained a more comprehensive description of the Timberland Assets and included a summary of relevant financial information.

16. Fifty of the fifty-seven potential purchasers initially contacted by Scotia Capital expressed interest in acquiring some or all of the Timberland Assets. All fifty interested parties received the teaser document. SSCCI entered into non-disclosure agreements with thirteen of these parties – nine strategic purchasers and four financial investors.

17. All thirteen potential purchasers were invited to submit non-binding expressions of interest by late October 2008. SSCCI received three non-binding bids – two from strategic purchasers and one from the Société Générale de Financement du Québec ("**SGF**") - an investment arm of the provincial government of Québec.

18. SSCCI then created a confidential online data room (the "**Data Room**") to which they gave access to two of the parties that submitted non-binding bids (the "**Second Round Participants**"). SSCCI posted financial, operational and other relevant information to the Data Room. SSCCI also posted the confidential information memorandum to the Data Room. SSCCI's management team and Scotia Capital subsequently delivered management presentations to the Second Round Participants.

19. SSCCI then requested that the three parties who submitted non-binding bids submit binding offers by December 16, 2008. None of the parties submitted binding bids by such deadline, but SGF submitted another non-binding bid on January 21, 2009. SSCCI and Scotia Capital continued to negotiate with SGF between February and April 2009.

D. THE ASSET PURCHASE AGREEMENT

20. On April 30, 2009, SSCCI, as vendor, and SGF, as purchaser, signed the *Asset Purchase Agreement*, a copy of which and its related schedules and exhibits are communicated as Exhibit **P-5**.

21. Pursuant to the *Asset Purchase Agreement*, the sale price of the Timberland Assets (the "**Proposed Sale**") is $60,400,000.

22. Pursuant to the Letter Agreement, BCFPI, a wholly owned subsidiary of ABH is entitled to

half of the net proceeds of the Proposed Sale. After all related transaction costs are paid, including attorneys' fees and sales commissions, BCFPI expect to receive approximately $28,000,000.

23. As discussed above, SSCCI and Scotia Capital executed an exhaustive marketing process over a period of approximately eight months in an effort to obtain the highest possible price for the Timberland Assets. Consequently, the Petitioners believe that the Timberland Assets are being sold for a fair and reasonable price.

24. On July 30, 2009, SSCC et al. filed a motion before The United States Bankruptcy Court for the District of Delaware for an order to consider approval of the Proposed Sale and related transactions. The Hearing Date for this motion was scheduled for August 14, 2009.

25. SSCCI has also scheduled a hearing for August 17, 2009 before the Ontario Superior Court of Justice to consider approval of the Proposed Sale and related transactions (Exhibit **P-6**, together with the Monitor's report).

26. On August 14 and 17, 2009, both of the United States Bankruptcy Court for the District of Delaware and the Ontario Superior Court of Justice respectively approved the Proposed Sale and Supply Agreement (as hereinafter define (Exhibit **P-7**).

E. THE AGREEMENTS

27. The Petitioners respectfully request the approval by the Court of the execution of the following agreements (collectively, the "**Agreements**"):

    a) a wood fiber Supply Agreement between BCFPI, ACI and SSCCI (Exhibit **P-8**) pursuant to which BCFPI and ACI will sell to SSCCI for use at its mill in LaTuque, Quebec ("**Supply Agreement**")

    b) Termination Agreement between ACI, BCFPI and SSCCI (Exhibit **P-9**) in connection with the following Supply contracts:

       (i) *Contrat de vente de bois sur pied* (50-3VP-01) between SSCCI and Abitibi-Consolidated Inc. dated November 25, 2001;

       (ii) *Contrat de vente de bois sur pied* (50-6VP-01) between SSCCI and Bowater Canadian Forest Products Inc. dated June 3, 2002;

    c) Waiver and Release Agreement between BCFPI and SSCCI (Exhibit **P-10**); and

    d) Indemnity Agreement between BCFPI and SSCCI (Exhibit **P-11**).

28. One of the conditions precedent that SSCCI must satisfy under the *Asset Purchase Agreement* with SGF is a requirement that the existing supply agreements between SSCCI and the Petitioners be terminated that a new one be entered into and that the Petitioners release SSCCI from all obligations going forward in respect of such rights.

29. SSCCI and the Petitioners have engaged in good faith, arm's-length negotiations that have resulted in the Agreements.

30. The Supply Agreement would guarantee the Petitioners' mills with a minimum annual production volume of wood fiber at market prices and on otherwise favourable terms for a seven (7) year period.

31. Pursuant to the Agreements, in consideration for its consent to the Proposed Sale, the Petitioners have agreed to:

    a) release all of their cutting and harvesting rights with respect to the Timberlands upon the consummation of the Proposed Sale;

    b) waive and release their rights on the Optioned Land under the 1994 Asset Purchase Agreement; and

    c) share fifty percent (50%) of the risk and cost of any indemnity amount which may become payable to SGF pursuant to the *Asset Purchase Agreement* and expenses incurred to defend against and/or settle any such claim up to a maximum $4,500,000.

32. The Petitioners and the Monitor believe that there are sound business reasons for entering into the Agreements with SSCCI. The Agreements constitute fair consideration for the approximately $28,000,000 it expects to receive in connection with the Proposed Sale.

33. Certain parts of the *Asset Purchase Agreement* (Exhibit **P-5**), the Supply Agreement (Exhibit **P-8**) and the Letter Agreement (Exhibit **P-2**) contain information that is confidential to SSCCI and/or its employees, including confidential personal information and commercially sensitive wood fibre pricing information.

34. There is no legitimate rationale for anyone to require disclosure of the personal employee information and revealing sensitive pricing information may give SSCCI's competitors unfair advantages that would not otherwise be available to them and could disadvantage the SSCCI's and Partnerships in their ongoing restructuring initiatives.

