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

THE REGISTRAR OF THE REGISTER OF PERSONAL AND MOVABLE REAL RIGHTS

and

THE LAND REGISTRAR FOR THE LAND REGISTRY OFFICE FOR THE REGISTRATION DIVISION OF SAGUENAY

Mis en cause

and

ERNST & YOUNG INC.,

Monitor

MOTION FOR THE ISSUANCE OF A VESTING ORDER IN RESPECT OF THE SALE OF THE MPCO ASSET

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]

2. Any undefined capitalized expressions used herein shall have the meaning set forth in the Initial Order and in the Petitioners' *Amended Motion for the Issuance of an Order Authorizing the Sale of Petitioner Abitibi-Consolidated Company of Canada's Indirect Interest in the McCormick Hydroeletric Facility* (the "**MPCo Motion**") dated September 16, 2009.

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

4. On April 16, 2009, AbitibiBowater Inc. ("**ABH**"), Bowater Inc. and certain of their U.S. and Canadian subsidiaries filed voluntary petitions for relief under

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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., 9150-3383 Québec Inc. and Abitibi-Consolidated (U.K.) 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.

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**").

II. ORDERS SOUGHT

5. The Petitioners hereby seek the following orders from this Court in connection with the MPCo Transaction (each capitalized term below as defined in the conclusions to the present *Motion for the Issuance of a Vesting Order in Respect of the Sale of the MPCo Asset* (the "**Motion**")):

   (a) the approval of the terms of the following agreements and of the transactions contemplated therein:

   - the Asset Transfer Agreement, Exhibit R-1;
   - the Acquisition Agreement, Exhibit R-2;
   - the Unit Transfer Agreement and Share Purchase Agreement, Exhibit R-3;

   (b) the issuance of the vesting orders in connection with the transactions contemplated in the above-mentioned agreements;

   (c) an order that the proceeds of the Proposed Transactions be subject to and dealt with in accordance with the MPCo Order;

   (d) a number of orders typically requested along with vesting orders; and

   (e) an order authorizing ACCC to make a contribution to certain pension plans in order to comply with any applicable pension legislation requirement to eliminate all or part of any deficit in connection with the transfer of assets and liabilities to a successor pension plan in respect of employees and former employees of MPCo;

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[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.

the whole as set forth in the conclusions of the Motion (collectively, the "**MPCo Vesting Order**").

III. BACKGROUND

1. The MPCo Order

6. 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 and Alcoa, to which HQ intervened. The Implementation Agreement 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 MPCo Motion.

7. On September 29, 2009, this Court issued an order (as corrected on October 6, 2009, the "**MPCo Approval 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; and

   (c) issuing a number of other orders in connection with the above, including regarding the use of proceeds from the MPCo Transaction.

8. It was initially anticipated that the MPCo Transaction would close before November 1, 2009.

9. Since the issuance of the MPCo Approval Order on September 29, 2009, ACCC has worked towards completing the steps outlined in the Implementation Agreement. Despite their best efforts, the closing of the MPCo Transaction has been delayed until the latter part of the month of November 2009 due to, *inter alia*, the complex nature of the transactions and the need to address a number of outstanding issues, the whole as outlined in the Nineteenth Report of the Monitor dated October 26, 2009 at paragraph 20 and following.

2. The Definitive Agreements

10. Since the issuance of the MPCo Approval Order and as provided for in the Implementation Agreement, the following agreements (collectively, the "**Definitive Agreements**") have been negotiated:

(a) an Asset Transfer Agreement (the "**Asset Transfer Agreement**") by and between ACCC, as acquiree, and the Partnership, as acquiror, a draft of which is communicated herewith as **Exhibit R-1**;

(b) an Acquisition Agreement (the "**Acquisition Agreement**") by and between ACCC and ACI, as selling parties, and HQ Énergie Inc., any wholly-owned direct subsidiary of Hydro-Québec or one of their permitted assigns (the "**HQ Purchaser**"), as purchaser, an executed copy of which is communicated herewith as **Exhibit R-2** (the Disclosure Schedules thereto are to be filed under seal); and

(c) a Unit Transfer Agreement (the "**Unit Transfer Agreement**") and a Share Purchase Agreement (the "**Share Purchase Agreement**") by and between ACCC, as transferor, and Alcoa Canada Energy Company, as transferee, drafts of which are communicated herewith, *en liasse*, as **Exhibit R-3.**

11. The Definitive Agreements stipulate as a condition to closing the issuance of an approval and the registration of vesting orders with respect to the transfers and sales contemplated therein.

