

CANADA

PROVINCE OF QUEBEC
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 AN ORDER ESTABLISHING A PROCEDURE FOR THE REVIEW
AND DETERMINATION OF CLAIMS, SUBSEQUENT CLAIMS AND FORMER
EMPLOYEE GRIEVANCES AGAINST THE PETITIONERS**

TO JUSTICE GASCON OR ONE OF THE HONOURABLE JUDGES OF THE
SUPERIOR COURT, SITTING IN COMMERCIAL DIVISION, IN AND FOR THE
JUDICIAL DISTRICT OF MONTRÉAL, THE PETITIONERS RESPECTFULLY
SUBMIT THE FOLLOWING:

A. PREAMBLE

1. On April 17, 2009, this Honourable Court (the "**Canadian Court**") issued an order (as subsequently amended and restated, the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA**" and the "**CCAA Proceedings**") in respect of (i) Abitibi-Consolidated Inc. ("**ACI**") and subsidiaries thereof (the "**Abitibi Petitioners**")¹; (ii) Bowater Canadian Holdings Inc. and subsidiaries thereof (the "**Bowater Petitioners**")², collectively with the Abitibi Petitioners, the "**Canadian Petitioners**") and (iii) certain partnerships (the "**Partnerships**").³
2. Pursuant to the Initial Order, Ernst & Young Inc. (the "**Monitor**") was appointed as Monitor of the Canadian Petitioners and Partnerships under the CCAA and a stay of proceedings was granted in favour of the Canadian Petitioners and Partnerships which was extended most recently until March 15, 2010.
3. On April 16, 2009, AbitibiBowater Inc. ("**ABH**"), Bowater Inc. and certain of their U.S. and Canadian subsidiaries (excluding the Cross-Border Petitioners as defined below, the "**U.S. Debtors**")⁴ 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. Court**"). On April 17, 2009, ABH and certain of its subsidiaries (collectively with ABH, the "**18.6 Petitioners**")⁵ obtained orders under s. 18.6 of the CCAA in respect of the Chapter 11 Proceedings.

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. Abitibi-Consolidated (U.K.) Inc. was added to the Schedule of Abitibi Petitioner on November 10, 2009.

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 (Note: for the purposes of the order to be granted on the present Motion as well as the Cross-Border Protocol, Abitibi-Consolidated Finance LP, a U.S. entity, is excluded from the definition of "Partnerships" and is treated as a U.S. Debtor).

⁴ The US Debtors are AbitibiBowater Inc., AbitibiBowater US Holding LLC, Donohue Corp., Abitibi Consolidated Sales Corporation, Abitibi-Consolidated Alabama Corporation, Alabama River Newsprint Company, Abitibi-Consolidated Corporation, Augusta Woodlands, LLC, Tenex Data 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, Coosa Pines Golf Club Holdings LLC and Abitibi-Consolidated Finance LP; provided that "U.S. Debtors" shall not include the Cross-Border Filers;

⁵ 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

4. In the context of the restructuring of the Petitioners' business, Bowater Canadian Forest Products Inc. and five other Bowater Petitioners filed for court protection in both the CCAA Proceedings and the Chapter 11 Proceedings (the "**Cross-Border Petitioners**").⁶

B. ORDERS SOUGHT

5. The present motion seeks an order from this Court (the "**Claims Determination Order**") establishing the applicable procedure for the review, determination, adjudication or compromise of all Claims, Subsequent Claims and Former Employee Grievances filed by the creditors of the Canadian Petitioners, including the Cross-Border Petitioners, and the Partnerships. A copy of the English version of the Claims Determination Order is communicated herewith as **Exhibit R-1**, with a French version of said Order to be communicated as **Exhibit R-2** prior to the hearing on the present Motion. All otherwise undefined capitalized terms used herein shall have the meaning attributed to them in the Claims Determination Order.

C. BACKGROUND

6. On July 28, 2009, this Court approved a Cross-Border Court-to-Court Protocol (the "**Court Cooperation Protocol**") which was also approved by the U.S. Court on July 27, 2009. The Court Cooperation Protocol is designed to assist in the efficient and orderly harmonization of the insolvency proceedings initiated in respect of the Petitioners in the U.S. and Canada.
7. On August 26, 2009, this Court issued a first order (the "**Claims Procedure Order**") which, *inter alia*, (i) established a claims bar date of November 13, 2009 at 4:00 p.m. Eastern Time (the "**Claims Bar Date**") for the filing of creditors' proofs of claim with the Monitor (except for certain Excluded Claims); (ii) outlined a procedure for the filing of claims against the Canadian Petitioners and Partnerships; and (iii) approved the forms and manners of notice of the Claims Procedure Order.
8. On September 3, 2009 an Order was issued in the context of the Chapter 11 Proceedings by the U.S. Court approving an order similar to the Claims Procedure Order (the "**U.S. Claims Procedure Order**"). The U.S. Claims Procedure Order also set November 13, 2009 as a claims bar date for the filing of claims against U.S. Debtors in the Chapter 11 Proceedings.
9. Since the issuance of the Claims Procedure Order, as outlined at paragraphs 20 and following of the *Twenty Seventh Report of the Monitor* (the "**Monitor's 27th Report**"), the Monitor has been proactive in mailing over 47,000 proof of claim packages to

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.

