

**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)

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**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**

**Petitioners/Debtors**

-and-

**ERNST & YOUNG INC.**

**Monitor**

-and-

**THE ROYAL TRUST COMPANY**

**Mise en cause**

-and-

**Clifford R. Bowles**

**Donald Bridges**

**Serge Bureau**

**Robert Chambers**

**Emmanuelle-Andrée Collin**

**Paul J.E. Gagné**

**Anthony Iasenza**

**Norman W. Lord**

**Ian Moss McArthur**  
**John Poleschuk**  
**Marc Charles Régnier**  
**David Toole and Bette Toole**  
**Wallace M. Vrooman**  
**John Hubert Whalen**  
**Edward Broadhurst**  
**Donald Campbell**  
**Fernand Landry**  
**David J. Steuart**  
**Jerry P. Soderberg**  
**Alyce Flenniken**  
**-and-**  
**Warren Porter Woodworth**

**Petitioners/Creditors**

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**AMENDED JOINT MOTION OF THE PETITIONERS/CREDITORS TO  
IMMEDIATELY RESUME THE PAYMENT OF SERPS BENEFITS TO SCHEDULE  
“A”, “B” AND “C” MEMBERS OF THE SERPS PENDING THE PROCEEDINGS ON  
THE MOTION FOR DIRECTIONS**

TO THE HONOURABLE CLÉMENT GASCON J.S.C., PETITIONERS/CREDITORS  
RESPECTFULLY SUBMIT THE FOLLOWING:

**I. PROCEDURAL BACKGROUND**

1. On March 19, 2010, the Petitioner/Debtor Bowater Canadian Forest Products Inc. (“**BCFPI**”) filed a *Motion for Directions on the Identity of the persons whose benefits under the Bowater Supplemental Executive Retirement Plans were secured by a letter of credit (“Motion 484”)*, which was amended on May 28, 2010 (hereafter collectively the “**Motion for Directions**”).
2. By way of its Motion for directions, Petitioner BCFPI seeks a declaration and order from the Court:
  - a) That the only persons entitled to continue to receive monthly Supplemental Executive Retirement Plans (“**SERPs**”) payments from the proceeds of the letter of credit (the “**Letter of Credit**”) held by the Royal Trust Company (“**RTC**”) are the following:

- (i) Canadian resident members of the SERPs who retired before December 31, 2003 (Schedule A);
  - (ii) Canadian resident members of the SERPs who retired after December 31, 2003 but before May 26, 2009, including Mr. Donald Campbell, but only on the value of their SERPs benefits accrued up to December 31, 2003 (Schedule B); and
  - (iii) U.S. resident members of the SERPs, including Respondent Jerry Soderberg (Schedule C);
- b) That RTC should pay the full monthly SERPs payments to those persons who are entitled to receive such payments from the proceeds of the Letter of Credit until such proceeds are exhausted, in accordance with Schedule F, or until a further order from a court;
3. The Motion for Directions is scheduled for hearing on August 30 and 31, 2010.
4. At the time of the present Joint Motion, the rights the Schedule "A", Schedule "B" and Schedule "C" members to continue receiving monthly SERPs payments from the proceeds of the Letter of Credit are not contested, as appears from the court record.

## **II. GROUNDS OF THE PRESENT AMENDED JOINT MOTION**

### **A) PRESENTATION OF THE PETITIONERS/CREDITORS**

5. The Petitioners/Creditors are all members of the SERP's of BCFPI.
6. The Petitioners/Creditors are identified as Schedule "A" members (Canadian Members who Retired Before December 31, 2003), Schedule "B" members (Canadian Members who Retired After December 2003) and Schedule "C" members (U.S. Members) in the Motion for Directions.
7. More particularly, the following Petitioners/Creditors are identified as "Schedule A members" (Canadian members who retired before December 31, 2003) in the Motion for Directions:
- Clifford R. Bowles
  - Donald Bridges
  - Serge Bureau
  - Robert Chambers
  - Emmanuelle-Andrée Collin
  - Paul J.E. Gagné
  - Anthony Iasenza
  - Norman W. Lord

