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 FOR THE APPROVAL OF A SECOND DIP FINANCING IN RESPECT OF THE ABITIBI PETITIONERS AND F OR THE DISTRIBUTION OF CERTAIN PROCEEDS OF THE MPCo SALE TRANSACTION TO THE TRUSTEE FOR THE SENIOR SECURED NOTES

TO THE HONOURABLE CLÉMENT GASCON J.S.C. OR 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:

I. 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 shall have the meaning set forth in the Initial Order.

2. Pursuant to the terms of the Initial Order, Ernst & Young Inc. (the "**Monitor**") was named monitor of the Petitioners.

3. 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 (the "**Chapter 11 Proceedings**") in the United States Bankruptcy Court for the District of Delaware (the "**U.S. Bankruptcy Court**") and on April 17, 2009, ABH and certain Petitioners (collectively with ABH, the "**18.6 Petitioners**")[4] obtained orders under s. 18.6

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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.

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**").

II. ORDER SOUGHT

4. The Petitioners hereby seek:

   (a) orders (the "**ULC DIP Orders**") authorizing ACI and ACCC, as borrowers, to enter into a Loan Agreement (the "**ULC DIP Agreement**") with 3239432 Nova Scotia Company, an unlimited liability company ("**ULC**"), as lender, providing for a **$230** million super-priority secured debtor-in-possession credit facility (the "**ULC DIP Facility**"), which terms will be consistent with the ULC DIP Term Sheet communicated in support of the present Motion, **Exhibit R-1**;

   (b) such amendments to the Initial Order as are necessary to provide for the ULC DIP Orders or as have been requested in connection with the ULC DIP Facility; and

   (c) an order approving a distribution to the Trustee of the Senior Notes of up to $200 million upon completion of the MPCo Transaction (as defined hereunder) and the ULC DIP Agreement;

the whole as set forth in the conclusions of this Motion.

III. BACKGROUND

1. <u>Current Sources of Liquidity</u>

5. ACI currently relies on two sources of financing for its operations: the ACI DIP Facility and the Securitization Program (both as defined below). In a context where the Abitibi Petitioners face challenges which call their very survival into question, these liquidity sources have enabled them to maintain their business as a going concern while undertaking large-scale restructuring efforts.

(i) The ACI DIP Facility

6. On May 6, 2009, this Court issued an order (the "**ACI DIP Order**") authorizing the Abitibi Petitioners to enter into a Loan Agreement between the Bank of Montreal, as lender, and ACI and Donohue Corporation ("**DCorp**"), as borrowers, thereby providing the Abitibi Petitioners with a USD $100 million super-priority senior secured debtor-in-possession credit facility (the "**ACI DIP Facility**") which includes a Loan Guarantee by Investissement Québec, authorized by the Government of Quebec.

7. The ACI DIP Order contains a subrogation charge (paragraph 61.10 of the Initial Order) which protects the interests of the secured creditors of the Abitibi Petitioners. As a result of this assurance, although it was initially opposed by several stakeholders, the ACI DIP Facility was ultimately authorized over the objections of only one group of creditors, namely the ACI Term Lenders.

8. The ACI DIP Facility must be repaid and shall terminate on the earliest of (i) April 30, 2010, being the maturity date, (ii) the effective date of the filing of a plan of arrangement in Canada or in the U.S., (iii) the acceleration of the DIP Facility or occurrence of certain specified events of default (including the failure to repay the DIP Facility by November 1, 2009, and (iv) the unenforceability of the Sponsor Guarantee (as defined therein). The Abitibi Petitioners have sought an extension of the date for repayment of the ACI DIP Facility in the event the MPCo Transaction referred to below is not able to be completed on or before November 1, 2009.

9. The ACI DIP Facility provides that a minimum availability of USD$12.5 million shall be maintained under the ACI DIP Facility at all times, such that the effective maximum amount which can be drawn thereunder for working capital purposes is USD $87.5 million. As of the date of this Motion, the total amount drawn on the ACI DIP Facility was USD$54.8 million, resulting in net available liquidity under the ACI DIP Facility of approximately USD$32.7 million.

(ii) The Securitization Program

10. On June 15, 2009, this Court issued an order authorizing the Petitioners to enter into an Amended and Restated Securitization Program (the "**Securitization Program**"). The Securitization Program enables entities in the ACI Group and in the DCorp Group to realize the cash equivalent value of certain of their accounts receivable prior to the usual collection period. Pursuant to the Securitization Program, accounts receivable are sold or contributed to a special purpose entity, Abitibi Consolidated U.S. Funding Corp. ("**ACI Funding**") at a discount, based upon the outstanding balance on the accounts receivable.

11. Pursuant to section 5.14 of the Securitization Program's *Guaranty and Undertaking Agreement* dated June 16, 2009 among ACI, Citibank, N.A., as agent, and the guarantors party thereto (the "**Guaranty Agreement**"), ACI, Donohue Incorporated and their respective subsidiaries must maintain their cumulative consolidated EBITDAR (as said term is defined in the Guaranty Agreement) above certain specified levels. Where the EBITDAR does not meet these minimum thresholds, the daily average liquidity for the most recent four calendar week period ending prior to the date on which the EBITDAR is calculated must be at least USD $100 million. Failure to meet the EBITDAR and liquidity requirements constitutes an event of default under the Guaranty Agreement.

2. The MPCo Transaction

12. The ACI DIP Facility was conceived as a bridge to the receipt of proceeds from the sale of ACCC's indirect interest in Manicouagan Power Corporation ("**MPCo**" and the "**MPCo Transaction**") to Hydro-Québec or one of its wholly-owned subsidiaries (collectively, "**HQ**").