IV. GROUNDS FOR THIS MOTION

12. As appears from the foregoing, the issuance of the MPCo Vesting Order is required in the Definitive Agreements and necessary in order to complete the MPCo Transaction in accordance with the MPCo Approval Order.

13. The completion of the MPCo Transaction is vital as the monetization of the MPCo asset will allow the Abitibi Petitioners to reimburse the ACI DIP Facility before the December 15, 2009 deadline.

14. In addition, it is anticipated that subject to a favourable ruling of this Court on the Petitioners' *Re-Amended 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* dated November 9, 2009 (the "**ULC DIP Motion**"), a motion heard on November 9, 2009 and taken under advisement by this Court, the MPCo Transaction could provide the Abitibi Petitioners with an interest-free debtor-in-possession loan (the "**ULC DIP**") from an unlimited liability company (the "**ULC**") created in connection with the Proposed Transactions.

15. As outlined in the ULC DIP Motion, the ULC DIP which is contingent, *inter alia*, upon the completion of the MPCo Transaction, would be beneficial to the Abitibi Petitioners, to the creditor body as a whole and to the larger community of stakeholders by allowing the Abitibi Petitioners and the ABH group of companies to continue operations as a going concern and preserve value to the benefit of their creditors, employees and other stakeholders.

16. Considering:

    (a) the urgency of the situation;

    (b) the need to close the MPCo Transaction in a timely fashion;

    (c) the interest 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 MPCo Vesting Order.

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

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

WHEREFORE, MAY THIS COURT:

[1] **GRANT** this *Motion for the Issuance of a Vesting Order in Respect of the MPCo Asset* (the "**Motion**");

[2] **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;

[3] **ORDER** that the terms and conditions of the Asset Transfer Agreement (the "**Asset Transfer Agreement**") by and between ACCC, as acquiree, and Manicouagan Power Limited Partnership (the "**Partnership**"), as acquiror, a draft of which is filed as **Exhibit R-1** to the Motion, and all the transactions contemplated therein, are approved;

[4] **ORDER** that the terms and conditions of the Acquisition Agreement (the "**Acquisition Agreement**") by and between ACCC and ACI, as selling parties, and HQ Énergie Inc., as purchaser (the purchaser under the Acquisition Agreement, whether HQ Énergie Inc., another wholly-owned direct subsidiary of Hydro-Québec or one of their permitted assignee under the Acquisition Agreement, is hereinafter referred to as the "**HQ Purchaser**"), an executed copy of which is filed as **Exhibit R-2** to the Motion, and all the transactions contemplated therein, are approved with such alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Monitor;

[5] **ORDER** that the terms and conditions of the Unit Transfer Agreement (the "**Unit Transfer Agreement**") and the Share Purchase Agreement (the "**Share Purchase Agreement**") by and between ACCC, as transferor, and Alcoa Canada Energy Company, as transferee, drafts of which are filed, *en liasse*, as

Exhibit R-3 to the Motion, and all the transactions contemplated therein, are approved with such alterations, changes, amendments, deletions or additions thereto, as may be agreed to with the consent of the Monitor;

[6] **ORDER and DECLARE** that upon the execution and delivery of the Asset Transfer Agreement and upon all conditions to closing having been satisfied or waived (save and except for the registration of the present Order in the Land Registry), all obligations of the Partnership that are required to be satisfied at or prior to closing under the Asset Transfer Agreement having been satisfied and the delivery of a Monitor's certificate, substantially in the form of the draft Monitor's Certificate appended as Annex "I" hereto, confirming same (the "**Monitor's Certificate**"), all right, title and interest in and to the assets described in the Asset Transfer Agreement (the "**Transferred Assets**"), shall vest absolutely and exclusively in and with the Partnership, free and clear of and from any and all claims, liabilities, obligations, interests, prior claims, hypothecs, security interests (whether contractual, statutory or otherwise), liens, assignments, judgments, executions, writs of seizure and sale, options, adverse claims, levies, charges, liabilities (direct, indirect, absolute or contingent), pledges, executions, rights of first refusal or other pre-emptive rights in favour of third parties, mortgages, hypothecs, trusts or deemed trusts (whether contractual, statutory or otherwise), restrictions on transfer of title, or other claims or encumbrances, whether or not they have attached or been perfected, registered, published or filed and whether secured, unsecured or otherwise (collectively, the "**Transferred Assets Encumbrances**"), including without limiting the generality of the foregoing: (i) any Transferred Assets Encumbrances created by the Order issued on April 17, 2009 by Justice Clément Gascon, J.S.C., as amended, and/or any other CCAA order; and (ii) all Transferred Assets Encumbrances evidenced by registration, publication or filing pursuant to the *Civil Code of Québec*, any other personal or movable property registry system, the *Bank Act* or any other applicable legislation and, for greater certainty, **ORDERS** that all of the Transferred Assets Encumbrances affecting or relating to the Transferred Assets be expunged and discharged as against the Transferred Assets, in each case effective as of the applicable time and date set out in the Asset Transfer Agreement;