- Ian Moss McArthur
- John Poleschuk
- Marc Charles Régnier
- David Toole and Bette Toole
- Wallace M. Vrooman
- John Hubert Whalen

8. The following Petitioners/Creditors are identified as “Schedule B members” (Canadian members who retired after December 31, 2003 but before May 26, 2009) in the Motion for Directions:

- Edward Broadhurst
- Donald Campbell
- Fernand Landry
- David J. Steuart

9. The following Petitioners/Creditors are identified as “Schedule C members” (U.S. Members) in the Motion for Directions:

- Alyce Flenniken
- Jerry P. Soderberg
- Warren Porter Woodworth

**B) RIGHT OF PETITIONERS/CREDITORS (AND OTHER SCHEDULES A, B AND C MEMBERS) TO SHARE IN THE PROCEEDS OF THE LETTER OF CREDIT**

10. The rights of the Petitioners/Debtors who are identified as Schedule “A” and “C” members in sharing in and benefiting from the proceeds of the Letter of Credit for the entirety of the rights which they accumulated in the SERPs are not contested, as appears from the court record.
11. With respect to Schedule B members, their rights to share in the proceeds of the Letter of Credit, but only to the extent of the value of the SERPs liabilities accrued up to December 31, 2003, are not contested either, as appears from the court record and more particularly from paragraphs 50 and 52 of the Motion for Directions.

**C) PREJUDICE TO PETITIONERS/CREDITORS**

12. The proceeds of the Letter of Credit are held in trust by the Mise en cause since May 26, 2009, as appears from paragraph 34 of the Motion for Directions.
13. In spite of the Petitioners/Creditors’ unchallenged rights to share in the proceeds of the Letter of Credit, the payment of their monthly SERPs benefits is suspended since May 1, 2009.

14. Being deprived from their monthly SERPs payments has caused and unnecessarily continues to cause significant harm and inconveniences to the Petitioners/Creditors.
15. Many Petitioners/Creditors are fairly old, some being more than 80 years old, and would be prejudiced considerably by any further delay in resuming the payment of monthly SERP's benefits.

**D) ORDER SOUGHT**

16. The Petitioners/Creditors therefore seek an Order from this Court to have the payment of their monthly SERPs benefits resumed immediately, with arrears since May 1, 2009.
17. The Petitioners/Creditors also seek that such Order be made to the benefit of all the other individual identified as Schedule "A", Schedule "B" and Schedule "C" members in the Motion for Directions, as none of the parties interested in the Motion for Directions suggests that distinctions should be made between the members of those categories.
18. The Petitioners/Creditors represent the most significant portion of the beneficiaries of the Letter of Credit (both in numbers and in value of covered benefits).
19. According to an actuarial report dated May 6, 2010 prepared by Mercer, the total market value of the assets of the Retirement Compensation Agreement ("RCA") referred to in the Motion for Directions was in excess of TWENTY SEVEN MILLION DOLLARS (\$27,000,000) as at April 2010.
20. More importantly, according to Mercer, said assets are expected to run out only in January 2026 based on payments to be made in accordance with the conclusions contained in the Motion for Directions.
21. In this respect, according to Petitioner, the total benefits payable to the Petitioners/Creditors amount to approximately \$175,000 per month.
22. Consequently, irrespective of the judgment to be rendered on the Motion for Directions, there is no risk that the Petitioners/Creditors be paid more than their full undisputed share of the proceeds of the Letter of credit before a judgment is rendered on the Motion for Directions.
23. More importantly, the interim order sought herein will not prejudice the rights of the Active Employees whose names are listed in Schedule "D" or those of the Deferred Vested Members listed at Schedule "E" or other parties interested in the Motion for Directions to recover their share of the proceeds of the letter of credit held by RTC, should the judgment on the Motion for Directions eventually determine that they are entitled to such a share.
24. Petitioner/Debtor Bowater Canadian Forest Products Inc. ("**BCFPI**") does not object to the present Motion

