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 named herein

Petitioners

And

ERNST & YOUNG INC.,

Monitor

AMENDED MOTION FOR THE ISSUANCE OF AN ORDER AUTHORIZING THE SALE OF PETITIONER ABITIBI-CONSOLIDATED COMPANY OF CANADA'S INDIRECT INTEREST IN THE MCCORMICK HYDROELECTRIC FACILITY
(Section 11 of the *Companies' Creditors Arrangement Act* ("CCAA"))

TO JUSTICE GASCON OR 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 subsequently 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, the "**Abitibi Petitioners**"),[1] (ii) Bowater Canadian Holdings Inc. and subsidiaries thereof (collectively, the "**Bowater Petitioners**")[2] and (iii) certain partnerships.[3] Any undefined capitalized expressions used herein have the meanings set forth in the Initial Order.

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 certain Petitioners (collectively with ABH, the "**18.6 Petitioners**")[4] obtained orders under s. 18.6 of the CCAA in respect of the Chapter 11 Proceedings (the 18.6 Petitioners, the Abitibi Petitioners and the Bowater Petitioners being collectively referred to as the "**Petitioners**").

3. Abitibi-Consolidated Company of Canada ("**ACCC**"), subsidiary of ACI, holds a 60% equity interest (the "**ACCC Interest**") in Manicouagan Power Company ("**MPCo**"), a company jointly owned with Alcoa Canada Ltd. ("**Alcoa Canada**"), which holds the remaining 40% equity interest in MPCo (the "**Alcoa Interest**").

B. ORDERS SOUGHT

4. In the context of these CCAA proceedings, the Petitioners seek to implement certain transactions designed to transfer the indirect interest of ACCC in the business of

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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.

MPCo to Hydro-Québec or a wholly-owned subsidiary of Hydro-Québec (collectively,"**HQ**") .

5. Accordingly, in addition to such further orders as this Court may deem appropriate in the circumstances, ACI and ACCC hereby seek authorization or approval from this Court:

   (a) of a certain Implementation Agreement (the "**Implementation Agreement**") among ACI, ACCC, MPCo, Alcoa Canada and Alcoa Ltd. ("**Alcoa Ltd.**" and collectively with Alcoa Canada and a new wholly-owned subsidiary of Alcoa Ltd. referred to as "Newco" in Section 3.6 of the Implementation Agreement, "**Alcoa**"), to which HQ Énergie Inc, a wholly-owned subsidiary of Hydro-Québec intervened, a copy of the Implementation Agreement being communicated as **Exhibit R-1;** and

   (b) to effect the various transactions contemplated in the Implementation Agreement in respect of the business currently owned and operated by MPCo (the "**Business**"), the whole substantially as described in the Implementation Agreement and the Exhibits thereto (the "**Proposed Transactions**").

6. The Abitibi Petitioners also intend to present a Motion seeking the approval of a ULC DIP Loan (as defined in the Implementation Agreement) by a special-purpose unlimited liability company incorporated under the laws of the Province of Nova Scotia to be wholly-owned by ACCC ("**ULC**"), which ULC DIP Loan would be made by ULC to ACI or ACCC using a portion of the proceeds from the Proposed Transactions. The ULC DIP Loan is intended to rank immediately after the existing ACI DIP Charge (which charge will remain in place to the extent of any repayment to the ACI DIP Lender giving rise to the subrogation mechanism provided for in paragraph 61.10 of the Initial Order).

C. BACKGROUND

1. GENERAL

7. MPCo owns and operates the McCormick hydroelectric facility, which is located on the Manicouagan River, in the Province of Québec. The hydroelectric facility consists of a dam, seven hydroelectricity generating units with a total capacity of 335 MW and certain electricity transmission facilities (the "**McCormick Hydroelectric Facility**").

8. MPCo is structured as a stand-alone company and has 17 employees (2 staff and 15 hourly employees). ACCC provides certain administrative services to MPCo.

2. LEGAL AND REGULATORY FRAMEWORK

9. The distribution and transmission of electricity in the Province of Québec is highly regulated. Hydro-Québec holds, subject to limited exceptions, exclusive rights for the distribution of electricity on the territory of the Province of Québec.

10. MPCo's electricity distribution activities are regulated by *An Act respecting the Régie de l'énergie, An Act respecting Municipal and Private Electric Power Systems* as well as by private legislation. This legal and regulatory framework provides, *inter alia*, that:

    (a) MPCo's McCormick Facility qualifies as a "private electric power system" allowing it to distribute, as an exception to HQ's monopoly, electricity within a specified territory;

    (b) the Québec Government must authorize the direct or indirect transfer of private electric power systems, according to section 80 of an *Act respecting the Régie de l'énergie* requiring the advice of the Régie de l'énergie which cannot be rendered without public hearings;

    (c) the maximum prices at which electricity may be distributed by a private electric power system such as the McCormick Hydroelectric Facility to its customers are subject to legislative limitations;

    (d) electricity generated from water power vested in the "domain of the state", or which would be transmitted by transmission lines over the "domain of the state", may not be exported without the authorization of the Québec Government; [...]