⁶ The Cross-Border Petitioners are Bowater Canadian Holdings Inc., Bowater Canada Finance Corporation, Bowater Canadian Limited, AbitibiBowater Canada Inc., BCFPI, Bowater LaHave Corporation and Bowater Maritimes Inc.

creditors, placing notices in newspapers and on its website and fielding an important number of telephone calls from creditors of the Canadian Petitioners or Partnerships.

10. The Petitioners have been informed that the Monitor plans to file, shortly after the service of this Motion, a *Thirtieth Monitor's Report* (the "**Monitor's 30th Report**") in which the Monitor will provide a summary of the Monitor's preliminary review of the claims filed against the Canadian Petitioners and Partnerships.
11. As will be illustrated in the Monitor's 30th Report, since the issuance of the Claims Procedure Order, over four thousand eight hundred and nine (4,809) claims have been filed with the Monitor in respect of the Canadian Petitioners and Partnerships representing, in the aggregate, approximately \$7.43 billion in claims, excluding likely duplicate claims.

D. CLAIMS DETERMINATION ORDER

12. The Claims Determination Order applies to all Claims, Subsequent Claims and Former Employee Grievances filed by creditors or unions by the Claims Bar Date against the Canadian Petitioners (a group which includes the Cross-Border Petitioners) and the Partnerships (excluding Abitibi-Consolidated Finance LP, a U.S. partnership treated as a U.S. Debtor for the purposes of the Claims Determination Order).
13. The Claims Determination Order proposes (i) a general procedure for the review, determination, adjudication or compromise of all Claims and Subsequent Claims against the Canadian Petitioners or Partnerships; (ii) a similar procedure for the review, determination, adjudication or compromise of Former Employee Grievances against same entities; and (iii) a supplementary procedure for the review, determination, adjudication or compromise of all claims (including Claims, Subsequent Claims and Former Employee Grievances) against the Cross-Border Petitioners.

1. CLAIMS AND SUBSEQUENT CLAIMS

14. The Claims Determination Order provides for the review and determination of all Claims and Subsequent Claims by the Monitor and the Canadian Petitioners or Partnerships as well as the Monitor's sending, where applicable, of a Notice of Revision or Disallowance to creditors whose claims are disallowed in whole or in part. A copy of the Form of Notice of Revision or Disallowance is communicated herewith as **Appendix F** to Exhibits R-1 and R-2.
15. Upon receiving a Notice of Revision or Disallowance, a creditor whose claim has been disallowed in whole or in part will have the opportunity to dispute the determination of its claim by sending to the Monitor, within ten (10) business days from the receipt of the Notice of Revision or Disallowance, a Notice of Dispute setting out the basis for the dispute, failing which the creditor will be deemed to have accepted the Monitor's determination of its claim. A copy of a the Form of Notice of Dispute is communicated herewith as **Appendix G** to Exhibits R-1 and R-2.

16. Upon the filing of a Notice of Dispute, the Monitor, with the assistance of the Petitioners, shall attempt to consensually resolve the disputed claim. Any unresolved disputed claim will then be referred by the Monitor to a Claims Officer for determination. The Monitor will also have the right to make a motion to this Court in order for said claim to be adjudicated by this Court.
17. The Canadian Petitioners or Partnerships shall have the power and authority to appoint, from time to time, one or more individuals to act as Claims Officer for the purposes of the claims process, provided that the Monitor shall have consented to the appointment of such individual(s).
18. The role of the Claims Officer will be to determine the claims referred to him/her by the Monitor by scheduling and conducting a hearing in order to adjudicate upon the disputed portion of the claim. The Claims Officer will have the authority to choose the procedure governing the proceedings before him/her and will also have the power to mediate between the parties, provided however that all parties are in agreement with said mediation.
19. Once a determination is issued by a Claims Officer, the parties will have ten (10) business days to appeal such determination by filing a motion before this Court. The latter shall have jurisdiction to hear any such appeal.

