CANADA

PROVINCE OF QUÉBEC
DISTRICT OF **MONTREAL**

N° : 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)

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 in Schedules A, B and C

Petitioners-Debtors

and

ERNST & YOUNG INC.

Monitor

and

AURELIUS CAPITAL MANAGEMENT, LP,
having its head office at 535 Madison Avenue, 22nd Floor, New York, NY, 10022

Petitioner-Noteholder

MOTION FOR THE ISSUANCE OF AN ORDER TO PROVIDE THE FINANCIAL INFORMATION ON CERTAIN PETITIONERS

TO ONE OF THE HONOURABLE JUDGES SITTING IN THE COMMERCIAL DIVISION, FOR THE JUDICIAL DISTRICT OF MONTREAL, THE PETITIONER-NOTEHOLDER AURELIUS CAPITAL MANAGEMENT, LP RESPECTFULLY SUBMITS THE FOLLOWING:

A. **PETITIONERS' GROUP OF COMPANIES AND CCAA PROCEEDINGS**

1. On April 17, 2009, this Court issued an *Initial Order* pursuant to sections 4, 5 and 11 of the Companies' Creditors Arrangement Act (the "**CCAA**") granting the relief sought by petitioners (i) Abitibi-Consolidated Inc. ("**ACI**") and certain subsidiaries thereof (the "**Abitibi Petitioners**"), (ii) Bowater Canadian Holding Inc. ("**BCHI**") and certain subsidiaries thereof (the "**Bowater Petitioners**" and together with the Abitibi Petitioners and the 18.6 Petitioners (defined below), the "**Petitioners**") and (iii) certain affiliated partnership (the "**Partnerships**") in their *Petition for an Initial Order* (the "**Petition**"), the whole as it appears from the Court file;

2. The Abitibi Petitioners include ACI, Abitibi-Consolidated Company of Canada, 3224112 Nova Scotia Limited, Marketing Donohue Inc., Abitibi-Consolidated Canadian Office Products Holdings Inc., 3834328 Canada Inc., 6169678 Canada Inc., 40421140 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.;

3. The Bowater Petitioners include BCHI, 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.;

4. Simultaneous with the filing of the Petition, AbitibiBowater Inc., Bowater Incorporated ("**BOW**") and certain of their U.S. and Canadian subsidiaries (the "**18.6 Petitioners**") obtained an order from this Court pursuant to section 18.6 of the CCAA recognizing the cases commenced by these entities under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware on April 16, 2009; the 18.6 Petitioners include AbitibiBowater Inc., BOW, AbitibiBowater US Holding 1 Corp., Bowater Ventures Inc., Bowater Nuway Inc., Bowater Nuway Mid-States Inc., Catawba Property Holdings LLC, Bowater Finance Company Inc., Bowater South American Holdings Inc., 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;

5. The Petition provides organizational charts illustrating the basic corporate structure of the ABH group of companies and each of the ACI Group and the BOW Group, the whole as it appears from the said charts, produced *en liasse* herewith as Exhibit **R-1**;

6. On April 17, 2009, the *Initial Order* requested was issued, the whole as it appears from the Court file;

7. Ernst & Young Inc. ("**EY**") was appointed as the sole Monitor for the fifty-five (55) companies included as the Petitioners ("**Debtors**");

B. <u>PRELIMINARY REPORT FROM THE MONITOR</u>

8. On April 16, 2009, EY issued a preliminary report (the "**Preliminary Report**") as proposed monitor;

9. The Preliminary Report provided certain financial information for only four (4) entities: AbitibiBowater Inc. (consolidated), ACI (consolidated), BOW (consolidated), and BCFPI (unconsolidated);

10. The financial information included for these four (4) entities included sales, operating income, interest and net income for the nine months ended September 30, 2008, and various assets and liabilities;

11. In this report, Bowater Canadian Forest Products Inc. ("**BCFPI**") was the only individual BOW Petitioner for which selected financial information was presented, on an unconsolidated basis, as it appears from said report;

12. Furthermore, AbitibiBowater Inc., the parent company, was the only non-operating entity for which financials were provided;

13. In fact, the only mention of the other BOW Petitioners in the Preliminary Report was the following: "*The balance of the [BOW] Group's corporate structure primarily consists of a combination of holding, finance, special purpose, non-operating and sales entities in both the CCAA and Chapter 11 proceedings,*" the whole as it appears from the Preliminary Report, at page 6, item 33;

14. Of the twenty-three (23) reports the Monitor has issued since its appointment, not one report sets forth the assets and liabilities of any of the fifty-five (55) individual petitioners other than BCFPI and ACI in a systematic way;