13. MPCo owns and operates the McCormick hydroelectric facility located on the Manicouagan River, in the Province of Quebec. MPCo is a joint venture between ACCC, which holds a 60% equity interest in MPCo, and Alcoa Canada Ltd. ("**Alcoa Canada**"), which holds the remaining 40% interest.

14. On September 3, 2009, an agreement (collectively, with the exhibits thereto, the "**Implementation Agreement**") for the sale of ACCC's interest in MPCo to HQ was entered into between ACI, ACCC, MPCo, Alcoa Canada and Alcoa Ltd. (collectively, Alcoa Canada and Alcoa Ltd. are referred to as "**Alcoa**"), to which HQ intervened and which sets out a series of transactions and steps (the "**Proposed Transactions**"), outlined in Exhibit A to the Implementation Agreement. A copy of the Implementation Agreement has already been filed as Exhibit R-1 to the Petitioners' *Amended Motion for the Issuance of an Order Authorizing the Sale of Petitioners Abitibi-Consolidated Company of Canada's Indirect Interest in the McCormick Hydroelectric Facility* (the "**MPCo Motion**").

15. As stated in the MPCo Motion, the Abitibi Petitioners intend to apply the gross proceeds from the Proposed Transaction as follows, subject to certain adjustments:

    (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;

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

    (d) about $282.3 million (the "**ULC Reserve**") held by the ULC as Permitted Investment (as defined in the Implementation Agreement;

    (e) up to USD$87.5 million for the repayment of the ACI DIP Facility; and

    (f) about $10 million in other amounts paid or payable in connection with the deeds, contracts or documents as may be contemplated in the Implementation Agreement (the "**Transaction Documents**").

16. On September 29, 2009 this Court issued an order (the "**MPCo Order**") authorizing the MPCo Transaction thereby, *inter alia* :

(a) approving the terms and conditions of the Implementation Agreement;

(b) authorizing and directing ACI and ACCC to implement and complete the Proposed Transactions;

(c) declaring that (i) the proceeds from the Proposed Transactions, net of certain payments, holdbacks, reserves and deductions, and (ii) the shares of the ULC, shall constitute the proceeds of the disposition of ACCC's MPCo shares (collectively, the "**MPCo Share Proceeds**") and that (iii) the MPCO Share Proceeds extend to and include ACCC's interest in the HQ Holdback and in ACCC's interest in claims arising from the satisfaction of related party claims in the amounts of $31.1 million and $0.9 million among ACCC/BCFPI/HQ and ACI Group/Alcoa/MPCo respectively;

(d) declaring that the MPCo Share Proceeds will be subject to a first-ranking replacement charge (the "**MPCo Noteholder Charge**") in favour of US Bank, National Association as Indenture Trustee and Collateral Trustee (the "**Trustee**") for the benefit of the holders (the "**Senior Secured Noteholders**") of the 13.75% senior secured notes due April 1, 2011 (the "**Secured Notes**"), with the same rank and priority as the security held by the Trustee in respect of the shares of MPCo held by ACCC;

(e) ordering that the cash component of the MPCo Share Proceeds be paid to and held by the Monitor, and in the case of the ULC Reserve, in an interest bearing account or investment grade marketable securities which cannot be released by the Monitor except pursuant to the terms of the Transaction Documents;

(f) ordering that the ULC Reserve will be subject to a second-ranking charge (the "**ULC Reserve Charge**") in favour of the Trustee for the benefit of the Senior Secured Noteholders, subordinate to a charge in favour of Alcoa on behalf of itself and on behalf of all Alcoa Indemnified Persons and MPCo Indemnified Persons (in each case as defined in the Implementation Agreement) on terms and conditions as to subordination and enforcement satisfactory to Alcoa, in its sole discretion;

(g) ordering that nothing in the MPCo Order shall be construed as the Court granting authority or approval to the Abitibi Petitioners to borrow any portion of the ULC Reserve; and

(h) ordering that, at the option of the Trustee, the ULC shall provide to the Trustee, concurrently with the completion of the Proposed Transactions, a guarantee (the "**ULC Guarantee**") of the payment of the Secured Notes held by the Senior Secured Noteholders on the terms outlined in paragraph 18 of the MPCo Order.

17. Although the Petitioners are required to complete the MPCo Transaction and repay the ACI DIP by November 1, 2009, an extension request has been made to IQ to permit the closing to occur as soon as possible thereafter.

IV. NEW DIP FACILITY

18. In the MPCo Motion, the Abitibi Petitioners announced their intention to present a Motion seeking the approval of a ULC DIP Loan (as defined in the Implementation Agreement) by ULC, which ULC DIP Loan would be made by ULC to ACI or to ACCC using a portion of the proceeds from the MPCo Transaction which will be held in the ULC Reserve upon closing, as contemplated in the Implementation Agreement.

19. Section 2.5.3 of the Implementation Agreement specifically provides that the ULC DIP Facility is a Permitted Investment (as defined in the Implementation Agreement) and allows ULC to make available the ULC DIP Facility to ACI or ACCC on terms and conditions (including security ranking) reasonably satisfactory to Alcoa.

20. The proposed ULC DIP Facility consists of a $230 million commitment. It is anticipated that the entire commitment would be taken down in a single initial draw.