[7] **ORDER and DECLARE** that upon the portion of the Purchase Price (as defined in the Acquisition Agreement) that is payable at closing and the Assignment Consideration Amount (as defined in the Acquisition Agreement) (and all applicable taxes) having been paid, all conditions to closing having been satisfied or waived (save and except for the registration of the present Order in the Land Registry), all obligations of the Purchaser that are required to be satisfied at or prior to closing under the Acquisition Agreement having been satisfied and the delivery of the Monitor's Certificate confirming same, all right, title and interest in and to the partnership units in the capital of the Partnership, the shares in the capital of Manicouagan Power General Partner ULC (the "**General Partner**") and the

Abitibi Power Purchase Contracts (as defined in the Acquisition Agreement) described in the Acquisition Agreement as being sold to the HQ Purchaser (the "**HQ Assets**"), shall vest absolutely and exclusively in and with the HQ Purchaser, free and clear of and from any and all claims, liabilities, obligations, interests, prior claims, hypothecs, security interests (whether contractual, statutory or otherwise), liens, assignments, judgments, executions, writs of seizure and sale, options, adverse claims, levies, charges, liabilities (direct, indirect, absolute or contingent), pledges, executions, rights of first refusal or other pre-emptive rights in favour of third parties, mortgages, hypothecs, trusts or deemed trusts (whether contractual, statutory or otherwise), restrictions on transfer of title, or other claims or encumbrances, whether or not they have attached or been, perfected, registered, published or filed and whether secured, unsecured or otherwise (collectively, the "**HQ Assets Encumbrances**"), including without limiting the generality of the foregoing: (i) any HQ Assets Encumbrances created by the Order issued on April 17, 2009 by Justice Clément Gascon, J.S.C., as amended, and/or any other CCAA order; and (ii) all HQ Assets Encumbrances evidenced by registration, publication or filing pursuant to the *Civil Code of Québec,* any other personal or movable property registry system, the *Bank Act* or any other applicable legislation and, for greater certainty, **ORDERS** that all of the HQ Assets Encumbrances affecting or relating to the HQ Assets be expunged and discharged as against the HQ Assets, in each case effective as of the applicable times and dates set out in the Acquisition Agreement;

[8] **ORDER and DECLARE** that upon the execution and delivery of the Unit Transfer Agreement and the Share Purchase Agreement and upon all conditions to closing having been satisfied or waived, all obligations of Alcoa Canada Energy Company under the Unit Transfer Agreement and the Share Purchase Agreement that are required to be satisfied at or prior to closing having been satisfied and the delivery of the Monitor's Certificate confirming same, all right, title and interest in and to the partnership units in the capital of the Partnership and in and to the shares in the capital of the General Partner described in the Unit Transfer Agreement and in the Share Purchase Agreement (the "**Alcoa Assets**"), shall vest absolutely and exclusively in and with Alcoa Canada Energy Company, free and clear of and from any and all claims, liabilities, obligations, interests, prior claims, hypothecs, security interests (whether contractual, statutory or otherwise), liens, assignments, judgments, executions, writs of seizure and sale, options, adverse claims, levies, charges, liabilities (direct, indirect, absolute or contingent), pledges, servitudes which materially interfere with the operation, value or use of the Alcoa Assets, executions, rights of first refusal or other pre-emptive rights in favour of third parties, mortgages, hypothecs, trusts or deemed trusts (whether contractual, statutory or otherwise), restrictions on transfer of title, or other claims or encumbrances, whether or not they have attached or been, perfected, registered, published or filed and whether secured, unsecured or otherwise (collectively, the "**Alcoa Assets**

