

CANADA

SUPERIOR COURT

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

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

No. : 500-11-036133-094

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

And

VIATEUR CAMIRÉ, domiciled at 231 Du
Mont St-Michel, Boucherville, Québec
J4B 7T6

Representative

**MOTION TO CONTEST THE AMENDED MOTION FOR THE
APPOINTMENT OF A REPRESENTATIVE AND SOLICITORS FOR THE
PETITIONERS' CANADIAN NON-UNIONIZED FORMER EMPLOYEES AND
OTHER BENEFICIARIES OF THE PENSION PLANS**

TO THE HONOURABLE CLÉMENT GASCON J.S.C. OF THE SUPERIOR COURT,
SITTING IN COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT

OF MONTRÉAL, THE ABITIBI PETITIONERS RESPECTFULLY SUBMIT THE FOLLOWING:

1. All otherwise undefined capitalized term herein shall have the same meaning as the one attributed to it in the Initial Order issued by this Court on April 17, 2009 in the present Court file (as amended and restated, the "**Initial Order**").
2. With respect to the allegations contained at paragraphs 1 and 2 of the motion by Viateur Camiré (the "**Representative**") dated November 5, 2009 and entitled *Amended Motion for the Appointment of a Representative and Solicitors for the Petitioners' Canadian Non-unionized Employees and Other Beneficiaries of the Pension Plans* (the "**Representative's Motion**"), the Petitioners refer to their *Petition for an Initial Order* and their *Petition for the Issuance of a Recognition Order* and deny any allegation not in strict conformity therewith.
3. The Petitioners admit paragraph 3 of the Representative's Motion.
4. With respect to the allegations contained at paragraphs 4 to 23 of the Representative's Motion, the Petitioners refer to the proceedings and orders referred to therein and deny any allegation not in strict conformity therewith.
5. The Petitioners deny, as drafted, the allegations contained at paragraphs 24 and 25 of the Representative's Motion.
6. With respect to the allegations contained at paragraphs 26, 27 and 28 of the Representative's Motion, the Petitioners refer to their *Petition for the Issuance of an Initial Order* and deny any allegation not in strict conformity therewith.
7. The Petitioners ignore the allegations contained at paragraphs 29 to 34 of the Representative's Motion.
8. The Petitioners deny, as drafted, the allegations contained at paragraphs 35 to 49 of the Representative's Motion.
9. The Petitioners take act of the Representative's request contained at allegation 50 of the Representative's Motion but deny that the such request should be granted for reasons more fully described hereinafter.
10. The Petitioners ignore paragraphs 51 to 61 of the Representative's Motion.
11. The Petitioners deny, as drafted, the allegations contained at paragraphs 62 to 78 of the Representative's Motion.

AND IN SUPPORT OF THEIR CONTESTATION TO THE REPRESENTATIVE'S MOTION, THE PETITIONERS STATE AS FOLLOWS:

(a) Absence of Jurisdiction of the Court

12. Not all of the Canadian Non-Unionized Former Employees (as said term is defined in the Representative's Motion) have a common interest with respect to the issues raised in the Representatives' Motion. In that regard it must be noted that a group of Canadian Non-Unionized Former Employees has elected to retain counsel and has specifically required to be excluded from any order to be rendered in connection with the Representatives' Motion.
13. As appears from the allegations of the Representative's Motion, the proposed Representative has not sought, obtained nor filed any mandate from any of the Canadian Non-Unionized Former Employees.
14. The Representative's Motion seeks the issuance of orders which are contrary to the applicable provisions of the *Code of Civil Procedure* ("CCP") allowing a person to appear in judicial proceedings on behalf of third parties.

