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 FILING OF AN ADDITIONAL PETITIONER AND FOR AN AUTHORIZATION TO ENTER INTO TRANSACTIONS FOR THE RESTRUCTURING OF THE PETITIONERS' EUROPEAN SALE STRUCTURE

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 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**").

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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.

II. BACKGROUND

4. Pursuant to the terms of a *First Amended and Restated Paper Supply Agreement,* dated as of January 1, 2001 (the "**Paper Supply Agreement**") between Bridgewater Paper Company Limited or its subsidiaries ("**BCPL**") and ACI, ACI contracts with BPCL to effect the sale of products produced by the ACI Group to its European clients (the "**Current European Sale Structure**").

5. The Current European Sale Structure functions as follows:

   (a) the ACI Group's products are sold by BPCL to customers in the U.K. and in the rest of Europe, with BPCL taking legal title in these products before they are sold;

   (b) the receivables of BPCL generated by the Current European Sale Structure are collected in BPCL bank accounts with Citibank, N.A. situated in various European countries and then concentrated in BPCL's concentration accounts held with Citibank, N.A. in London;

   (c) the receivables concentrated in BPCL's London concentration accounts are remitted to ACCC on a regular basis (three or four times a month).

6. As a result, ACI may be owed by BPCL, on an unsecured basis, at any given time, between USD$5 million and USD$15 million in receivables collected by BPCL.

7. The Petitioners wish to restructure the Current European Sales Structure as set forth hereinafter in order to limit their exposure to BPCL. In so doing, the Petitioners also seek to preserve the rights of their creditors, including the Term Lenders who currently hold security over BPCL's accounts receivables.

III. ORDERS SOUGHT

8. The Petitioners hereby seek the following orders (collectively, the "**European Sale Structure Orders**"):

   (a) an order declaring that ACUK is a debtor company to which the CCAA applies and amending the Initial Order in order to include ACUK on "Schedule 'A' - Abitibi Petitioners" thereof;

   (b) an order authorizing ACI to enter into the Deed of Amendment (as defined below) with BPCL pursuant to which BPCL's existing and future accounts receivables will be assigned to ACUK;

(c) an order authorizing ACUK to become guarantor of the obligations of ACCC as contemplated under the Term Loan (as defined below) and to execute the necessary agreements and security in connection therewith;

(d) an order authorizing ACUK to become guarantor of the obligations of ACCC under the indenture for the 13.75% Senior Secured Notes due April 1, 2011 (the "**Senior Notes Indenture**") and the indenture for the unsecured US$293M 15.5% Exchange Notes due July 15, 2010 (the "**Unsecured Notes Indenture**") and to execute the necessary agreements in connection therewith;

(e) an order confirming that the ACI DIP Charge extends to the shares of ACUK in connection with the ACI DIP Facility;

(f) an order declaring that the present or future assets of ACUK, save and except for the liens to be created thereon in favour of the Term Lenders (the "**Term Lenders' Liens**"), are not and shall not become subject to any charges, liens or encumbrances granted in respect of the Abitibi Petitioners, or any one thereof, or any of their respective assets, including, without limitation, any and all CCAA charges or any future equivalents thereof or replacements thereof and that said assets shall be free and clear of any charges, liens or encumbrances other than the Term Lenders' Liens; and

(g) an order declaring that the guarantees and where applicable any security provided by ACI and its direct or indirect subsidiaries under the terms of the Term Loan (as defined below), the Senior Notes Indenture and the Unsecured Notes Indenture, validly extend (provided their terms so provide) to the respective obligations of ACUK under the guarantee to be granted by it pursuant to the European Sale Structure Orders in favour of the Term Lenders, the trustee under the Senior Notes Indenture and the trustee under the Unsecured Notes Indenture.

9. In connection with the implementation of the New European Sale Structure (as defined below), the Petitioners have amended the Securitization Program's Guaranty and Undertaking Agreement dated June 16, 2009 among Donohue Corp., Abitibi-Consolidated Sales Corporation, Abitibi-Consolidated Corp., Augusta Woodlands, LLC, Abitibi-Consolidated Alabama Corporation and Alabama River Newsprint Company, as guarantors and obligors, ACI, as obligors and Citibank, N.A., as agent so as to permit the assignment of BPCL's accounts receivables described above and provide that each exception to a negative covenant that applies to BPCL shall apply equally to ACUK. The Petitioners are of the view that these amendments to the Securitization Program are non-material and therefore do not require the approval of this Court or that of the U.S. Bankruptcy Court.

IV. OUTLINE OF THE NEW EUROPEAN SALE STRUCTURE

10. As part of the proposed new European Sales Structure, BPCL will agree, in consideration of ACI's continued supply of paper to BPCL, to assign existing and future accounts receivables to Abitibi-Consolidated (U.K.) Inc. ("**ACUK**"), a new wholly-owned subsidiary of ACI, incorporated under the *Canada Business Corporation Act* (the "**New European Sale Structure**").