21. The proposed ULC DIP Facility will be interest-free and free from any fees, with the exception that the Abitibi Petitioners will pay any reasonable expenses of ULC and Alcoa related to the ULC DIP Facility. The payment of interest by ACI or ACCC as borrowers, would create a taxable revenue in ULC, a special purpose subsidiary with no tax shelter of its own, and would thus be to the disadvantage of all stakeholders.

22. The other terms and conditions of the ULC DIP Facility will be consistent with the ULC DIP Term Sheet, Exhibit R-1, and will be similar to the existing ACI DIP Facility, to the extent applicable, subject to modifications which may be required by Alcoa, acting reasonably.

V. LACK OF PREJUDICE TO EXISTING SECURED CREDITORS

23. The assets of the ACI Group fall into three categories:

(a) assets secured in favour of the Senior Secured Notes;

(b) assets secured in favour of the Term Loan Facility; and

(c) assets not subject to any security other than the CCAA Charges.

1. **<u>Senior Secured Notes</u>**

24. As of October 1, 2009, a total amount of about USD$472 million consisting of USD$413 million in principal and about USD$59 million in accrued interest was outstanding under the Senior Secured Notes. The Senior Secured Noteholders also claim penalty interest which, if allowed, would bring the interest amount under the Senior Secured Notes to about USD$65 million, for a total amount outstanding under the Senior Secured Notes of about USD$478 million.

25. The Senior Secured Notes were issued under a Trust Indenture dated as of April 1, 2008, pursuant to which the principal amount of the Senior Secured Notes represented no more than 10% of the Consolidated Net Tangible Assets of the ACI Group (as said expression is defined in the Trust Indenture).

26. The Trustee and the Committee representing Senior Secured Notes have indicated that they will support the application of the Abitibi Petitioners for the ULC DIP Facility conditional upon approval by the court of the proposed distribution to the Trustee upon completion of the MPCo Transaction. The Petitioners view this agreement coming as it does after lengthy settlement discussions to be an important milestone in preparing the Petitioners for emergence from CCAA proceedings.

27. The Abitibi Petitioners expect no material claims to be made against the ULC Reserve and that the full amount of the ULC Reserve in respect of potential pension claims in particular (approximately $200 million) will be freed and made available to repay the Senior Secured Notes upon successful CCAA emergence. Accordingly, the Abitibi Petitioners expect that the Senior Secured Notes will be paid in full no later than CCAA emergence and will thus be unaffected by the CCAA Plan which the Petitioners intend to file in due course. In light of the foregoing, it is submitted that the proceeds generated by the MPCo Transaction ought to be sufficient to secure the alleged outstanding claims under the Senior Secured Notes. In the event that this proved to be untrue, the Senior Secured Notes have a fixed charge and pledge of substantial fixed assets of the Petitioners.

28. In light of the above, the Petitioners submit that the granting of the ULC DIP Facility will not cause undue prejudice to the Senior Secured Noteholders.

2. **<u>Term Loan Facility</u>**

29. As of August 31, 2009, an amount of about USD$347 million was outstanding under the Term Loan Facility. The Term Loan Facility is primarily secured by:

(a) a first ranking charge on certain movable property, corporeal and incorporeal, including: monies, instruments, inventory, claims, securities, insurance and receivables of Bridgewater, Cheshire Recycling Ltd. (U.K.), ACCC, ACI and 13 other guarantors, all of which are subsidiaries of ACCC, in all cases except if charged in connection with the Senior Secured Notes such as in respect of equipment, intellectual property and capital stock of certain subsidiaries; and

(b) a first ranking charge on substantially all of the movable property (including receivables, inventory and equipment) of DCorp and certain of its subsidiaries, a pledge of shares or other interests in the DCorp Group entities, and a mortgage over the real estate property related to the Alabama River Newsprint Mill.

30. The Petitioners submit that the proposed ULC DIP Loan will not cause undue prejudice to the Term Lenders. Indeed the most recent borrowing base certificate issued pursuant to the Term Loan Facility (the "**Borrowing Base Certificate**"), copy of which is communicated herewith as **Exhibit R-2**, indicates that, as at August 31, 2009, the book value of eligible inventories and accounts receivable was about USD$587.48 million. The Borrowing Base Certificate requires various negotiated ratios to be applied to the book value of various categories of working capital assets to derive the lending value. After applying these various discounts, a "Current Asset Amount" of USD$458.7 million is disclosed by the Borrowing Base Certificate as compared to actual Term Lender advances outstanding of USD$347 million for an estimated lending value surplus of USD$111.7 million.

31. The Borrowing Base Certificate does not take into account the value of the following:

(a) the pledge of the currently idled Alabama River newsprint mill with a capacity of 265,000MT;

(b) the unsecured claims held by the lenders under the Term Loan Facility against the DCorp Group entities that own the partnership interest (52.5%) in the Augusta Newsprint Mill which has 423,000MT of production capacity and all of DCorp's recycling operations;

(c) the unsecured claims held by the lenders under the Term Loan Facility against entities within the ACI Group; and

(d) the adequate protection charge in favour of the Term Lenders which was granted by the U.S. Bankruptcy Court in the context of the Chapter 11 Proceedings.

32. DCorp will not be a borrower under the ULC DIP Facility and as a result, no super priority charge will be granted in respect of the assets held by the DCorp Group. As a substantial portion of the security pledged to the Term Loan Facility consists of assets outside of Canada held by the DCorp Group and thus not subject to the super priority DIP charge, it is submitted that the Term Lenders suffer no material prejudice arising from approval of the proposed ULC DIP Facility. To the contrary, to the extent that the liquidity buffer made available by the ULC DIP Facility affords the Petitioners a greater level of security in avoiding potential defaults under the Securitization Program in which the Term Loan Facility has a substantial residual interest by way of security, the ULC DIP serves to enhance rather than detract from the value of the security of the Term Lenders.