    (e) MPCo is required to distribute electricity generated by the McCormick Hydroelectric Facility to every person which is served by its system , unless a distribution agreement regarding a client's load transfer (according to section 76.1 of an *Act respecting the Régie de l'énergie*) is entered into between MPCo and HQ; <u>and</u>

    (f) according to the Water-Powers Lease Act, "the electric power derived from the concession made under this act shall be used in such manner as not to endanger the stability of the pulp and paper industry in the Province of Québec" and the New Industries Establishment Act recognizes the need to facilitate the development of the <u>aluminum</u> industry and Alcoa's contributions thereto.

11. Accordingly, MPCo is required to distribute electricity on its specified territory to its existing customers. In the event that a third party were to acquire the ACCC Interest, MPCo would remain subject to the above-referred legal and regulatory requirements and would therefore have to continue to supply power to its existing customers (ACCC and Alcoa) unless a distribution agreement regarding a client's load transfer is entered into between MPCo and HQ.

12. HQ operates five dams on the Manicouagan River and controls the flow of water upstream. Under a Compensation Agreement entered into in 1964, HQ compensates MPCo for the difference between its actual generation and 335 MW per year. Accordingly, HQ is familiar with MPCo's operations.

3. WATER RIGHTS

13. MPCo's water rights on the Manicouagan River (the "**MPCo Water Rights**") will expire on February 23, 2011.

14. The Québec Government has the discretion to renew the MPCo Water Rights for an additional period of 25 years, the whole based on such conditions as the Québec Government may impose.

15. In 2007, MPCo initiated discussions with the Ministry of Natural Resources and Wildlife (the "**MNR**") concerning the renewal of the MPCo Water Rights. ACCC's understanding is that a renewal of such MPCo Water Rights would likely require, as part of an overall understanding with the Québec Government, a significant capital investment commitment from ACCC in the Province of Quebec.

4. EXISTING AGREEMENTS

16. The electricity generated by the McCormick Hydroelectric Facility is sold by MPCo to ACCC and Alcoa pursuant to power purchase agreements expiring on February 23, 2011 which provide, *inter alia*, for the following:

    (a) MPCo sells the power it produces to ACCC and Alcoa at an average purchase price of about $4.11 per MWh which approximates the production cost to MPCo; and

    (b) ACCC receives about 25% of the power produced by MPCo for consumption at its Baie-Comeau newsprint mill (the "**Baie-Comeau Mill**"), while Alcoa consumes the remaining 75%.

17. ACCC and Alcoa are parties to an Amended and Restated Agreement dated as of December 20, 1996 (the "**MPCo Shareholders Agreement**"). A copy of the MPCo Shareholders Agreement is communicated as **Exhibit R-2.**

18. The MPCo Shareholders Agreement provides for a right of first offer in favour of Alcoa should ACCC decide to sell the ACCC Interest, the whole subject to certain terms and conditions.

19. In connection with ACH Limited Partnership ("**ACH LP**"), a joint venture of ACCC and the Caisse de dépôt et placement du Québec in respect of certain hydroelectric generation facilities located in the Province of Ontario, a right in favour of each of ACH LP and CDP Investments Inc. ("**CDP**") to offer to purchase certain assets, including the ACCC Interest, was granted subject to certain terms and conditions provided for under an Amended and Restated Limited Partnership Agreement dated March 30, 2007 (the "**ACH LP Agreement**").

D. SALE PROCESS

1. DECISION TO SELL THE ACCC INTEREST

20. Following the merger of ACI and Bowater Incorporated on October 29, 2007 (the "**Combination**"), ABH began a comprehensive strategic review of its operations to reduce costs and improve profitability.

21. In this context, ABH decided to dispose of certain non-core assets in order to improve its liquidity, including the ACCC Interest.

22. In May 2008, CIBC World Markets Inc. ("**CIBC**") was retained to advise ABH on the contemplated disposition of the ACCC Interest.

23. In light of the restrictive legal and regulatory framework applicable to MPCo's activities, the extent of the investments which would have been required at the Baie-Comeau Mill to renew the MPCo Water Rights and the rights contained in the above-mentioned agreements, it became apparent to CIBC and ABH that a third party (other than Alcoa and Hydro-Québec) would be highly unlikely to be in a position to conclude a transaction on satisfactory terms to ACCC given the complexity of the situation.

2. NEGOTIATIONS LEADING TO THE ENTERING INTO OF THE LETTER OF INTENT

24. CIBC, on behalf of ACCC, initiated discussions with HQ in November 2008 in respect of a sale by ACCC to HQ of the MPCo shares held by ACCC (the "**MPCo Sale**").