25. In view of being able to carry out the order sought herein, the Royal Trust Company requires from Petitioners the following information (the “Members Information”):
- (a) Name of each member entitled to receive payment from the RCA Plan Trust Fund;
  - (b) Home address of each member;
  - (c) Social insurance number of each member;
  - (d) The amount of Outstanding Payments and the amount of Monthly Payments for each member;
  - (e) Payment instructions (i.e. cheque or Electronic Funds Transfer (EFT) – if by EFT, a void cheque is required. If a cheque is not available, a sample of the MICR (Magnetic Ink Character Recognition) line encoding for the bank account is required.)
  - (f) Payment frequency;
  - (g) TD1 information for the calculation of withholding tax;
  - (h) Additional tax to be withheld, if requested;
  - (i) Payment termination date, if applicable;
26. Petitioners have represented that they are in a position to provide said information to the Royal Trust Company.

**WHEREFORE, MAY PLEASE THE COURT TO:**

**ORDER** Petitioner Bowater Canadian Forest Products Inc. to communicate to The Royal Trust Company, within five (5) days of the judgment to be rendered herein on the present Amended Joint Motion seeking the immediate resumption of the payment of monthly SERPs benefits the following information:

- (a) Name of each member entitled to receive payment from the RCA Plan Trust Fund;
- (b) Home address of each member;
- (c) Social insurance number of each member;
- (d) The amount of Outstanding Payments and the amount of Monthly Payments for each member;
- (e) Payment instructions (i.e. cheque or Electronic Funds Transfer (EFT) – if by EFT, a void cheque is required. If a cheque is not available, a sample of the

MICR (Magnetic Ink Character Recognition) line encoding for the bank account is required.)

- (f) Payment frequency;
- (g) TD1 information for the calculation of withholding tax;
- (h) Additional tax to be withheld, if requested;
- (i) Payment termination date, if applicable;

**ORDER** The Royal Trust Company to resume, within thirty (30) days following the receipt of the Members Information from Petitioner Bowater Canadian Forest Products Inc., the Outstanding Payments and the Monthly Payments of SERP's benefits, in accordance with the Members Information to be provided by Petitioner Bowater Canadian Forest Products Inc., to:

- (a) Clifford R. Bowles, Donald Bridges, Serge Bureau, Robert Chambers, Emmanuelle-Andrée Collin, Paul J.E. Gagné, Anthony Iasenza, Norman W. Lord, Ian Moss McArthur, John Poleschuk, Marc Charles Régnier, David Toole and Bette Toole, Wallace M. Vrooman, John Hubert Whalen, as well as to all other individuals identified as Schedule A members in the Motion for Directions;
- (b) Edward Broadhurst, Donald Campbell, Fernand Landry, David J. Steuart, as well as to all other individuals identified as Schedule B members in the Motion for Directions, the whole based on the value of the SERPs liabilities which accrued up to December 31, 2003, as calculated by Mercer;
- (c) Jerry P. Soderberg, Alyce Flenniken and Warren Porter Woodworth, identified as Schedule C members in the Motion for Directions;

**ORDER** that Petitioner Bowater Canadian Forest Products Inc. provide The Royal Trust Company any changes that may occur to the Members Information, and that such changes be implemented by The Royal Trust Company within 30 days following the communication of such changes;

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

Montreal, June 30, 2010



**GREENSPOON PERREAULT, LLP**

Attorneys for Petitioner/Creditor

Jerry P. Soderberg

## AFFIDAVIT

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I, the undersigned, NORMAND PERREAULT, attorney, practicing at 1002, Sherbrooke Street West, Suite 1900, in the City and District of Montreal, solemnly declare the following:

1. I represent Petitioner/Creditor Jerry P. Soderberg in the present matter;
2. I was mandated by Woods LLP to argue the present Amended Joint Motion seeking the immediate resumption of the payment of monthly SERPs benefits on behalf of the Schedule "A" and Schedule "B" Members of the SERPs;
3. All the facts alleged in the Amended Joint Motion of the Petitioners/Creditors to Immediately Resume the Payment of SERPs Benefits to Schedule "A", Schedule "B" and Schedule "C" Members of the SERPs pending the Proceedings on the Motion for Directions are true.