3. **Other Assets**

33. To the extent that the proposed ULC DIP loan is required to be repaid from assets which are charged by security interests granted pre-filing, the ACI Group also holds substantial assets which are at present affected only by the CCAA Charges granted under the Initial Order.

34. These include hydro power generating facilities with 162MW of capacity situated in Chicoutimi and Jonquière, in the Saguenay Region of the Province of Québec. While no firm valuation of these assets is currently available, the pending MPCo Sale transaction provides a benchmark from which a rough estimate of value is possible. Based on the MPCo Sale price, the value of these facilities would be estimated to be about USD$400 million although clearly some time would be required to market and sell the properties were this to be required.

35. In addition to the Saguenay hydro generation assets, the following assets would be available to repay a DIP or to compensate a secured creditor whose assets were used to repay a DIP advance:

(a) the Iroquois Falls pulp and paper mill, which has an annual production capacity of 276,000 MT;

(b) the hydro assets that were expropriated in December 2008 by the Government of Newfoundland and Labrador (direct compensation in excess of C$300 million is being sought for the fair market value of all expropriated rights and assets);

(c) approximately 10,500 hectares of timberlands located in the Province of Québec and 63,424 hectares in the Province of Ontario; and

(d) 16 lumber facilities (1,924mmbf), 4 remanufacturing wood facilities and 2 engineered wood facilities which have substantial capacity but are currently operating well below such capacity and are projected to generate slightly negative EBITDA in 2009.

36. In the event that proceeds of any assets subject to the security of secured creditors including the Term Loan Facility were used to secure repayment of the ULC DIP, these substantial assets will represent a pool of value from which any impairment of security values can be appropriately compensated by way of a subrogated charge.

VI. PRESENT SITUATION AND NEED FOR ULC DIP

37. The Seventeenth Report of the Monitor (the "**Monitor's 17th Report**") served on October 5, 2009 outlines the significant challenges faced by the forest products industry with respect to pricing and demand. As outlined in the Monitor's 17th Report at paragraphs 17 and following, the Petitioners have had no choice but to respond to the continued weakness in market demand by curtailing production or indefinitely idling certain additional facilities.

38. While the pricing environment has improved somewhat in the past two months for many of the Petitioners' products, losses incurred in operating during those months of below-cost pricing have eroded some of the Petitioners' liquidity. Unfortunately, the stabilization in the pricing environment is now being offset to a degree by the recent steep rise in the Canadian dollar exchange rate. As a significant portion of sales are made into the Unites States market or in United States dollar terms while expenses remain in Canadian dollars, the exchange rate instability is placing further strains on the Petitioners' liquidity.

1. <u>Selling and Collections Cycle</u>

39. During the first three quarters of 2009, significant downtime was taken by the ABH Group as a whole in response to the decline in customer demand. As outlined in paragraph 21 of the Monitor's 17th Report, ABH has announced production curtailments or mill idlings representing annual capacity reductions of approximately 1.3 million tons since the commencement of the CCAA proceedings.

40. The ACI Group's total receipts from August 24, 2009 to September 20, 2009 were approximately $22.7 million lower than expected, while its disbursements were $10.3 million higher. The negative receipts were partly offset by a $17.5 million inflow from the Securitization Program, thus leaving a financing cash flow which was $16.7 million greater than forecasted. The ACI Group's overall cash balance and available liquidity was approximately $16.3 million lower than initially forecasted by the company and reported by the Monitor (paragraph 26 of the Monitor's 17th Report).

41. The ACI Group receives financing from the sale of a portion of its accounts receivable through the Securitization Program which, from the ACI Group's

perspective, effectively partially funds new accounts receivable in accordance with a formula provided for in the *Receivables Purchase Agreement* (the "**RPA**"). The collections expected in any particular week are a function of the composition of the sales at various times during the last six months, customer behaviour (customers tend to pay near the beginning or end of the month) and the formula provided for in the RPA.

42. While customer credit performance has generally been adequate in the current economic circumstances, challenging market conditions expose the ACI Group to the risk that a customer becomes insolvent (e.g. CanWest) which immediately makes any receivable ineligible in the funding formula set out in the RPA and delays the collection of that receivable.

2. <u>Production and Payments Cycle</u>

43. Due to its current liquidity situation, the level of trade credit available to the ACI Group is below its historic average. On average, since April 17, 2009, the ACI Group has disbursed approximately USD$44 million per week to its suppliers and employees, net of amounts received for disbursements made on behalf of affiliated entities. Negative cash flows related to financing, excluding DIP draws and the proceeds from asset sales, have averaged approximately USD$3.7 million per week. As with most entities of similar size, there is significant variation in the quantum of weekly disbursements. For example, the ACI Group has disbursed as little as approximately USD$33 million and as much as approximately USD$65 million per week since the date of filing (excluding DIP and asset sale activity).

44. The ACI Group's liquidity requirements associated with the production and payments cycle are a function of:

    (a) the ACI Group's operating schedule, which will vary in response to management's assessment of actual and projected market conditions and normal seasonality in the business;

    (b) the actual timing of payments to suppliers will likely be closely related to the nature and timing of specific purchase orders; and

    (c) the time between the production of inventory and the sale of inventory will vary over the course of the year.

45. The Monitor reports at paragraph 24 of the Monitor's 17th Report that price increases are expected in the paper industry for the months of September and October 2009.