25. On December 5, 2008, the notices provided for under the ACH LP Agreement were delivered to each of ACH LP and CDP. Both ACH LP and CDP confirmed that they would not exercise their respective rights to purchase the ACCC Interest.

26. On December 22, 2008, HQ provided a preliminary indication of interest for the ACCC Interest, subject to, among other things, its due diligence in respect of MPCo being satisfactory and the payment of any and all amounts owed for electricity sold and to be sold by HQ to ACCC, Bowater Inc. ("**Bowater**") or any of their respective affiliates prior to the closing of the Proposed Transactions (the "**ACCC Debt to HQ**") subject to any adjustments thereto up to the date of closing of the Proposed Transactions.

27. Following negotiations, on January 21, 2009, HQ provided ABH with an indication of value of $615 million for the ACCC Interest and ACCC's rights, title and interest under the ACCC/MPCo Power Purchase Agreements, again subject to, among other things, satisfactory due diligence and the payment of the ACCC Debt to HQ , subject to any adjustments thereto up to the date of closing of the Proposed Transactions.

28. The parties and their representatives and advisors subsequently negotiated the terms and conditions of the potential MPCo Sale and the transfer of the ACCC/MPCo Power Purchase Agreements as well as the conduct of the due diligence process.

29. A Letter of Intent (the "**LOI**") was executed on February 19, 2009 providing, *inter alia*, for the MPCo Sale for gross proceeds of $615 million and an exclusivity period in favour of HQ until March 23, 2009, subject to, among other things, satisfactory due diligence and the payment of the ACCC Debt to HQ, subject to any adjustments thereto up to the date of closing of the Proposed Transactions. A copy of the LOI is communicated as **Exhibit R-3**.

30. Upon the execution of the LOI, on February 19, 2009, ACCC sent a notice to Alcoa providing Alcoa with the opportunity to purchase the ACCC Interest for gross proceeds of $615 million, the whole in accordance with the MPCo Shareholders Agreement.

31. On February 20, 2009, HQ and its advisors began their due diligence process. HQ's legal, financial, technical and environmental due diligence continued until mid-March 2009.

32. On March 6, 2009, Alcoa confirmed that it would not exercise its right to purchase the ACCC Interest.

33. During the course of its due diligence verification, HQ required that the MPCo Sale be restructured as an asset sale (the "**Revised MPCo Sale**") in order for HQ to hold the assets directly or through a flow-through entity and to delineate the potential liabilities being assumed.

34. This structural change from a share sale to an asset sale could not be effected without Alcoa's approval, since the Alcoa Interest would effectively be replaced by a 40% interest in New LP and Alcoa's rights would be affected in a material way.

35. Alcoa agreed to actively cooperate in the structuring discussions on the condition that it would not incur any direct or indirect cost, expense or liability as a result of the Proposed Transactions and the Revised MPCo Sale. Therefore, Alcoa required, *inter alia*, (i) an indemnity for any cost, expense or liability which could arise from the Proposed Transactions and the Revised MPCo Sale, including any tax costs and (ii) an undertaking from ACCC to pay for fees and expenses incurred in connection with the Proposed Transactions and the Revised MPCo Sale.

36. On March 13, 2009, ABH announced that it had entered into the LOI. The news release issued by ABH specified that the LOI was subject to certain terms and conditions, including satisfactory due diligence, obtaining required consents and approvals, the execution of definitive agreements (including a power supply agreement regulated in accordance with the rates and conditions approved by the Régie de l'énergie for the Baie-Comeau Mill) and other customary conditions. A copy of the news release is communicated as **Exhibit R-4**.

37. On March 20, 2009, the LOI was amended to extend the exclusivity period in favour of HQ until April 30, 2009, as appears from a copy of the letter dated March 20, 2009 communicated as **Exhibit R-5.**

38. On March 27, 2009, HQ and its advisors confirmed that they had substantially completed their due diligence process and that, based on their findings as at that date, HQ was still committed to purchase the ACCC Interest for gross proceeds of $615 million, provided, *inter alia,* that the transaction be structured as an asset sale and that the ACCC Debt to HQ be paid by ACCC, subject to any adjustments thereto up to the date of closing of the Proposed Transactions.

39. On April 17, 2009, the Petitioners filed a Petition for the Issuance of an Initial Order (the "**Petition**") pursuant to the CCAA, which referred to, *inter alia*:

    (a) continuing discussions and negotiations in connection with the MPCo Sale; and

    (b) the fact that the Petitioners were in the process of preparing restructuring plans to allow ABH to be profitable over time and that such plans would include several measures, including the disposition of assets,

    the whole as appears from the Court Record.

40. On April 28, 2009, the LOI was further amended to extend the exclusivity to December 31, 2009 and to confirm that HQ and ACCC were now considering structuring the transaction as a sale of assets, as appears from a copy of the letter dated April 28, 2009 communicated as **Exhibit R-6**.