11. The New European Sale Structure is expected to be implemented shortly following the issuance of the European Sale Structure Orders.

12. The New European Sale Structure, once implemented, will allow for existing and future accounts receivables of BPCL to be paid directly by the customers to ACUK before the corresponding amounts are remitted to ACI.

13. As is the case under the Current European Sale Structure, the accounts receivables generated under the New European Sale Structure will not be sold to Abitibi-Consolidated U.S. Funding Corp. and will remain at all times distinct from the flow of receivables processed under the Securitization Program.

14. The completion of the following steps are contemplated in connection with the New European Sale Structure:

    (a) the execution, by ACI, ACUK and BPCL, of a *Deed of Amendment to Paper Supply Agreement and Assignment* (the "**Deed of Amendment**") to the Paper Supply Agreement giving effect to the the Hew European Sale Structure;

    (b) a notice will be given by BPCL to its customers informing them of the assignment, in favour of ACUK, of existing and future amounts owing by such customers to BPCL;

    (c) the execution of the agreements and any other documents which may be necessary for ACUK to become a guarantor under the Term Loan and to provide the security provided thereunder, as well as to become a guarantor under the Secured Notes Indenture and the Unsecured Notes Indenture;

    (d) the pledge and delivery by ACI to the Bank of Montreal of the ACUK shares issued to ACI pursuant to a Deed of Hypothec granted by ACI in favour of Bank of Montreal on May 6, 2009.

V. SECURITY GRANTED

15. ACCC is party to a Credit and Guaranty Agreement dated as of April 1, 2008 (the "**Term Loan** "), among, inter alia, ACCC, as borrower, ACI, as guarantor, the other guarantors party thereto, the lenders party thereto (the "**Term**

Lenders"), and Wells Fargo N.A., as successor administrative agent (the "**Agent**"), under which an amount of about US$347 million of principal remained outstanding as of August 31, 2009.

16. The Term Loan is primarily secured by, *inter alia*, a first ranking charge on certain movable property, corporeal and incorporeal, including monies, instruments, inventory, claims, securities, insurance and receivables of BPCL and other guarantors, all of which are direct or indirect subsidiaries of ACI, in all cases except if charged in connection with the Senior Secured Notes.

17. The Petitioners have recognized that the assignment of BPCL's receivables to ACUK under the New European Sale Structure may have a detrimental effect on the value of the Term Lenders' collateral unless a replacement security is granted to the Term Lenders and the present and future assets of ACUK, save and except for the Term Lenders' Liens, are free and clear of any charges, liens or encumbrances.

18. As a result, in connection with the implementation of the New European Sale Structure, ACI seeks an authorization from this Court to enter into the documents which will allow ACUK to become a guarantor as contemplated in section 5.10 of the Term Loan and to grant security thereunder.

19. ACCC is also a party to the Senior Notes Indenture and to the Unsecured Notes Indenture pursuant to each of which BPCL is a guarantor of ACCC's obligations. It is therefore appropriate for ACUK to become a guarantor under these indentures in order to preserve the interests ACCC's noteholders under these indentures.

VI. GROUNDS FOR THIS MOTION

20. The benefits of authorizing the New European Sale Structure are clear and the Petitioners submit there is no prejudice suffered by their creditors but rather, that the proposed structure will be beneficial to all creditors.

21. The successful implementation of the New European Sale Structure will serve to reduce ACI's exposure to BCPL by ensuring that between approximately USD$15 million and USD$20 million per month in accounts receivables are channeled into ACUK, a corporate entity with activities limited to those contemplated by the New European Sale Structure. The assurance deriving therefrom will benefit all of the ACI Group's stakeholders, including its secured and unsecured creditors.

22. The New European Sale Structure will provide for replacement security to the Term Lenders in order to prevent their secured position from eroding as a result of the assignment of BPCL's accounts receivables to ACUK as well as guarantees to the holders of notes under the Senior Notes Indenture and the Unsecured Notes Indenture. The Abitibi Petitioners therefore submit that the

interests of these creditors will be unaffected by the New European Sale Structure.

23. It is appropriate for this Court to declare that ACUK is a debtor company to which the CCAA applies and for the Stay of Proceedings issued under the Initial Order to be extended to ACUK. Indeed, although a newly formed entity, ACUK meets the criteria for filing under the CCAA.

24. For the reasons set forth above, the Abitibi Petitioners believe it is both appropriate and necessary that the relief sought be granted. The New European Sale Structure is an integral part of the efforts undertaken by the Abitibi Petitioners to restructure their operations and maximize long term value for the benefit of all stakeholders.

25. Considering:

    (a) the necessity for the Abitibi Petitioners to implement the New European Structure as soon as practicable in order to limit the ACI Group's exposure to BPCL;

    (b) the potential consequences of a default in payment of BPCL under the Current European Sale Structure on the ongoing CCAA restructuring;

    (c) the interests of the Abitibi Petitioners and their stakeholders; and

    (d) the notices given for the presentation of this Motion, 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 European Sale Structure Orders.