46. Any recovery in demand, some of which may arise from customers who have run their inventory down to acceptable levels, will likely result in an increase in working capital requirements since input costs for production necessary to service such demand must be paid for up front while the accounts receivable

generated by increased sales take a longer period to be collected. Any recovery will thus paradoxically require increased liquidity to finance a build-up in working capital to service such incremental demand.

47. A limited portion of the increased requirements may be eligible for funding through the existing Securitization Program but the remainder would need to be funded with internally generated funds or through a new DIP loan.

48. If ACI lacked access to financing to permit it to finance an increase in working capital, it would be at risk of losing market share and causing damage to its business. Such loss of market share and business could in turn impact adversely upon the Petitioners' efforts to fashion a restructuring plan which will maximize values for all stakeholders.

VII. GROUNDS FOR THE ULC DIP MOTION

1. <u>Need for Additional Financing</u>

49. The Abitibi Petitioners require additional DIP financing during the pendency of these proceedings primarily for the following reasons:

(a) to replace the liquidity which will be lost upon repayment of the existing ACI DIP Facility upon completion of the MPCo Transaction;

(b) to provide sufficient liquidity for normal working capital purposes, including capital expenditures and restructuring expenses;

(c) to provide liquidity for any unforeseen liquidity requirements;

(d) to fund increases in inventory levels and meet the anticipated recovery in demand; and

(e) to continue demonstrating to customers and suppliers that that the ACI Group will meet its obligations during the pendency of the CCAA proceedings and continue progress made in re-establishing more normalized trade credit terms.

50. A Cash Flow Forecast for the ACI Group covering the thirteen-week period from September 28, 2009 to December 27, 2009 (the "**Cash Flow Forecast**") is communicated herewith as **Exhibit R-3.**

51. The Abitibi Petitioners have taken a sophisticated and reasonable approach to estimating the ACI Group's flow of working capital over the next 13 weeks, but the ACI Group is a substantial operation with significant working capital flows which are not predictable with precision. Actual changes in working capital may vary materially from the estimate and the likelihood of a material variance with respect to a specific week increases with the length of the forecast.

52. As appears from the Cash Flow Forecast:

    (a) the ACI Group anticipates having a cash balance as low as USD$97.9 million. This amount assumes receipt of certain tax credits (road tax credits) in the estimated amount of USD$36 million. Without these tax credits, the available cash balance could be as low as USD$62 million. The ACI Group is of the view that it is prudent to supplement this relatively low level of liquidity and that the interim financing contemplated under ULC DIP Facility would be appropriate; and

    (b) the estimated cash receipts (excluding a road tax credits) total USD$602 million while the expected cash disbursements total USD$671.2 million (USD$634.5 million in operating disbursements and USD$36.7 million in financing disbursements).

53. Since the beginning of these CCAA proceedings, the Abitibi Petitioners have repeatedly experienced material differences between forecasts and actual results. The ACI Group estimates that reasonable cash flow variations during any given week may reach USD$40 million given the timing difference between receipts and disbursements. In addition to funding working capital requirements, the ULC DIP Facility is therefore also to be used to fund any unexpected or unforeseen liquidity requirements of the ACI Group.

54. In addition the working capital requirements for the first quarter of 2010 could reach USD$40 million given overall market price increases.

55. Pursuant to the terms of the Guaranty Agreement executed in connection with the Securitization Program, ACI, Donohue Incorporated and their respective subsidiaries must meet certain EBITDAR requirements or maintain an daily average liquidity of USD$100 million for the most recent four calendar week period ending prior to the date on which the EBITDAR is calculated, failing which an event of default could be triggered under the Guaranty Agreement, thus accelerating the obligations of Abitibi-Consolidated U.S. Funding Corp. and the Obligors under the Guaranty Agreement and compromising the ABH Group's restructuring efforts.

56. The Abitibi Petitioners therefore need access to the ULC DIP Facility to smooth out their cash flows, fulfill the liquidity requirements under the Securitization Program and meet their post-petition obligations, even if the Abitibi Petitioners' business performs largely as forecasted. A reasonable liquidity cushion is imperative to ensure that there is no risk of defaulting on this critical working capital facility which was both difficult and expensive to secure and put in place.

57. The Abitibi Petitioners submit that interim financing of the order contemplated by the ULC DIP Facility will be required to provide for the foregoing and maintain operations at the current level. Having regard to the size of the ACI Group's business, the Petitioners submit that this level of

liquidity will permit them to operate with a cushion sufficient to enable them to respond to changing business conditions.

58. In light of the foregoing, and the specific circumstances surrounding the creation of ULC and of the ULC Reserve as well as the required consents of Alcoa to any DIP Loan (as defined in the Implementation Agreement) to be made available by ULC to ACI and ACCC, the Abitibi Petitioners submit that it is reasonable for this Court to authorize the ULC DIP Facility for $230 million.

59. The ULC DIP Facility will be beneficial to the Abitibi Petitioners, to the creditor body as a whole and to the larger community of stakeholders. It will allow the Abitibi Petitioners and the ABH Group to continue operations as a going concern and preserve value to the benefit of their creditors, employees and other stakeholders.

2. Consequences of Failure to Secure Adequate DIP Financing

60. The Abitibi Petitioners and the ABH Group have a viable business and a strong basis for a successful restructuring despite the current liquidity crisis they are facing.

61. If granted, the ULC DIP Facility would compare favorably with the USD$206 million DIP financing which has been made available to entities in the Bowater Group.