2. FORMER EMPLOYEE GRIEVANCES

20. In accordance with the Claims Procedure Order, certain Unions have filed Former Employee Grievances. Former employees of the Canadian Petitioners or Partnerships are the only employees affected by the Claims Bar Date since claims by employees who were employed as of April 16, 2009 by same entities, including all current employees, form part of the Excluded Claims to which the Claims Bar Date does not apply.
21. The Claims Determination Order provides for a distinct procedure governing Former Employee Grievances, with an initial Monitor grievance-review and determination stage essentially mirroring the procedures outlined above in respect of Claims and Subsequent Claims, save for the fact that the exchange of Notices will take place between the Monitor and the Union(s) concerned.
22. Any disputed review of Former Employee Grievances will be referred to a Grievance Claims Officer with an adequate background in the mediation and arbitration of grievances. The Canadian Petitioners or Partnerships will have the power and authority to appoint, from time to time, one or more individuals to act as a Grievance Claims Officer for the purposes of the claims process, provided that the Monitor shall have consented to the appointment of such individual(s). At this stage, the Petitioners propose the appointment of the Honourable Louise Otis as Grievance Claims Officer and the Monitor has indicated that it supports this appointment.
23. The role of the Grievance Claims Officer will be to determine the claims referred to him/her by the Monitor by scheduling and conducting an arbitration hearing to

adjudicate upon the disputed portion of the claim. The Grievance Claims Officer will have full latitude in choosing the procedure governing the proceedings before him/her and will also have the power to mediate between the parties, provided however that all parties are in agreement with said mediation.

24. Once a determination is issued by a Grievance Claims Officer, the parties will have ten (10) business days to appeal such determination by filing a motion before this Court. The latter shall have jurisdiction to hear any such appeal.

3. CLAIMS AGAINST CROSS-BORDER PETITIONERS

25. All Claims, Subsequent Claims and Former Employee Grievances filed against the Cross-Border Petitioners will be subject to the Claims Determination Order, subject however to the provisions of the Cross-Border Claims Protocol, a copy of which is communicated as **Appendix E** to Exhibits R-1 and R-2.
26. The approval of the Cross Border Protocol will be sought by the Petitioners before the Canadian Court during the hearing on the present Motion and before the U.S. Court on January 19, 2010.
27. The Cross-Border Claims Protocol supplements the procedures that the US and Canadian Courts will establish in their respective claims determination orders and implements mechanisms for reviewing and reconciling claims filed in either or both the Chapter 11 and CCAA Proceedings against the Cross-Border Petitioners, entities subject to both the U.S. Bankruptcy Code and the CCAA.
28. On April 28, 2009, in the context of the Petitioners' Chapter 11 Proceedings, the Office of the United States Trustee for the District of Delaware appointed a statutory committee of unsecured creditors (the "UCC") pursuant to section 1102 of the Bankruptcy Code. In accordance with standard claims procedure under U.S. law, the UCC is expected to be involved in aspects of the Petitioners' U.S. claims review and reconciliation process.
29. In Canada, it is the Monitor, as a court-appointed officer, who has the independent duty to review and evaluate claims filed against the Canadian Petitioners or Partnerships. In the U.S. however, the UCC, also a creature of statute, has an oversight role in the Chapter 11 claims reconciliation process and, in the exercise of its fiduciary duty to its stakeholders, may participate in claims objections and disputes.
30. The Cross-Border Claims Protocol results from extensive negotiations between the Monitor and its US and Canadian counsel, the UCC's US and Canadian counsel and financial advisors, and the Company and its US and Canadian counsel.
31. The Petitioners expect that a majority in number of claims against the Cross-Border Petitioners will involve Quebec or Canadian law, may be in French or assert rights under contracts governed by Quebec or Canadian law, and will be filed by Canadian creditors. The Cross-Border Protocol accordingly embodies a consensual procedure

for undertaking the claims process with respect to claims filed against the Cross-Border Petitioners based upon the following guiding principles:

- (a) *First*, in the absence of any objection and subject to the UCC's review and objection rights as discussed hereunder, the Canadian Petitioners and the Monitor will review all claims against the Cross-Border Petitioners and the Monitor shall allow, disallow or amend the claims in accordance with the Claims Determination Order. Any such claim will be deemed allowed in both the Chapter 11 and CCAA Proceedings.
- (b) *Second*, if the UCC does not object (in the case of Threshold Claim as defined below) but a creditor objects to the Monitor's determination of a claim under the Claims Determination Order and the parties cannot agree on which court should determine the objection, then the Canadian Court will decide which court shall determine the objection. However, prior to such determination, the creditor, Monitor or Cross-Border Petitioners may call a joint hearing to determine the objection pursuant to the Court Cooperation Protocol.
- (c) *Finally*, the UCC has certain additional review and objection rights. Notably, the Monitor must consult with the UCC prior to deciding on the treatment of any claim asserted against the Cross-Border Petitioners in excess of \$100,000 (a "**Threshold Claim**") by sharing its intended treatment of the claim, along with supporting documentation, with the UCC. If the UCC objects to the Monitor's treatment of the Threshold Claim and the parties do not disagree on forum, the claim will be adjudicated pursuant to the Claims Determination Order and the UCC will have standing in the proceedings to contest the Monitor's determination of the claim. Should the parties fail to agree on which Court should determine the objection, then the Monitor or the Cross-Border Petitioners will seek a joint hearing pursuant to the Court Cooperation Protocol in order to determine which forum should hear the objection. In addition, with respect to claims in excess of \$1,000,000 against the Cross-Border Petitioners for which a creditor also filed a claim against a Canadian Petitioner who only filed for protection only under the CCAA (a "**Duplicate Claim**"), the Monitor will provide the UCC with a copy of the Duplicate Claim along with its recommendation of the intended treatment of the Duplicate Claim in the CCAA Proceedings. The Monitor will not accept, amend, or disallow the relevant Duplicate Claim in the CCAA Proceedings while the UCC is reviewing the related claim against the Cross-Border Petitioners, or while an objection by the UCC with respect to such claim remains pending.