26. 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 European Sale Structure Orders.

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

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

WHEREFORE, MAY THIS COURT:

1. **GRANT** this *Motion for the Filing of an Additional Petitioner and for an Authorization to Enter into Transactions for the Restructuring of the Petitioners European Sale Structure* (the "**Motion**").

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

3. **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**").

<u>Abitibi-Consolidated (U.K.) Inc.</u>

4. **DECLARE** that Abitibi-Consolidated (U.K.) Inc. ("**ACUK**"), a subsidiary of Abitibi-Consolidated Inc. ("**ACI**") is a debtor company to which the CCAA applies.

5. **AMEND** the Initial Order by including the following additional Petitioner on "Schedule 'A' - Abitibi Petitioners":

   20. Abitibi-Consolidated (U.K.) Inc.

6. **DECLARE** that from immediately after midnight (Montréal time) on October 27, 2009, any act or action taken or notice given by any person in respect of ACUK are deemed not to have been taken or given, as the case may be, to the extent such act, action or notice would otherwise be stayed after the granting of this Order, pursuant to the terms of the Initial Order.

7. **ORDER** that ACI is hereby authorized and directed to pledge and deliver the shares of ACUK to the Bank of Montreal pursuant to the ACI DIP Charge and that certain Deed of Hypothec granted by ACI in favour of Bank of Montreal on May 6, 2009.

<u>Assignment of Accounts Receivables</u>

8. **ORDER** that ACUK be authorized to enter into a *Deed of Amendment to Paper Supply Agreement and Assignment* (the "**Deed of Amendment**") with ACI and Bridgewater Paper Company Limited ("**BPCL**") upon such terms and conditions as may be approved by the Monitor in order to give effect to and implement and complete those transactions and steps which may be necessary or useful for the assignment of BPCL's accounts receivables to ACUK (the "**Assignment**") and any and all related matters.

9. **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 Assignment and that no other approval or conditions shall be required in connection with the Assignment or the effectiveness of any replacement security contemplated herein.

10. **ORDER AND DECLARE** that, save and except for the liens to be created on present or future assets of ACUK in favour of the Term Lenders (the "**Term Lenders' Liens**"), the present or future assets of ACUK are not and shall not become subject to any charges, liens or encumbrances granted in respect of the Abitibi Petitioners, or any one thereof, or any of their respective assets, including, without limitation, any and all CCAA Charges or any equivalents thereof or replacements thereof, and that said assets shall be free and clear of any charges, liens or encumbrances other than the Term Lenders' Liens.

<u>Replacement Security</u>

11. **ORDER** that ACUK is authorized to enter into and execute the guaranty and security documents necessary for ACUK to become a guarantor and grantor pursuant to Section 5.10 of the Term Loan Facility (as said term is defined in the Initial Order), along with any other documents in relation with the foregoing as the Petitioners party thereto may agree to with the consent of the Monitor.

12. **ORDER** that ACUK is authorized to enter into guaranties and to execute any and all documents necessary for ACUK to become a guarantor under (i) the indenture for the 13.75% Senior Secured Notes due April 1, 2011 (the "**Senior Notes Indenture**"); and (ii) the indenture for the unsecured US$293M 15.5% Exchange Notes due July 15, 2010 (the "**Unsecured Notes Indenture**") along with any other documents in relation with the foregoing as the Petitioners party thereto may agree to with the consent of the Monitor.

13. **ORDER AND DECLARE** that the guarantees and where applicable any security provided by ACI and its direct or indirect subsidiaries under the terms of the Term Loan, the Senior Notes Indenture and the Unsecured Notes Indenture, validly extend (provided their terms so provide) to the respective obligations of ACUK under the guarantee to be granted by it pursuant to the present Orders in favour of the Term Lenders, the trustee under the Senior Notes Indenture and the trustee under the Unsecured Notes Indenture.

14. **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 28, 2009

Stikeman Elliott LLP

Stikeman Elliott LLP
Attorneys for the Petitioners

#10485851 v7

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 Filing of an Additional Petitioner and for an Authorization to enter into Transaction for the Restructuring of the Petitioners' European Sale Structure* are true.

AND ~~I HAVE~~ SIGNED

ALLEN DEA

Solemnly declared before me at Montréal, on the 28th day of October, 2009

Sophie Rossignol, avocate 257915-4

Commissioner for oaths

#10485851 v7

NOTICE OF PRESENTATION

TO : SERVICE LIST

TAKE NOTICE that the *Motion for the Filing of an Additional Petitioner and for an Authorization to enter into Transaction for the Restructuring of the Petitioners' European Sale Structure* 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 **Montréal 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 28, 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 FILING OF AN ADDITIONAL PETITIONER AND FOR AN AUTHORIZATION TO ENTER INTO TRANSACTIONS FOR THE RESTRUCTURING OF THE PETITIONERS' EUROPEAN SALE STRUCTURE, AFFIDAVIT AND NOTICE OF PRESENTATION

ORIGINAL

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