41. On May 6, 2009, this Court issued an order (the "**ACI DIP Order**") authorizing the Abitibi Petitioners to enter into a Letter Loan Agreement with Bank of Montreal providing for a USD$100,000,000 Super-Priority Senior Secured Debtor-in-Possession Credit Facility guaranteed by Investissement Québec (the "**ACI DIP Facility**"), the whole as appears from the Court Record.

42. At the hearing on the Motion seeking approval of the ACI DIP Facility, the Court was advised that the ACI DIP Facility was to be repaid from the proceeds of the MPCo Sale, the whole as appears from paragraph 34 of the ACI DIP Order which reads as follows:

    > *"[...] All this, in a context where the ACI DIP Facility of $100,000,000 USD is said to be a bridge to the receipt of proceeds from the contemplated sales of the MPCO and ACH hydro assets expected by November 1, 2009. ACI intends to repay the ACI DIP Facility from the proceeds of these sales or other sales of non-core assets under consideration."*

43. The availability of the MPCo Sale proceeds was an integral part of the negotiations surrounding the ACI DIP Facility, which specifically provides that "[t]*he Borrowers shall be required to make mandatory prepayments of the outstanding Loans to the extent of*

100% of the net cash proceeds of: [...] (iv) any direct or indirect sale of the Borrowers' interest in the assets of the Manicouagan Power Company".

E. THE IMPLEMENTATION AGREEMENT

1. GENERAL

44. The negotiations among ABH, HQ and Alcoa (collectively, the "**Parties**") surrounding the Revised MPCo Sale continued after April 17, 2009. Since then, the Parties have finalized the terms and conditions of the Implementation Agreement.

45. The Implementation Agreement, *inter alia*, sets out the Proposed Transactions to be carried out by the Parties in order that the Revised MPCo Sale and the transfer of the ACCC/MPCo Power Purchase Agreements be effected in the most efficient manner while complying with Alcoa's conditions for cooperating therewith. In particular, the Implementation Agreement contemplates 17 steps, as set out in Schedule A thereto, which include:

    (a) the acquisition by ACCC of the Alcoa Interest in consideration for the issuance by ACCC of a promissory note;

    (b) the winding-up of MPCo into ACCC and the subsequent transfer by ACCC to a limited partnership formed under the laws of the Province of Québec ("**New LP**") of the assets of MPCo, including the McCormick Hydroelectric Facility and the liabilities related to the Business other than Excluded Liabilities (as defined in the Implementation Agreement) to New LP;

    (c) the sale by ACCC to HQ of a 59.9994% interest in New LP and of its rights, title and interest in the ACCC/MPCo Power Purchase Agreements and the sale by ACCC to HQ, directly or indirectly, of a 60% interest in the general partner of New LP (the "**GP**") for gross proceeds of $615 million (the "**HQ Acquisition**"), the whole subject to all the conditions set forth in the Intervention section of the Implementation Agreement; and

    (d) as repayment for the promissory note issued by ACCC in consideration for the transfer of the Alcoa Interest, the transfer by ACCC to Alcoa of a 39.9996% interest in New LP and the transfer by ACCC to Alcoa (or an entity owned by Alcoa) of a 40% interest in the GP, the whole in replacement of the Alcoa Interest.

46. The outline of the corporate structure prior to the Proposed Transactions is communicated as **Exhibit R-7** and the outline of the corporate structure following the Proposed Transactions is communicated as **Exhibit R-8**.

47. The execution of the acquisition agreement among HQ and ACCC in respect of the HQ Acquisition is expected to take place on or about September 30, 2009 and the closing of the Proposed Transactions is expected to take place on or about October 15, 2009.

2. Certain Terms and Conditions of the Proposed Transactions

(a) Tax Matters

48. The obligation of Alcoa to proceed with the Proposed Transactions is subject to, *inter alia*, the determination by Alcoa that it will not suffer or incur any negative tax consequences as a result of the Proposed Transactions, unless the amount of such taxes is fully reimbursed to it prior to or concurrently with the implementation of the Proposed Transactions. As a result, the Implementation Agreement provides that:

    (a) ACCC or ACI will pay or cause to be paid to the appropriate Alcoa Indemnified Person (as defined in the Implementation Agreement) an amount equal to the taxes to be reimbursed to Alcoa, calculated in accordance with the Implementation Agreement, provided that ACCC has a right not to proceed with the Proposed Transactions if such payment exceeds $60 million at closing; and

    (b) ACCC and ACI will solidarily indemnify the Alcoa Indemnified Persons and the MPCo Indemnified Persons (as defined in the Implementation Agreement) from any tax directly resulting from the Proposed Transactions.