62. Without the ULC DIP Facility, the Abitibi Petitioners would: (a) lack access to sufficient operating credit to maintain normal operations and respond to any recovery in demand of products; (b) be significantly impaired in their ability to operate in the ordinary course; and (c) face an increase in the risk of unexpected interruptions in the business should unanticipated shortfalls in cash flow occur. Furthermore, with the repayment of the ACI DIP Facility from the MPCo Transaction proceeds, the MPCo Transaction would actually result in a loss of liquidity and working capital unless further replacement DIP financing were obtained.

63. Should working capital deficiencies result in any interruption of the business operations of the ACI Group, such interruption could result in permanent losses in market share and thus drastically depreciate the value of the business and assets of the Abitibi Petitioners. In addition, an interruption of the ACI Group's business would certainly give rise to large number of claims in damages representing significant potential liabilities, which would significantly dilute recoveries for creditors.

VIII. DISTRIBUTION TO SENIOR SECURED NOTEHOLDERS

64. The Petitioners are proposing to make a distribution to the Trustee of the Senior Secured Notes in the amount of $200 million upon completion of the

MPCo Transaction (the "**Proposed Distribution**"), conditional upon the court granting the required orders to make the proceeds of the ULC DIP available.

65. The Petitioners agreement to make the Proposed Distribution and the Trustee and Committee's agreement to support the proposed ULC DIP Facility are mutually conditional such that were the ULC DIP Facility to be approved in a lower amount or not at all, the Petitioners would propose a lower distribution or potentially none at all and vice versa.

66. The Petitioners understand that the Monitor has reviewed the security held by the Trustee in respect of the Senior Secured Notes as regards the MPCo Transaction in particular and will be providing a report to this Court confirming the Monitor's view regarding the priority of such security.

67. The Trust Indenture under which the Senior Secured Notes were issued (copy of which was communicated as Exhibit SN-2 to the Senior Secured Noteholders' *Contestation of 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*) does not expressly provide for the application of funds distributed consensually in consequence of a realization upon Collateral in insolvency proceedings commenced by the Debtor.

68. The parties have agreed to allocate the Proposed Distribution firstly to reasonable costs of the Trustee and Committee (this Court remaining seized of any disputes regarding reasonableness), secondly to outstanding interest at the non-default, contract rate of 13.75% per year compounded semi-annually and thirdly to principal. The proposed payment of interest is without prejudice to the Trustee and Committee making claim to default or special interest under the Trust Indenture in due course, which claims are not admitted.

69. The Proposed Distribution will substantially reduce the interest cost to the Petitioners in respect of the Senior Secured Notes. As the Senior Secured Notes carry an interest rate of 13.75% per year (a further 2% per year being claimed but remaining in dispute), repayment of $200 million to the Senior Secured Notes at this time will result in savings to the Petitioners of interest which would otherwise have to be repaid upon emergence from CCAA proceedings of approximately $2.29 million per month or $27.4 million per year (both figures would be higher if the increased interest rate claimed were employed). Such savings are even more favorable when compared to the zero percent interest rate cost of borrowing under the proposed ULC DIP.

70. In addition, it is expected that the Trustee and Committee costs of participating in the CCAA process will be lessened as the possibility of the Senior Secured Notes being affected by any CCAA Plan becomes increasingly remote. As all or substantially all of such costs would ultimately be borne by the Petitioners having regard to the security of the Trustee of the Senior

Secured Notes, this represents a further significant savings to the Petitioners accruing from the proposed distribution.

71. The funds to make the Proposed Distribution are derived from MPCo Transaction proceeds, the bulk being the funds which would otherwise be held in trust by the Monitor pending further order of the Court (estimated by the Monitor as approximately C$173.9 million assuming no further draws on the ACI DIP Facility beyond the current borrowings of US$54.8 million) with the remaining C$26.1 million being paid upon completion of the MPCo Sale Transaction, the repayment of the ACI DIP and its funding of the ULC DIP.

72. The following table summarizes the sources of funds to make the distribution and the remaining liquidity available to the Petitioners upon drawdown of the proposed ULC DIP (all figures using the estimates of MPCo Transaction proceeds contained in paragraph 48 of the Monitor's Sixteenth Report and using the C$1.00 = US$0.90 rate assumed therein):

Net Proceeds After Holdbacks and Before Payment of ACI DIP Facility (from Monitor's 16th Report):	$234.8 million
Proceeds of Proposed ULC DIP Facility:	$230 million
Subtotal:	***$464.8 million***
Less:	
Repayment of ACI DIP Facility:	$60.87 million
Proposed Distribution:	$200 million
Liquidity Available to Petitioners:	$203.93 million
Less:	
Liquidity lost upon repayment of ACI DIP Facility:	$36.32 million
Net Incremental Liquidity to Petitioners:	***$167.61 million***

73. The Abitibi Petitioners submit that the Proposed Distribution will be beneficial to all stakeholders having regard to the security and priority of the claim of the Trustee of the Senior Secured Notes, the interest savings to be realized and the greater access to liquidity under the ULC DIP Facility that the negotiated settlement with the Committee and the Trustee has made possible.

IX. CONCLUSIONS

74. As appears from the foregoing, the benefits of authorizing the ULC DIP Facility and the Proposed Distribution clearly outweigh the prejudice, if any, suffered by the creditors of the Abitibi Petitioners.

75. Indeed, the Proposed Distribution will result in substantial savings for the Petitioners including, without limitation, a reduction of interest payments of approximately $27.4 million per year.