C. <u>INTEREST OF AURELIUS CAPITAL MANAGEMENT, LP</u>

15. The Petitioner-Noteholder Aurelius Capital Management, LP ("**Aurelius**" and together with other holders of the Notes, the "**Noteholders**") holds 7.95% Notes issued by a petitioner, BCFC, pursuant to a Purchase Agreement and an Indenture Agreement, each dated as of October 31, 2001 (collectively, the "**Note Agreements**"), produced *en liasse* as Exhibit **R-2**;

16. The need for information is particularly important here given BCFC's unique position in the Proceeding, as explained below;

17. The Notes are entitled to distributions as unsecured debt from the proceeds of the liquidation of BCFC, including, without limitation, the recoveries from BCHI and any other parties that may have obligations towards BCFC or in which BCFC or BCHI may hold an interest;

18. The Notes are fully and unconditionally guaranteed by BOW and additionally, under section 135 of the *Companies Act (Nova Scotia)*, BOW, as the sole shareholder of BCFC, is required to make contributions to BCFC to satisfy all creditor claims of BCFC (the "**Contribution Claim**");

19. The insolvency proceedings to which BCFC is a debtor constitute an Event of Default under the Notes, as per the Note Agreements;

20. The Petition includes three (3) brief mentions of the Notes, at paragraphs 58 and 216 and in its Exhibit 20, where the Debtors state that the principal outstanding on the Notes is US$600 million, with a maturity of November 15, 2011;

21. The Notes are the largest single issue of bonds at the BOW entities, according to the "Bowater Entities Bond Indebtedness" document produced as Exhibit 20 to the Petition (produced as Exhibit **R-3**) and the only bonds issued by BCFC;

22. Aurelius notes that the facts outlined in this motion, including the description of preferred stock, are based upon information from the Debtors and the Monitor. Aurelius reserves all of its rights to challenge these factual assertions, including without limitation, the characterization of intercompany obligations as preferred stock as opposed to debt, and the rights, priorities and preferences of any intercompany obligations or interests;

D. BCFC

23. BOW formed BCFC for the purpose of providing financing to BOW in Canada;

24. BCFC is the issuer of the Notes and is an unlimited liability company organized under Nova Scotia laws, and a wholly owned subsidiary of BOW;

25. BOW is also BCFC's sole shareholder, and as such has obligations under section 135 of the *Companies Act (Nova Scotia)* to make contributions to BCFC to satisfy all creditor claims;

26. The only reference to BCFC in the CCAA initial proceedings is at paragraph 58 of the Petition, which reads as follows:

Bowater Canada Finance Corporation ("BCFC") is a Nova Scotia company having its registered office in Halifax, Nova Scotia. The company is wholly owned by BI and is the issuer of the US$ 600 million in 7.95% Notes due November 15, 2011.

27. In that regard, on information and belief, through a series of transactions, BCFC transferred directly and indirectly substantially all the proceeds of the issuance of the Notes to BOW and its subsidiaries, and BCFC ultimately received Class A preferred shares in BCHI (the "**Preferred Shares**") because of a series of inter-company operations since 2001, which can be described as follows:

a) On October 31, 2001, BCFC sold US$600 million principal amount of ten year Notes at an interest rate of 7.95%, with BOW acting as guarantor;

b) The proceeds from the sale, namely the amount of US$593 million, have been used by BCFC for the following purposes:

i) to acquire 99% of Bowater Canada Finance LP ("**BCFLP**") from BOW, and

ii) to capitalize Bowater Canada Treasury Corporation ("**BOW Treasury**"), a wholly-owned subsidiary of BCFC, which then acquired the remaining 1% of BCFLP from Bowater Ventures ("**BOW Ventures**"), a wholly-owned subsidiary of BOW;

c) BOW and BOW Ventures used the proceeds from the sale described in paragraphs 27(a) and (b) above to, among other things, repay all amounts outstanding under a bridge credit agreement which was used to finance the cash portion of the purchase price for the acquisition of Alliance Forest Products Inc. ("**Alliance**") and certain items of Alliance's outstanding debt, which took place on or about September 24, 2001;

d) On or about September 24, 2001, Bowater Pulp and Paper Canada Holdings LP ("**BPPC**") acquired BCFPI, and on January 1, 2002, Alliance and BCFPI merged and became BCFPI. Subsequently, BCFPI became the 100% owner of Bowater Shelburne Corporation ("**Shelburne**");

e) In December 2001, BCFC conducted an exchange offer, after which the Notes were the only senior debt outstanding at BCFC;