49. These terms and conditions were required by Alcoa as it will not be receiving any proceeds from the Revised MPCo Sale and will suffer or incur negative tax consequences since the Proposed Transactions cannot be carried out without triggering a disposition of Alcoa's shares in MPCo for tax purposes.

50. In addition, Alcoa indicated that it would require, as a condition of the MPCo Sale, that sufficient assets be retained in ULC to satisfy any potential tax and other liabilities, and that security be granted thereon, the whole as specifically set forth in the Implementation Agreement.

(b) Intercompany Payables

51. The Implementation Agreement provides that the intercompany payables (including certain pre-filing payables) between (i) ACCC and Alcoa, (ii) ACCC and MPCo, (iii) MPCo and HQ and (iv) ACCC and HQ are settled at closing of the Proposed Transactions. A summary of such intercompany payables as of September 30, 2009 is included as Exhibit B of the Implementation Agreement.

52. This intercompany payables settlement condition was imposed by HQ and Alcoa and includes payment by ACCC and certain of its affiliates to HQ of the ACCC Debt to HQ which, as of the date hereof, was estimated by HQ at approximately $31 million, subject to any adjustments thereto up to the date of closing of the Proposed Transactions.

(c) Potential Contingent Pension Liabilities

53. The Implementation Agreement provides that ACCC and ACI will solidarily indemnify the Alcoa Indemnified Persons and the MPCo Indemnified Persons

against any potential Contingent Pension Liabilities (as defined in the Implementation Agreement).

54. This condition was required by Alcoa in connection with the *Régime de retraite à prestations déterminées des employés non syndiqués d'Abitibi-Consolidated Inc. and the Régime complémentaire de retraite des employés non syndiqués de Donohue Inc.* (collectively, the "**Plan**") maintained by ACI for the benefit of current and former employees of ACI, ACCC and MPCo.

55. The Plan provides pensions on a defined benefit basis to non-unionized employees of ACI and relevant affiliates. The Plan is registered under and subject to the *Supplemental Pension Plans Act* (Québec) (the "**SPPA**"). The SPPA provides that in some instances, participating employers in a pension plan may be solidarily liable for the "*obligations incumbent upon each employer under the plan or under* [the SPPA]".

56. In the context of the negotiation of the Implementation Agreement, Alcoa required, as a condition of the Revised MPCo Sale, that any potential Contingent Pension Liabilities not be assumed by New LP, that sufficient assets be retained in ULC to satisfy its guarantee of ACCC's and ACI's liabilities with respect to any potential Contingent Pension Liabilities, and that appropriate security thereon be granted, the whole as specifically set forth in the Implementation Agreement.

(d) Asset Retention Undertaking

57. The Implementation Agreement provides that ULC will hold Permitted Investments (as defined below) having a value equal to at least the following amount: (i) $202.3 million (for the potential Contingent Pension Liabilities); plus (ii) an amount of $5 million; plus (iii) $75 million plus (iv) an additional amount of $1 million if certain conditions are met.

58. For these purposes, the Implementation Agreement provides that "Permitted Investments" will mean (i) DIP loans made by ULC to ACI or ACCC on terms and conditions (including security ranking) reasonably satisfactory to Alcoa, (ii) cash or cash equivalents, or (iii) such other assets as may be agreed to by ACCC and Alcoa, acting reasonably.

59. The retention and holding of Permitted Investments was required by Alcoa in order to secure various obligations of ACI, ACCC and ULC under the Implementation Agreement and under the definitive agreements implementing the Proposed Transactions, including the indemnification obligations in connection with any potential Contingent Pension Liabilities and the payment of any taxes.

60. The asset retention undertaking will terminate or be proportionately reduced (i) coincident with the successful completion of the Restructuring (as defined in the Implementation Agreement), (ii) following the expiration of the Tax Assessment Periods (as defined in the Implementation Agreement) and/or (iii) upon certain other occurrences provided for in the Implementation Agreement.

61. As noted above, as required by Alcoa, the Implementation Agreement provides that ULC shall grant a first ranking hypothec and general security agreement for the benefit of the Alcoa Indemnified Persons and the MPCo Indemnified Persons on the assets retained under the Implementation Agreement to guarantee the performance of such indemnification obligations.

3. POWER SUPPLY TO THE BAIE-COMEAU MILL

62. As ACCC will with no longer benefit from the ACCC/MPCo Power Purchase Agreements, HQ will, in accordance with the rates and conditions approved by the Régie de l'énergie, supply electricity to ACCC following the completion of the MPCo Sale and the conclusion of a distribution agreement regarding a client's load transfer for the Baie-Comeau Mill.

63. ACCC has determined that the increased power costs for the Baie-Comeau Mill are appropriate in the circumstances, including the terms of the Proposed Transactions, the proceeds to be generated thereby and the alternatives available to it.