Encumbrances"), including without limiting the generality of the foregoing: (i) any Alcoa Assets Encumbrances created by the Order issued on April 17, 2009 by Justice Clément Gascon, J.S.C., as amended, and/or any other CCAA order; and (ii) all Alcoa Assets Encumbrances evidenced by registration, publication or filing pursuant to the *Civil Code of Québec*, any other personal or movable property registry system, the *Bank Act* or any other applicable legislation and, for greater certainty, **ORDER** that all of the Alcoa Assets Encumbrances affecting or relating to the Alcoa Assets be expunged and discharged as against the Alcoa Assets, in each case effective as of the applicable time and date set out in the Unit Transfer Agreement or the Share Purchase Agreement, as applicable;

[9] **ORDER** that proceeds of the Proposed Transactions be subject to and dealt with in accordance with the MPCo Order;

[10] **ORDER** the Land Registrar for the Land Registry Office in the Registration Division of Saguenay, upon presentation of this Order accompanied by an application for registration, to publish this Order and (i) to proceed with an entry on the index of immovables showing ACCC as the absolute owner or as the absolute tenant, as the case may be, in regards to the real property identified on Annex "II" hereto (the "**Real Property**") and to open the land files as indicated in Annex II and (ii) after the entry has been made in (i), to proceed with an entry on the index of immovables showing the Partnership as the absolute owner or as the absolute tenant, as the case made be, in regards to the Real Property;

[11] **ORDER** the Personal and Movable Real Rights Registrar to cancel, radiate and discharge all of the Alcoa Assets Encumbrances listed on Annex "III" hereto, such that all of the movable assets included in the Transferred Assets, the HQ Assets and the Alcoa Assets are no longer affected by the Encumbrances, the whole on presentation of the required form with a true copy of this Vesting Order and a Monitor's certificate attesting that the Proposed Transactions are completed;

[12] **ORDER** that notwithstanding:

a. the proceedings under the CCAA;

b. any petitions for a receiving order now or hereafter issued pursuant to the Bankruptcy and Insolvency Act ("**BIA**") and any order issued pursuant to any such petition; or

c. the provisions of any federal or provincial legislation;

the vesting of the Transferred Assets, the HQ Assets and the Alcoa Assets as contemplated in this Vesting Order, as well as the execution of the Asset Transfer Agreement, the Acquisition Agreement, the Unit Transfer Agreement and the Share Purchase Agreement pursuant to this Vesting

Order, are to be binding on any trustee in bankruptcy that may be appointed, and shall not be void or voidable nor deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it give rise to an oppression or any other remedy;

[13] **ORDER** that in order to comply with any applicable pension legislation requirement to eliminate all or part of any deficit in connection with the transfer of assets and liabilities to a successor pension plan in respect of employees and former employees of MPCo, ACCC be authorized to make, or arrange to be made, a contribution to either or both of (a) the *Régime de retraite à prestations déterminées des employés non syndiqués d'Abitibi-Consolidated Inc.*, (Québec registration no. 101793 and CRA registration no. 940510) or, in the event that approval of certain plan merger and division applications are not obtained, the *Régime complémentaire de retraite des employés non syndiqués d'Abitibi-Consolidated inc., anciennement Donohue Inc.* (Quebec registration no. 23058 and CRA registration no. 534313) and (b) the *Régime complémentaire de retraite des employés syndiqués de la Compagnie Abitibi-Consolidated du Canada – Division Pâtes et Papier – Secteur Baie-Comeau* (Quebec registration no. 22322 and CRA registration no. 210542); and

[14] **ORDER** the provisional execution of this Vesting Order notwithstanding any appeal and without the necessity of furnishing any security.

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

Montréal, November 12, 2009

Stikeman Elliott LLP

Stikeman Elliott LLP
Attorneys for the Petitioners

NOTICE OF PRESENTATION

TO : SERVICE LIST

TAKE NOTICE that the *Motion for the Issuance of a Vesting Order in Respect of the MPCo Asset* 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 and time and in a Room to be announced to the Service List.

DO GOVERN YOURSELVES ACCORDINGLY.

Montreal, November 12, 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, Quebec, 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 *Motion for the Issuance of a Vesting Order in Respect of the MPCo Asset* are true.

AND I HAVE SIGNED

Martin Savoie

MARTIN SAVOIE

Solemnly declared before me at Montréal, on the 12th day of November, 2009

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Gagné

Huguette Gagné

Commissioner for oaths

#10491737 v3

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 ISSUANCE OF A VESTING ORDER IN RESPECT OF THE SALE OF THE MPCO ASSET

ORIGINAL

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