f) In May 2002, BCHI engaged in transactions with BOW that resulted in BCHI's reduction of paid-up capital in the name of BOW in the amount of US$787 million:

i) BCHI assigned to BOW US$423 million of receivables owed from Bowater Alabama and Bowater US Holdings,

ii) BCHI assigned to BOW US$128 million of debt owed from BPPC dated November 30, 2001,

iii) BCHI cancelled debt owed from BOW of US$145 million effective as of November 6, 2001, US$17 million dated September 24, 2001 and US$75 million effective as of September 24, 2001 and

iv) BCHI paid a special dividend to BOW of C$55 million;

g) In February 2006, BOW, BCFPI and BCHI engaged in a series of debt-to-equity conversions that resulted BCFPI converting US$565 million of notes and advances from affiliates into 642,758 Class A Preferred Shares, all of which went to BCHI:

i) BOW transferred to BCHI an advance in the amount of US$400 million it was owed from BCFPI in exchange for common shares of BCHI,

ii) The advance was immediately cancelled, and in exchange, BCHI received 455,200 Class A preferred shares in BCFPI and

iii) Notes held by BCHI in the aggregate of US$164 million were cancelled for 187,558 additional Class A Preferred Shares in BCFPI;

h) In March 2007, BCFC engaged in transactions with BCHI that resulted in BCFC holding Class A preferred shares in BCHI and BCHI holding Class C shares of BCFPI:

i) BCFC exchanged the LP units held in BCFLP for Class A preferred shares in BCHI and

ii) BCHI transferred a 99% interest in BCFLP to BCFPI in exchange for Class C shares of BCFPI;

28. Therefore, at the end of those transactions, it appears that the proceeds from BCFC's issuance of US$600 million Notes were injected in other companies, and that BCFC ultimately obtained the preferred shares of BCHI;

29. In other words, BCFC has no independent operations, its material liabilities consist of the Notes, and its material assets consist of its preferred shares in BCHI;

30. BCHI is described at paragraphs 59 and following of the Petition as a Nova Scotia company wholly owned by BOW and a holding company for BOW's Canadian activities;

31. The recovery on the Notes will depend on maximizing recoveries by BCFC on its claims against BCHI, BOW, and other affiliates;

32. Furthermore, the status of the solvency of BCFC, BCHI and their affiliates is crucial to Aurelius and of the utmost importance;

33. Accordingly, it is absolutely essential that financial and other information pertinent to a recovery for the Notes be provided to all Noteholders, including Aurelius;

34. It is further noted BOW has a contractual obligation, through the Indenture, to provide Noteholders with information pertaining to its financial situation, and the Monitor, as a court-appointed officer, is required to answer reasonable information requests;

E. BCFC's Unique Position and the Resulting Need for the Requested Financial Information

35. The primary material asset of BCFC, as of today, is the preferred shares its holds in BCHI as it appears from above, to Aurelius's knowledge and based on the September Monthly Operating Report issued by the Debtors in the US proceedings;

36. Because BCFC has no independent operations, its material assets are the preferred shares in BCHI, and it holds guarantee and contribution claims against BOW, which is also its parent, BCFC is adverse in interest to all of the other Debtors in this Proceeding;

37. As a result of this adversity of interest, Aurelius, on behalf of all Noteholders, is concerned that a restructuring proposal may be put forth that would compromise the preferred shares of BCFC, the assets of BCHI and its affiliates and debtors, or the claims that BCFC holds against BOW and its affiliates and debtors;

38. Compounding the potential problems arising from BCFC's adversity of interest is the fact that BCFC is deprived of unconflicted advisors, given that BCFC is represented by the same counsel, financial advisors and Monitor as all of the other Petitioners, against whom BCFC is adverse in interest;

39. As a result, Aurelius, on behalf of all Noteholders, is concerned that BCFC could be prejudiced in the restructuring process because of the absence of any independent fiduciaries – counsel, a Monitor, a financial advisor, a receiver or a trustee – to advocate for the particular interests of BCFC, which are in direct conflict with the other Debtors;

40. Because of that inherent conflict of interest, Aurelius believes that is not appropriate that BCFC be represented by the same monitor and attorneys as the other Petitioners;

41. Given BCFC's current representation, the element of transparency becomes even more important, and it is therefore of the utmost importance that all Noteholders can obtain the

information to which they are entitled as creditors, about the companies in which they have an interest;