F. USE OF PROCEEDS AND REPLACEMENT LIEN

64. The Petitioners expect that the gross proceeds of approximately $615 million, subject to adjustments, from the Proposed Transactions will be applied as follows:

(a) about $25 million for the payment of the taxes reimbursed to Alcoa at closing;

(b) about $31 million to HQ for the payment of the ACCC Debt estimated by HQ, subject to any adjustments thereto up to the date of closing of the Proposed Transactions;

(c) about $30.75 million by way of a 2-year purchase price holdback by HQ (the "**Holdback**");

(d) up to $282.3 million to be held by ULC as Permitted Investments;

(e) up to US$87.5 million for the repayment of the ACI DIP Facility, of which about US $58.4 million is currently outstanding, plus any accrued interest and expenses; and

(f) about $10 million in other amounts paid or payable in connection with or pursuant to the Transaction Documents.

65. [...]

65.1 Subject to any further Order of this Court:

(a) the net proceeds of the Proposed Transactions will be subject to a replacement charge (the "**MPCo Noteholder Charge**") in favour of US Bank, National Association as Indenture Trustee and Collateral Trustee for the benefit of the holders of the Secured Notes (the "**Trustee**" and the "**Senior Secured Noteholders**" respectively);

(b) the Petitioners undertake to cause ULC to provide to the Trustee, concurrently with the completion of the Proposed Transactions, a guarantee (the "**ULC Subordinated Guarantee**") of the payment of the Secured Notes held by the Senior Secured Noteholders.

the whole as described in greater detail in the conclusions of this Motion.

66 [...] Prior to the completion of the Proposed Transactions, the Petitioners shall also apply to this Court for the issuance of the approval and vesting orders required in order to duly complete the Proposed Transactions.

G. GROUNDS FOR THIS MOTION

66. The Petitioners believe that the Proposed Transactions are in the Abitibi Petitioners' interest and will generally benefit the Petitioners' stakeholders, including for the following reasons:

(a) The MPCo Sale and the Proposed Transactions form part of the Petitioners' continuing objective and strategy to reduce costs and improve profitability. This strategy was initiated shortly following the completion of the Combination;

(b) The ACCC Interest is not required to continue the operations of the Abitibi Petitioners, nor is it vital for the Petitioners to retain it to successfully restructure their business;

(c) Prior to the Petitioners' filing under the CCAA, MPCo had already been identified as a suitable target for an asset sale, precisely because the transfer of the ACCC Interest could generate considerable proceeds without harming the Petitioners' core business activities;

(d) Should ABH decide to retain the ACCC Interest rather than sell it, it would expect to have no choice but to disburse material amounts in order to ensure its continued access to water rights after 2011 and to support capital expenditures in respect of the McCormick Hydroelectric Facility;

(e) The Proposed Transactions involving the transfer of the ACCC Interest are on attractive terms in the current marketplace and will provide the Petitioners with much needed liquidity;

(f) The purchase price for the ACCC Interest is fair and reasonable, including taking into consideration all relevant factors which could increase the Business' value, and factors which would prevent the increase in value from being realized due to certain incremental costs which would apply to a buyer other than HQ or an affiliated entity ; [...]

(g) The completion of the Proposed Transactions will allow the Abitibi Petitioners to meet their repayment obligations under the ACI DIP Facility and allow the Abitibi Petitioners to benefit from the ULC DIP Loan. The Abitibi Petitioners intend to present a Motion seeking the approval of such ULC DIP Loan, which is expected to rank immediately after the existing ACI DIP Charge (which charge will remain in place to the extent of any repayment to the ACI DIP Lender giving rise to the subrogation mechanism provided for in the Initial Order); and

(h) The MPCo Noteholder Charge and ULC Subordinated Guarantee are consistent with the protection of the interests of the Senior Secured Noteholders.

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

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

WHEREFORE, MAY THIS COURT:

1. **GRANT** this *Amended Motion for the Issuance of an Order Authorizing the Sale of Petitioners' Interests in Manicouagan Power Company* (the "**Motion**").

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

2.1 **DECLARE** that, unless otherwise provided, undefined capitalized terms and expressions used herein shall have the respective meanings ascribed thereto in the Second Amended Initial Order of the Honourable Mr. Justice Clément Gascon, J.S.C. of the Court dated May 6, 2009, as amended (the "**Initial Order**").

Approval of Implementation Agreement and Related Transactions

3. **ORDER** that the terms and conditions of a certain Implementation Agreement (the "**Implementation Agreement**") among [...] Abitibi-Consolidated Inc., Abitibi Consolidated Company of Canada ("**ACCC**"), Manicouagan Power Company ("**MPCo**"), Alcoa Canada Ltée and Alcoa Ltd. (collectively, "**Alcoa**") [...], to which has intervened HQ Énergie Inc., a wholly-owned subsidiary of Hydro-Québec, a copy of which is filed as Exhibit R-1 to [...] the Motion, are approved.