76. In addition, while the current challenging credit market conditions and customary DIP financing practices have required charges over pre-existing security interests, the Abitibi Petitioners have substantial equity in the assets pledged to secured lenders in addition to having substantial assets with conservatively estimated values far in excess of the amount subject to the ULC DIP Facility. The Abitibi Petitioners therefore submit that there is no reasonable prospect of actual prejudice to their secured creditors.

77. For the reasons set forth above, the Abitibi Petitioners believe it is both appropriate and necessary that the relief being sought be granted. With such relief, the Abitibi Petitioners will be able to restructure their business and affairs to maximize long term value for the benefit of all stakeholders.

78. Considering:

    (a) the urgency of the situation;

    (b) the necessity for the Abitibi Petitioners to obtain the credit facility provided for in the ULC DIP Facility in order to finance their operations and the Restructuring (as defined in the Initial Order);

    (c) the conditions precedent to the disbursement of advances under the ULC DIP Facility;

    (d) the interest of the Abitibi Petitioners and their stakeholders; and

    (e) the notices given for the presentation of this Petition, which Petitioners submit to be proper and sufficient;

    the Abitibi Petitioners respectfully submit and request that execution notwithstanding appeal be granted in respect of the ULC DIP Orders.

79. The Abitibi Petitioners respectfully request that the Initial Order be amended to include such modifications or amendments as are necessary to include and provide for the ULC DIP Orders.

80. The Abitibi Petitioners respectfully submit that this motion should be granted in accordance with its conclusions.

81. The present motion is well founded in fact and in law.

WHEREFORE, MAY THIS COURT:

82. **GRANT** this *Motion For the Approval of a Second DIP Financing in Respect of the Abitibi Petitioners and for the Distribution of Certain Proceeds of the MPCo Sale Transaction to the Trustee for the Senior Secured Notes* (the "**Motion**").

83. **EXEMPT** Abitibi-Consolidated Inc. ("**ACI**") and the Petitioners listed on Schedule "A" hereto (collectively with ACI, the "**Abitibi Petitioners**") from having to serve this Motion and from any notice of presentation.

ULC DIP Order

84. **ORDER** that the Abitibi Petitioners are hereby authorized and empowered to enter into, obtain and borrow under a credit facility provided pursuant to a loan agreement (the "**ULC DIP Agreement**") among ACI and ACCC, as borrowers, and 3239432 Nova Scotia Company, an unlimited liability company ("**ULC**"), as lender (the "**ULC DIP Lender**"), to be approved by Alcoa acting reasonably, which terms will be consistent with the ULC DIP Term Sheet communicated as **Exhibit R-1** in support of the Motion (subject to such non-material amendments and modifications as the parties may agree with a copy thereof being provided in advance to the Monitor) and with the existing ACI DIP Facility, subject to modifications required by Alcoa, acting reasonably, which credit facility shall be in an aggregate principal amount outstanding at any time not exceeding **$230** million.

85. **ORDER** that the Abitibi Petitioners are hereby authorized and empowered to execute and deliver the ULC DIP Agreement, which is hereby approved subject to the approval of Alcoa, acting reasonably, as well as such commitment letters, fee letters, credit agreements, mortgages, charges, hypothecs and security documents, guarantees, mandate and other definitive documents (collectively with the ULC DIP Agreement, the "**ULC DIP Documents**"), as are contemplated by the ULC DIP Agreement or as may be reasonably required by the ULC DIP Lender pursuant to the terms thereof, and the Abitibi Petitioners are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the ULC DIP Lender under and pursuant to the ULC DIP Documents as and when same become due and are to be performed, notwithstanding any other provision of this Order.

86. **ORDER** that, notwithstanding any other provision of this Order, the Abitibi Petitioners shall pay to the ULC DIP Lender when due all amounts owing (including principal, interest, fees and expenses, including without limitation, all fees and disbursements of counsel and all other advisers to or agents of the ULC DIP Lender on a full indemnity basis (the "**ULC DIP Expenses**") under the ULC DIP Documents and shall perform all of their other

obligations to the ULC DIP Lender pursuant to the ULC DIP Documents and this Order.

87. **ORDER** that the claims of the ULC DIP Lender pursuant to the ULC DIP Documents shall not be compromised or arranged pursuant to the Plan or these proceedings and the ULC DIP Lender, in such capacity, shall be treated as an unaffected creditor in these proceedings and in any Plan or any proposal filed by any Abitibi Petitioner under the BIA.

88. **ORDER** that the ULC DIP Lender may:

    (a) notwithstanding any other provision of this Order, take such steps from time to time as it may deem necessary or appropriate to register, record or perfect the ULC DIP Charge and the ULC DIP Documents in all jurisdictions where it deems it to be appropriate; and

    (b) notwithstanding the terms of paragraphs 10 and 11 hereof, upon the occurrence of a Termination Event (as each such term is defined in the ULC DIP Documents), refuse to make any advance to the Abitibi Petitioners and terminate, reduce or restrict any further commitment to the Abitibi Petitioners to the extent any such commitment remains, set off or consolidate any amounts owing by the ULC DIP Lender to the Abitibi Petitioners against any obligation of the Abitibi Petitioners to the ULC DIP Lender, make demand, accelerate payment or give other similar notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Abitibi Petitioners and for the appointment of a trustee in bankruptcy of the Abitibi Petitioners, and upon the occurrence of an event of default under the terms of the ULC DIP Documents, the ULC DIP Lender shall be entitled to apply to the Court to seize and retain proceeds from the sale of any of the Property of the Abitibi Petitioners and the cash flow of the Abitibi Petitioners to repay amounts owing to the ULC DIP Lender in accordance with the ULC DIP Documents and the ULC DIP Charge.