(b) The Need for a Representative at this Stage of the Proceedings

15. The proposed Representative requests to be appointed to represent and act on behalf of the Canadian Non-Unionized Former Employees in connection with of any employees' claims arising out of the ABH Group's insolvency, including claims based on:

- *Termination;*
- *Severance pay;*
- *Unpaid wages;*
- *Unpaid vacation pay;*
- *Medical benefits;*
- *Life insurance benefits;*
- *Pension plan benefits;*
- *Other employee benefits;*
- *Unpaid expense reimbursements;*
- *Amounts and benefits payable under the employment contract concluded between certain employees and Petitioners;*

as appears from paragraph 49 of the Representative's Motion.

16. The ABH Group submits that this Court has already issued orders in connection with the treatment of termination and severance entitlements, early retirement entitlements and salary continuance entitlements and pre-filing expenses.
17. The ABH Group also submits that the Monitor, as officer of the Court, is and has always been in a position to supply available information to the Canadian Non-Unionized Former Employees in the context of the filing of their respective proofs of claims. The ABH Group submits that it is inappropriate to appoint the Representative and Solicitors at their expense to review and to advise the Canadian Non-Unionized Former Employees with respect to their respective claims.
18. With respect to pension related issues, the ABH Group submits that the *Quebec Supplemental Pension Plans Act* ("QSPPA") already provides a comprehensive framework designed at protecting the interests of all beneficiaries of the pension plans maintained by ABH Group. For example, under the QSPPA, each plan is managed by a pension committee which administers the plan in respect of which it was created.
19. Under the QSPPA, amounts owed by an employer are owed to the relevant pension plan and are not direct payments to the employees or former employees benefiting from the pension plan. Canadian Non-Unionized Former Employees' claims with respect to pension plan benefits should to be addressed to the trustees under the various pension plans.
20. The difficulties highlighted in paragraphs 62 and following of the Representative's Motion are inherent to the CCAA process and do not form, in the circumstances, a sufficient basis for the granting of the various orders sought in the Representatives' Motion.

(c) Fees and Disbursements of the Committee

21. The ABH Group submits that it is not appropriate, in the circumstances, for this Court to order that the fees and costs of the Representative and the Solicitor be supported by the ABH Group.
22. Given the number of employees, former employees and of creditors generally, the granting of such an order is likely to give rise to the creation of several other similar committees, which in turn will give rise to similar requests for the payment of fees and costs.

(d) Proposed Counsel

23. The Representatives' Motion seeks the appointment of Davis LLP as Solicitor (as defined in the Representatives' Motion).
24. To the extent that the appointment of a Solicitor is ordered by the Court, the ABH Group submits that an appropriate process for the selection of same should be put in place, so as to ensure that the firm best suited to efficiently represent the interests of

the Canadian Non-Unionized Former Employees at a reasonable cost is retained as Solicitor.

WHEREFORE, MAY THIS COURT:

- [1] **DISMISS** the *Amended Motion for the Appointment of a Representative and Solicitors for the Petitioners' Canadian Non-unionized Employees and Other Beneficiaries of the Pension Plans* (the "**Representative's Motion**") of Viateur Camiré (the "**Representative**");
- [2] **GRANT** such further order as this Court thinks appropriate.

THE WHOLE WITH COSTS.

Montréal, November 16, 2009



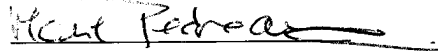
Stikeman Elliott LLP
Attorneys for the Petitioners

AFFIDAVIT

I, the undersigned, Marie Pedneault, 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 for AbitibiBowater Inc.;
2. All the facts alleged in the *Motion to Contest the Amended Motion for the Appointment of a Representative and Solicitors for the Petitioners' Canadian Non-unionized Employees and Other Beneficiaries of the Pension Plans* are true.

AND I HAVE SIGNED


MARIE PEDNEAULT

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


Commissioner for oaths



SUPERIOR COURT

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

N°. 500-11-036133-094

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PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

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BS0350 File: 041053-1170

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EMPLOYEES AND OTHER BENEFICIARIES OF THE
PENSION PLANS

ORIGINAL

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