4. **ORDER AND DECLARE** that Petitioners are authorized to implement and complete the transactions and steps contemplated in the Implementation Agreement and the Step Plan (Exhibit A thereto) (the "**Proposed Transactions**") 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 Implementation Agreement.

5. **ORDER** that in completing the Proposed Transactions, subject to the terms and conditions of the Implementation Agreement, the Petitioners be authorized:

   (a) to execute the agreements and to execute and deliver any documents and assurances governing or giving effect to the Implementation Agreement (including, without limitation, the directions of payment contemplated therein) as the Petitioners, in their discretion, may deem to be reasonably necessary or advisable to conclude the Proposed Transactions, including, without limitation, the execution of such deeds, contracts or documents, as may be contemplated in the Implementation Agreement and all such deeds, contracts or documents are hereby ratified, approved and confirmed (collectively with the Implementation Agreement, the **"Transaction Documents"**); 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 Implementation Agreement.

6. **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 Proposed Transactions and that no shareholder or regulatory approval shall be required in connection with the Proposed Transactions save and for those contemplated in the Implementation Agreement.

7. **ORDER AND DECLARE** that the assets or shares of MPCo to be transferred to ACCC under the Implementation Agreement shall not become subject to any charges, liens or encumbrances granted in respect of ACCC or its assets, including, without limitation, any and all CCAA Charges, and that the assets to be transferred by ACCC to the New LP (as defined in the Implementation Agreement) shall be transferred to the New LP free and clear of any charges, liens or encumbrances including, without limitation (i) the CCAA charges and any and all other encumbrances, liens, assignments, charges, hypothecs, pledges, mortgages, title retention agreements, security interests of any nature, adverse claims, exceptions, reservations, easements, servitudes, rights of occupation, matters capable of registration against title, options, rights of pre-emption, privileges or any contract to create any of the foregoing, or (ii) any liability or obligation of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, secured or unsecured, joint or several, solidary or not solidary, due or to become due, vested or unvested, executory, determined, determinable or otherwise and whether or not the same is required to be accrued on any financial statements, the whole save and except for the liabilities to be assumed by the New LP pursuant to the Implementation Agreement.

Treatment of Proceeds and Related Matters Pending Further Order

7.1 **ORDER AND DECLARE** that, subject to paragraphs 7 and 7.6 hereof, (i) the net proceeds from the Proposed Transactions paid to or for the benefit of ACCC or any Abitibi Petitioner under or as contemplated by the Transaction Documents (including as a result of any holdback or reserve described below being released unconditionally following closing), and (ii) the shares of ULC (as defined in the Implementation Agreement), shall constitute and shall for all purposes be treated as proceeds of disposition of the shares of MPCo held by ACCC (the "**MPCo Share Proceeds**"); for greater certainty the MPCo Share Proceeds shall not include the following:

(a) about $25 million (current estimate) paid in connection with taxes;

(b) about $31 million in connection with MPCo intercompany accounts payable;

(c) about $30.75 million representing a commercially negotiated holdback on the purchase price payable by HQ to ACCC, as contemplated in the Intervention section of the Implementation Agreement, except to the extent any amount thereof is released unconditionally to ACCC;

(d) about $282.3 million (the "**ULC Reserve**") contributed to the ULC, except to the extent any amount thereof is released unconditionally to ACCC;

(e) any amount paid in satisfaction of the Abitibi Petitioners' obligations under the ACI DIP Agreement (whether as principal, interest, fees or otherwise); and

(f) any amounts paid or payable by ACCC or by ACI in connection with or pursuant to the Transaction Documents, including any fees, costs, expenses, indemnities and closing adjustments provided for therein.

7.2 **ORDER** that the MPCo Share Proceeds will be subject to a replacement charge (the "**MPCo Noteholder Charge**") in favour of US Bank, National Association as Indenture Trustee and Collateral Trustee for the benefit of the holders of the Secured Notes (the "**Trustee**" and the "**Senior Secured Noteholders**" respectively) with the same rank and priority as the Senior Notes Security held by the Trustee in respect of the shares of MPCo held by ACCC, without requirement for further registration or action; provided further that the Trustee shall be authorized to require the shares of ULC to be pledged by ACCC to the Trustee or, at the election of the Trustee, in favour of a nominee of the Trustee established for such purpose.

7.3 **ORDER** that the cash component of the MPCo Share Proceeds and the ULC Reserve shall be paid to and be held by the Monitor:

(a) in the case of the MPCo Share Proceeds, in an interest bearing account subject to the terms of this Order, and shall not be released by the Monitor except upon approval of the Court made on notice to the Trustee; and

(b) in the case of the ULC Reserve, in an interest bearing account or in Permitted Investments and shall not be released by the Monitor except pursuant to the terms of the Transaction Documents.