AND I HAVE SIGNED



NORMAND PERREAULT

Solemnly declared before me at Montreal,  
on the 30<sup>th</sup> day of June, 2010.

  
Lilia Starounova  
Commissioner for oaths



**NOTICE OF PRESENTATION**

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TO: SERVICE LIST

**TAKE NOTICE** that the Amended Joint Motion of the Petitioners/Creditors to Immediately Resume the Payment of SERPs Benefits to Schedule "A", "B" and "C" Members of the SERPs pending the Proceedings on the Motion for Directions filed by the Petitioners/Debtors will be presented for adjudication to the Honourable Clément Gascon, at the Montreal Court House, 1 Notre-Dame St. East, on July 2, 2010 at 11h00, room 16.12.

**DO GOVERN YOURSELVES ACCORDINGLY.**

Montreal, June 30, 2010



**GREENSPOON PERREAULT, LLP**

Attorneys for Petitioner/Creditor

Jerry P. Soderberg

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|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|--|--|
| INV. 000-11-000130-034                                                                                                                                                                                                                                                                                                                                                                                                                                        |                     |  |  |
| CANADA<br>PROVINCE OF QUEBEC<br>DISTRICT OF MONTREAL<br>SUPERIOR COURT<br>(Commercial Division<br>Sitting as court designated pursuant to<br>The Companies' Creditors Arrangement<br>Act, R.S.C., c. C-36)                                                                                                                                                                                                                                                    |                     |  |  |
| IN THE MATTER OF THE PLAN OF<br>COMPROMISE OR ARRANGEMENT OF:<br>ABITIBIBOWATER INC.,<br>ABITIBI-CONSOLIDATED INC.,<br>BOWATER CANADIAN HOLDINGS INC.                                                                                                                                                                                                                                                                                                         |                     |  |  |
| and<br>ERNST & YOUNG INC.                                                                                                                                                                                                                                                                                                                                                                                                                                     | Petitioners/Debtors |  |  |
| and<br>THE ROYAL TRUST COMPANY                                                                                                                                                                                                                                                                                                                                                                                                                                | Monitor             |  |  |
| and<br>Clifford R. Bowles<br>Donald Bridges<br>Serge Bureau<br>Robert Chambers<br>Emmanuelle-Andrée Collin<br>Paul J.E. Gagné<br>Anthony Iasenza<br>Norman W. Lord<br>Ian Moss McArthur<br>John Poleschuk<br>Marc Charles Régnier<br>David Toole and Bette Toole<br>Wallace M. Wrooman<br>John Hubert Whalen<br>Edward Bradhurst<br>Donald Campbell<br>Fernand Landry<br>David J. Steuart<br>Jerry P. Soderberg<br>Alyce Flenniken<br>Warren Porter Woodworth | Mise-en-casue       |  |  |
| Petitioners/Creditors                                                                                                                                                                                                                                                                                                                                                                                                                                         |                     |  |  |
| AMENDED JOINT MOTION OF THE<br>PETITIONERS/CREDITORS TO IMMEDIATELY RESUME<br>THE PAYMENT OF SERPS BENEFITS TO SCHEDULE A, B<br>AND C MEMBERS OF THE SERPS PENDING THE<br>PROCEEDINGS ON THE MOTION FOR DIRECTIONS                                                                                                                                                                                                                                            |                     |  |  |
| ORIGINAL                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                     |  |  |
| N/D: 4269-01                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                     |  |  |
| Me Normand Perreault<br>GREENSPOON, PERREAU LT s.én.c.r.l.<br>1002, rue Sherbrooke Ouest, bureau 1900<br>Montréal (Québec) H3A 3L6<br>Tél: (514) 499-9400 poste 232, Téléc. (514) 499-9829                                                                                                                                                                                                                                                                    |                     |  |  |
| B00265                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                     |  |  |