89. **ORDER** that the foregoing rights and remedies of the ULC DIP Lender under this paragraph shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Abitibi Petitioners or the Property of the Abitibi Petitioners, the whole in accordance with and to the extent provided in the ULC DIP Documents.

90. **ORDER** that the ULC DIP Lender shall not take any enforcement steps under the ULC DIP Documents or the ACI DIP Charge without providing three (3) business day (the "**Notice Period**") written enforcement notice of a default thereunder to the Abitibi Petitioners, the Monitor and Alcoa. Upon expiry of such Notice Period, and notwithstanding any stay of proceedings provided

herein, the ULC DIP Lender shall be entitled to take any and all steps and exercise all rights and remedies provided for under the ULC DIP Documents and the ACI DIP Charge and otherwise permitted at law, the whole in accordance with applicable provincial laws, but without having to send any notices under Section 244 of the BIA. For greater certainty, the ULC DIP Lender may issue a prior notice pursuant to Article 2757 CCQ concurrently with the written enforcement notice of a default mentioned above.

91. **ORDER** that, subject to further order of this Court, no order shall be made varying, rescinding, or otherwise affecting paragraphs 61.1 to 61.9 of the Initial Order, the approval of the ULC DIP Documents or the ACI DIP Charge unless either (a) notice of a motion for such order is served on the Petitioners, the Monitor, Alcoa and the ULC DIP Lender by the moving party and returnable within seven (7) days after the party was provided with notice of this Order in accordance with paragraph 70(a) hereof or (b) the ULC DIP Lender applies for or consents to such order.

92. **ORDER** that 3239432 Nova Scotia Company is authorized to assign its interest in the ULC DIP to Alcoa or the Secured Noteholders as the case may be pursuant to the security agreements and guarantees to be granted pursuant to the Implementation Agreement and this Court's Order dated September 29, 2009.

93. **AMEND** the Initial Order issued by this Court in this matter on April 17, 2009 (as amended and restated) by adding the following at the end of paragraph 61.3 of the Initial Order:

> "**ORDERS** further, that from and after the date of closing of the MPCo Transaction (as said term is defined in the Petitioners' Motion dated October ●, 2009), the ACI DIP Charge shall be increased by the aggregate amount of **$230** million (subject to the same limitations provided in the first sentence hereof in relation to the Replacement Securitization Facility) and shall extend the charge by a movable and immovable hypothec, mortgage, lien and security interest on all property of the Abitibi Petitioners in favour of the ULC DIP Lender for all amounts owing, including principal, interest and ULC DIP Expenses and all obligations required to be performed under or in connection with the ULC DIP Documents. The ACI DIP Charge as so increased shall continue to have the priority established by paragraphs 89 and 91 hereof provided that such increased ACI DIP Charge shall in all respects be subordinated to the rights arising under paragraph 61.10 hereof in favour of the

holders of the Secured Notes arising from the repayment of the ACI DIP Lender from the proceeds of the sale of the MPCo transaction as approved by this Court in its order of September 29, 2009. The terms "ULC DIP Lender", "ULC DIP Documents" and "ULC DIP Expenses" shall be as defined in the order of this Court dated October ● 2009."

Senior Secured Notes Distribution

94. **ORDER** that the Abitibi Petitioners are authorized and directed to make a distribution to the Trustee of the Senior Secured Notes in the amount of $200 million upon completion of the MPCo Transaction (as said term is defined in the Motion) from the proceeds of such sale and of the ULC DIP Facility.

95. **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, October 16, 2009

Stikeman Elliott LLP

Stikeman Elliott LLP
Attorneys for the Petitioners

AFFIDAVIT

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

1. I am the Vice President, Secretary of Abitibi-Consolidated Inc. and the Vice President, Treasurer of AbitibiBowater Inc.;

2. All the facts alleged in the *Motion for the Approval of a Second DIP Financing in Respect of the Abitibi Petitioners and for the Distribution of Certain Proceeds of the MPCo Sale Transaction to the Trustee for the Senior Secured Notes* are true.

AND I HAVE SIGNED

ALLEN DEA

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

Commissioner for oaths

COMMISSAIRE À L'ASSERMENTATION
Nicole Leblanc
#132,216
TOUS LES DISTRICTS JUDICIAIRES DU QUÉBEC

NOTICE OF PRESENTATION

TO : SERVICE LIST

TAKE NOTICE that the *Motion for the Approval of a Second DIP Financing in Respect of the Abitibi Petitioners and for the Distribution of Certain Proceeds of the MPCo Sale Transaction to the Trustee for the Senior Secured Notes* will be presented for adjudication before one of the Honourable Judges of the Superior Court, sitting in practice in and for the District of Montreal, in the **Montreal Court House, 1 Notre-Dame St. East**, at a date, time and in a Room to be announced to the Service List.

DO GOVERN YOURSELVES ACCORDINGLY.

Montreal, October 16, 2009

Stikeman Elliott LLP

STIKEMAN ELLIOTT LLP
Attorneys for Petitioners

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

MOTION FOR THE APPROVAL OF A SECOND DIP FINANCING IN RESPECT OF THE ABITIBI PETITIONERS AND FOR THE DISTRIBUTION OF CERTAIN PROCEEDS FROM THE MPCo SALE TRANSACTION TO THE TRUSTEE FOR THE SENIOR SECURED NOTEHOLDERS

ORIGINAL

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