7.4 **ORDER** that the Abitibi Petitioners may not borrow any portion of the ULC Reserve except on terms and conditions permitted under the Implementation Agreement, including as to amount, security, priority, interest rates, fees, default, reporting and repayment, and except upon approval of the Court made on notice to the Trustee.

7.5 **ORDER** that the ULC shall provide to the Trustee, concurrently with the completion of the Proposed Transactions, a guarantee (the "**ULC Subordinated Guarantee**") of the payment of the Secured Notes held by the Senior Secured Noteholders on the following terms:

(a) the ULC Subordinated Guarantee to be for all purposes, and shall at all times remain, inferior, junior, subordinated and postponed to any and all other present or future obligations of ULC whether under the Transaction Documents or otherwise, and of whatever nature whatsoever (the "**Other Obligations**");

(b) any and all Other Obligations of the ULC shall be paid in full before any payment on account of, or in respect of, the ULC Subordinated Guarantee (whether as principal, interest, fees or otherwise) is paid;

(c) any payments or distributions on account of, or in respect of, the Secured Notes which are received contrary to these provisions shall be received in trust for the benefit of the ULC, shall be segregated from other funds and property held by recipient and shall be immediately paid over to the ULC; and

(d) the form and substance of the ULC Subordinated Guarantee shall be acceptable to Alcoa.

7.6 **ORDER** that for purposes of section 61.10 of the Initial Order the portion of the MPCo Share Proceeds that is used to pay any amount due under the ACI DIP Agreement constitutes net proceeds from, or cash subject to, the Existing Security of the Secured Notes, as Impaired Secured Creditors, that are used directly to pay the ACI DIP Lender, and that upon such payment being made the Senior Notes are subrogated to the extent thereof in the ACI DIP Charge in accordance with the terms of the Initial Order.

7.7 **ORDER**, consistent with s. 92 of the Initial Order, that:

(a) nothing herein shall affect any determination of (i) the validity or perfection of the Senior Notes Security, (ii) whether such security is opposable to third parties or (iii) whether such security is avoidable under applicable Canadian or United States laws; and

(b) the validity, perfection and opposability of the MPCo Noteholder Charge, of the ULC Subordinated Guarantee and of paragraph 7.6 hereof are conditional upon and subject to the validity, perfection and opposability of the Senior Notes Security in respect of the shares of MPCo held by ACCC.

Conclusion

8. **ORDER AND DECLARE** that leave be reserved to the Abitibi Petitioners or to [...] any party or intervenor to the Implementation Agreement, to apply for such orders or directions as may be required to complete the Proposed Transactions or otherwise in connection with the foregoing orders.

9. **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, September 16, 2009

Stikeman Elliott LLP

STIKEMAN ELLIOTT LLP
Attorneys for Petitioners

AFFIDAVIT

I, the undersigned, Martin Savoie, having my principal place of business at Suite 800, 1155 Metcalfe Street, Montréal, Québec, H3B 5H2 solemnly declare the following:

1. I am the Vice President – Strategy and Corporate Development of AbitibiBowater Inc.

2. All the facts alleged in the Amended *Motion for the Issuance of an Order Authorizing the Sale of Petitioner Abitibi-Consolidated company of Canada's indirect interest in the McCormick Hydroelectric Facility* are true.

AND I HAVE SIGNED

Martin Savoie

MARTIN SAVOIE

Solemnly declared before me at Montréal,
on the 16th day of September, 2009

143 111
Huguette Gagné

Huguette Gagné
Commissioner for oaths

#10473018 v2

NOTICE OF PRESENTATION

TO : SERVICE LIST

TAKE NOTICE that the *Amended Motion for the Issuance of an Order Authorizing the Sale of Petitioner Abitibi-Consolidated company of Canada's indirect interest in the McCormick Hydroelectric Facility* will be presented for adjudication before the Honourable Judge Clément Gascon of the Superior Court, sitting in practice in and for the District of Montréal, in the **Montréal Court House, 1 Notre-Dame St. East,** on **September 25, 2009** at a time and in a Room to be determined by the Court.

DO GOVERN YOURSELVES ACCORDINGLY.

Montréal, September 16, 2009

Stikeman Elliott LLP

STIKEMAN ELLIOTT LLP
Attorneys for Petitioners

#10473018 v2

SUPERIOR COURT
Commercial Division
(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act*)

N°. 500-11-036133-094

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

In the matter of Plan of Compromise or Arrangement of:

ABITIBIBOWATER INC. *et al*

Petitioners

- and –

ERNST & YOUNG INC.

Monitor

BS0350 **n/dos.:** 041053-1170

AMENDED MOTION FOR THE ISSUANCE OF AN ORDER AUTHORIZING THE SALE OF PETITIONER ABITIBI-CONSOLIDATED COMPANY OF CANADA'S INDIRECT INTEREST IN THE MCCORMICK HYDROELECTRIC FACILITY, AFFIDAVIT AND NOTICE OF PRESENTATION

ORIGINAL

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