42. The vital need for information relates to two determinations that need to be made – first, whether any of the assets at BCFC, any entities in which it holds claims, and any affiliates of those entities, have been or are being deprived for the benefit of other Debtors, and second, whether there exist any other claims that BCFC may hold as a result of the complicated series of transactions that took place between 2001 and the present time, about which public disclosure has been limited;

43. Aurelius believes that financial information that has been disclosed in the US and Canada is insufficient to make these determinations, given the complexity of the current and historical relationships between and among BOW entities;

44. With respect to Petitioners that are also US filers, ongoing post-Petition Date entity-by-entity financial information is being released in the Monthly Operating Reports and certain asset and liability data as of the Petition Date has been released in the Statement of Financial Affairs, but no information has been disclosed with respect to historical dealings for any companies other than SEC filers;

45. With respect to Petitioners that are not also US filers, no individual financial information has been released, with the implication that no demonstration of the insolvency of those entities has been made by the Monitor or the entities themselves in the Petition, although such demonstration should have been made for them to be considered petitioners under the CCAA;

46. Each Petitioner's creditors have the right to know if the company with which they are dealing was solvent or insolvent at the date of the Petition and if they are as of today;

47. Furthermore, each Petitioner's creditors have the right to be informed and reassured as to the fact that the company which with they are dealing is not being sacrificed for the benefit of any other Petitioners;

48. However, the objective concern that the assets of BCFC or any of its related entities have been or are now being deprived to the detriment of the Noteholders and the benefit of other Petitioners cannot be verified at this time given the character of information that has been released;

49. The necessity to establish the true assets and debts of each entity distinctly from the others is crucial: the fact that they are part of a group of companies does not entitle their parent company to sacrifice them in a restructuring process to the benefit of other entities;

50. Additionally, there is no way to know if the deals currently being negotiated and concluded between the US entities and the Canadian entities are at arm's length, because if they are not, BCFC and the Noteholders could be harmed;

51. Also, there may be courses of action for BCHI that would maximize value of the preferred shares held by BCFC at the expense of the common, which is owned by BOW: the converse could also be occurring to the detriment of BCHI preferred stock and recovery on the Notes;

52. In light of the foregoing, Aurelius respectfully requests that the Court enter an Order directing the Petitioners, the Partnerships and the Monitor to provide to all Noteholders, including Aurelius, (i) the disaggregated financial statements (including, without limitation, income statements and balance sheets) as of the date of the Petition (April 17, 2009) and as of today and (ii) particulars of intercompany transactions and asset transfers that occurred in the three (3) year period prior to the date of the Petition, in each case with respect to (i) and (ii), relating to the following Petitioners and Partnerships:

- Bowater Canada Finance Corporation;
- Bowater Canada Finance LP;
- Bowater Canadian Holding Incorporated;
- Bowater Canada Treasury Corporation;
- Bowater Alabama LLC;
- AbitibiBowater US Holding 1 Corp.;
- Bowater Canada Forest Products Inc.;
- Bowater Shelburne Corporation;
- Bowater Pulp and Paper Canada Holdings LP;
- Bowater Incorporated;
- AbitibiBowater Canada Incorporated;

(hereinafter collectively referred to as "**Relevant Entities**")

F. <u>AURELIUS'S EXTENSIVE ATTEMPTS TO OBTAIN INFORMATION FROM THE MONITOR</u>

53. Aurelius has made multiple attempts to obtain information from the Monitor for all Noteholders about the financial status of the Relevant Entities;

54. On September 15, 2009, Aurelius, through its attorneys, requested from the Monitor the financial information relating to the Relevant Entities, as it appears from said letter produced herewith as Exhibit **R-4**;

55. The Monitor failed, omitted or neglected to reply to the letter R-4;

56. On October 29, 2009, Aurelius, through its attorneys, reiterated its unanswered request for information, as it appears from said letter produced herewith as Exhibit **R-5**;

57. The Monitor failed, omitted or neglected to reply to the letter R-5;

58. Consequently, Aurelius has no other choice than to resort to this Court to force the Monitor and/or the directors of the Relevant Entities to provide the Noteholders, including Aurelius, with the requested financial information;

59. This Motion is well founded in fact and in law;

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present Motion;

ORDER the Monitor, the Petitioners and the Partnerships to provide to the Noteholders, including Aurelius, within five (5) days of the judgment to be rendered on this Motion, the disaggregated financial statements, including, without limitation, income statements and balance sheets as of the date of the Petition and as of the date of the Motion for each of the following Relevant Entities:

- Bowater Canada Finance Corporation;
- Bowater Canada Finance LP;
- Bowater Canadian Holding Incorporated;
- Bowater Canada Treasury Corporation;
- Bowater Alabama LLC;
- AbitibiBowater US Holding 1 Corp.;
- Bowater Canada Forest Products Inc.;
- Bowater Shelburne Corporation;
- Bowater Pulp and Paper Canada Holdings LP;
- Bowater Incorporated;
- AbitibiBowater Canada Incorporated;

ORDER the Monitor, the Petitioners and the Partnerships to prepare and to provide to the Noteholders, including Aurelius, within ten (10) days of the judgment to be rendered on this Motion, particulars of all intercompany transactions and asset transfers that occurred in the three (3) year period prior to the date of the Petition relating to the following Relevant Entities;

- Bowater Canada Finance Corporation;
- Bowater Canada Finance LP;
- Bowater Canadian Holding Incorporated;
- Bowater Canada Treasury Corporation;
- Bowater Alabama LLC;

- AbitibiBowater US Holding 1 Corp.;
- Bowater Canada Forest Products Inc.;
- Bowater Shelburne Corporation;
- Bowater Pulp and Paper Canada Holdings LP;
- Bowater Incorporated;
- AbitibiBowater Canada Incorporated;

THE WHOLE without cost, except if contested.

Montréal, December 1, 2009

BCF LLP

BCF LLP
Attorneys for the Petitioner-Noteholder Aurelius Capital Management, LP

1473894.1

AFFIDAVIT

I, the undersigned, DAN GROPPER, Managing Director, exercising my profession at 535 Madison Avenue, 22nd Floor, New York, New York, USA 10022, solemnly declare as follows:

1. I am a duly authorized representative of Aurelius Capital Management, LP;

2. The facts alleged in the present Motion are to my knowledge and are true.

AND I HAVE SIGNED :

DAN GROPPER

State of New York
County of New York

SOLEMNLY AFFIRMED before me at New York, this 1st day of December, 2009

Michelle Roditi

MICHELLE RODITI
Notary Public - State of New York
NO. 01RO6194247
Qualified in New York County
My Commission Expires 9/29/2012

NOTICE OF PRESENTATION

TO: SERVICE LIST

TAKE NOTICE that the foregoing Motion shall be presented for adjudication before this Honourable Court of the Court House of Montreal, 1 Notre-Dame Street East, for such date as may be fixed by this Honourable Court.

DO GOVERN YOURSELVES ACCORDINGLY.

Montréal, December 1, 2009

BCF LLP

BCF LLP
Attorneys for the Petitioner-Noteholder
Aurelius Capital Management, LP

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF **MONTREAL**

N° : 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)

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 in Schedules A, B and C

Petitioners-Debtors

and

ERNST & YOUNG INC.

Monitor

and

AURELIUS CAPITAL MANAGEMENT, LP, having its head office at 535 Madison Avenue, 22nd Floor, New York, NY, 10022

Petitioner-Noteholder

LIST OF EXHIBITS

Exhibit R-1: *En liasse*, Charts of ABH, ACI and BI (produced with the Petition);

Exhibit R-2: *En liasse,* Purchase Agreement and an Indenture Agreement, dated of October 31, 2001;

Exhibit R-3: Bowater Entities Bond Indebtedness (produced with the Petition);

Exhibit R-4: Letter to the Monitor dated September 15, 2009 requesting financial information;

Exhibit R-5: Letter to the Monitor dated October 29, 2009 reiterating the request for financial information.

Montréal, December 1, 2009

BCF LLP

BCF LLP
Attorneys for the Petitioner-Noteholder
Aurelius Capital Management, LP

N° : 500-11-036133-094

SUPERIOR COURT
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF:

ABITIBIBOWATER INC.

ABITIBI-CONSOLIDATED INC.

BOWATER CANADIAN HOLDINGS INC.

And the other Petitioners listed in Schedules A, B and C

Petitioners

and

ERNST & YOUNG INC.

Monitor

and

AURELIUS CAPITAL MANAGEMENT LP, having its head office at 535, Madison Avenue, 22nd floor, New York, NY 10022

Petitioner - Noteholder

MOTION FOR THE ISSUANCE OF AN ORDER TO PROVIDE THE FINANCIAL INFORMATION ON CERTAIN PETITIONERS

ORIGINAL

Me Jean-Yves Fortin **Notre dossier : 17615-1**
Me Mélanie Martel

BCF AVOCATS AGENTS DE BREVETS ET MARQUES

1100, boul. René-Lévesque Ouest, 25e étage
MONTRÉAL, QUÉBEC, CANADA
H3B 5C9
Tél: (514) 397-6934
Téléc: (514) 397-8515
BB 7462

1473008.1