32. In summary, the framework for reviewing and reconciling claims filed against the Cross-Border Petitioners would subject such claims to review and determination by the Canadian Petitioners and the Monitor pursuant to the Claims Determination Order, with recourse to a joint hearing before both the US and Canadian court and certain UCC review and objection rights.

33. The Petitioners submit that such a framework creates a fair and efficient mechanism for determining which forum should be seized of the matter, should this become necessary, in addition to promoting the orderly administration of both the Chapter 11 and CCAA Proceedings. It should be noted however, that the Cross Border Claims Protocol does not address applicable law and that nothing therein should be construed as determining which law should apply to resolve any disputed claims.

E. GROUND FOR THIS MOTION

34. ABH and its subsidiaries' ability to reorganize depends on the comprehensive reorganization of their businesses in Canada and the United States. In light of the fact that their interests are united in an integrated, co-dependent business relationship, the Chapter 11 Debtors as well as the Canadian Petitioners and Partnerships have committed to engage in a joint and harmonious restructuring in both jurisdictions in an effort to maximize value for the benefit of their collective stakeholders.
35. In order for ABH and its subsidiaries to adequately formulate one or more plan(s) of arrangement to be presented to their creditors, it is appropriate and necessary for the claims against all Canadian Petitioners or Partnerships to be reviewed, determined and, in certain cases, adjudicated or compromised.
36. The issuance of the proposed orders will benefit the Petitioners' creditors as a whole.
37. It is respectfully submitted that this Motion should be granted in accordance with its conclusions.
38. The present Motion is well founded in fact and in law.

WHEREFORE, MAY THIS COURT:

- [1] **GRANT** this *Motion for an Order Establishing a Procedure for the Review and Determination of Claims, Subsequent Claims and Former Employee Grievances Against the Petitioners* (the "**Motion**").
- [2] **EXEMPT**, if applicable, the applicants from having to serve this Motion and from any notice or delay of presentation.
- [3] **ENTER** into an order substantially in the form attached as **Exhibit R-1** hereto (with a French version filed as **Exhibit R-2** hereto to be equally of full force and effect).
- [4] **GRANT** such other and further relief as this Court deems just and proper.

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

Montréal, January 11, 2009


STIKEMAN ELLIOTT LLP
Attorneys for Petitioners

AFFIDAVIT

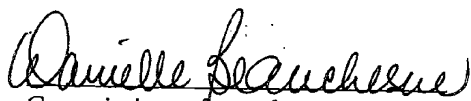
I, the undersigned, Stéphanie Leclaire, having my principal place of business at Suite 800, 1155 Metcalfe Street, Montréal, Quebec, H3B 5H2 solemnly declare the following:

1. I am Vice President, Legal Affairs of AbitibiBowater Inc.
2. All the facts alleged in the *Motion for an Order Establishing a Procedure for the Review and Determination of Claims, Subsequent Claims and Former Employee Grievances Against the Petitioners* are true.

AND I HAVE SIGNED


Stéphanie Leclaire

Solemnly declared before me at Montréal,
on the 11th day of January, 2009


Commissioner for oaths

**Commissioner of Oaths
Districts of Longueuil and Montréal
142 518**

NOTICE OF PRESENTATION

TO: SERVICE LIST

TAKE NOTICE that the *Motion for an Order Establishing a Procedure for the Review and Determination of Claims, Subsequent Claims and Former Employee Grievances Against the Petitioners* will be presented for adjudication before the Honourable Judge Clément Gascon 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 determined by the Court and announced to this Service List.

DO GOVERN YOURSELVES ACCORDINGLY.

Montréal, January 11, 2009


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
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In the matter of Plan of Compromise or Arrangement
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ABITIBOWATER INC. *et al*

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- and -

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BS0350 n/dos.: 041053-1170

MOTION FOR AN ORDER ESTABLISHING A
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AGAINST THE PETITIONERS

ORIGINAL

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