<u>Grounds for this Motion</u>

35. The Proposed Sale involving the Timberland Assets is on attractive terms in the current marketplace.

36. The Petitioners and the Monitor are therefore of the view that the sale of the Timberland Assets will benefit the Petitioners' creditors as a whole.

37. The Petitioners respectfully submit that this Motion should be granted in accordance with its conclusions.

38. The present Motion is well founded in fact and in law.

WHEREFORE, MAY THIS COURT:

1. **GRANT** this Motion to obtain the approval of Certain Agreements to Be Entered into by the Petitioners (the "**Motion**").

2. **EXEMPT**, if applicable, the Petitioners from having to serve this Motion and from any notice or delay of presentation.

3. **ORDER AND DECLARE** that Petitioners are authorized to implement and complete the Agreements with such alterations, amendments, deletions or additions as the parties thereto may agree to, with the consent of the Monitor, and to perform the obligations contained in the Agreements (Exhibits **P-8, P-9, P-10 and P-11**).

4. **ORDER** that in completing the Agreements, subject to the terms and conditions of the Agreements, the Petitioners be authorized:

   (a) to execute the Agreements and to execute and deliver any documents and assurances governing or giving effect to the Agreements as the Petitioners, in their discretion, may deem to be reasonably necessary or advisable to conclude the Agreements, including the execution of such deeds, contracts or documents, as may be contemplated in the Agreements and all such deeds, contracts or documents are hereby ratified, approved and confirmed; and

   (b) to take such steps as are, in the opinion of the Petitioners, necessary or incidental to the performance of their obligations pursuant to the Agreements.

5. **ORDER AND DECLARE** that the Order to be rendered on the Motion shall constitute the only authorization required by the Petitioners to proceed with the Agreements and that no shareholder or regulatory approval shall be required in connection with the Agreements.

6. **ORDER** that certain portions of the (i) Sale Agreement, (ii) the Supply Agreement, and (iii) the Letter Agreement between Smurfit-Stone Container Entreprises, Inc. and Bowater Canadian Forest Products, Inc., dated September 30, 2008 (the "**Letter Agreement**) shall be treated as confidential and that an un-redacted copy of the Sale Agreement (Exhibit **P-5**), the Supply Agreement (Exhibit **P-8**) and the Letter Agreement (Exhibit **P-2**) shall be segregated from other documents or information filed in connection with this motion and shall be provided to this honourable Court in a sealed envelope and the sealed envelope shall not be opened until further order of this Court.

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

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

Montréal, August 19, 2009

McCarthy Tétrault LLP

MCCARTHY TÉTRAULT LLP
Attorneys for the Petitioners

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No. : 500-11-036133-094

SUPERIOR COURT

Commercial Division
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And

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And

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Petitioners

And

ERNST & YOUNG INC.,

Monitor

AFFIDAVIT

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

1. I am Senior legal counsel of AbitibiBowater Inc.

2. All the facts alleged in the *Motion to obtain the approval of Certain Agreements Entered Into by the Petitioners* are true.

AND I HAVE SIGNED

CLAUDE ST-LAURENT

Solemnly declared before me at Montréal,
on the 19 day of August, 2009

#105746
Commissioner for oaths

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No. : 500-11-036133-094

SUPERIOR COURT

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ERNST & YOUNG INC.,

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NOTICE OF PRESENTATION

TO : SERVICE LIST

TAKE NOTICE that the *Motion to obtain the approval of certain agreements to be entered into by the Petitioners* will be presented for adjudication before the Honourable Judge Clément Gascon of the Superior Court, sitting in practice in and for the District of Montreal, in a Room **to be announced** of the Montreal Court House, 1 Notre-Dame St. East, Montreal, Quebec, H2Y 1B6, on **August 26, 2009**, at **2:00 p.m.**, or so soon thereafter as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

Montreal, August 19 ,2009

McCarthy Tétrault LLP

MCCARTHY TÉTRAULT LLP
Attorneys for Petitioners

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No. : 500-11-036133-094

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ERNST & YOUNG INC.,

Monitor

LIST OF EXHIBITS

(Motion to obtain the approval of certain agreements to be entered into by the Petitioners)

Exhibit P-1	Asset Acquisition Agreement dated June 15, 1994.
Exhibit P-2	Letter of Agreement dated September 30, 2008 ***(CONFIDENTIAL, filed in a sealed envelope)***
Exhibit P-3	Initial Order rendered on January 26, 2009.
Exhibit P-4	Order extending the Initial Order until Sept ember 30, 2009

Exhibit P-5	*En liasse*, Asset Purchased Agreement dated April 30, 2009 and its related schedules and exhibits. ***(CONFIDENTIAL, filed in a sealed envelope)***
Exhibit P-6	*En liasse*, Motion to consider approval of the Proposed Sale and Monitor's report.
Exhibit P-7	*En liasse*, Order dated August 14, 2009 rendered by the United States Bankruptcy Court for the district of Delaware and Order dated August 17, 2009 rendered by the Ontario Superior Court
Exhibit P-8	Wood Fiber Supply Agreement ***(CONFIDENTIAL, filed in a sealed envelope)***
Exhibit P-9	Termination Agreement.
Exhibit P-10	Waiver and Release Agreement.
Exhibit P-11	Indemnity Agreement.

Montreal, August 19, 2009

McCarthy Tétrault LLP

McCarthy Tétrault LLP
Attorneys for Petitioners

N° 500-11-036133-094
SUPERIOR COURT (Commercial Division)
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

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Monitor

MOTION TO OBTAIN THE APPROVAL OF CERTAIN ASSETS TO BE ENTERED BY THE PETITIONERS
(Section 11 of the CCAA)

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