CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No. : 500-11-036133-094

SUPERIOR COURT

Commercial Division
(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act*, R.S.C., c. C-36, as amended)

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

ABITIBIBOWATER INC.

and

ABITIBI-CONSOLIDATED INC.

and

BOWATER CANADIAN HOLDINGS INC.

and

the other Petitioners listed herein

Petitioners

and

ERNST & YOUNG INC.

Monitor

and

THE ROYAL TRUST COMPANY, a trust company duly constituted, having a place of business at 155 Wellington Street West, 20th Floor, Toronto, Ontario, M5V 3K7

Mise en cause

RE-AMENDED 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

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, PETITIONER BOWATER CANADIAN FOREST PRODUCTS INC. RESPECTFULLY SUBMITS 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 affiliates and subsidiaries thereof (collectively, the "**Bowater Petitioners**")[2] and (iii) certain partnerships[3]. Any undefined capitalized expressions used herein shall have the meaning set forth in the Initial Order.

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

3. On April 16, 2009, AbitibiBowater Inc. ("**ABH**"), Bowater Inc. and certain of their U.S. and Canadian subsidiaries filed voluntary petitions for relief under Chapter 11 of the U.S. Bankruptcy Code (the "**Chapter 11 Proceedings**") in the United States Bankruptcy Court for the District of Delaware (the "**U.S. Bankruptcy Court**") and on April 17, 2009, ABH and certain Petitioners (collectively with ABH, the "**18.6 Petitioners**")[4] obtained orders under s. 18.6 of the CCAA in respect of the Chapter 11 Proceedings (the

---

[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.) was added to the Schedule of Abitibi Petitioners 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.

[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.

18.6 Petitioners, the Abitibi Petitioners and the Bowater Petitioners being collectively referred to as the "**Petitioners**").

II. BACKGROUND

4. The Petitioner Bowater Canadian Forest Products Inc. ("**BCFPI**") is the sponsor of three Supplemental Executive Retirement Plans ("**SERPs**") to provide post-retirement benefits to eligible employees ("**participants**") and to the beneficiaries of any deceased participants ("**beneficiaries**"). For the purposes of this Motion, the term "**member**" includes both participants and beneficiaries.

5. The benefits under the SERPs are partially secured by a letter of credit held by The Royal Trust Company ("**RTC**") in trust for some or all of the members of the SERPs.

6. Because certain amendments to the SERPs were not formally adopted by BCFPI, there is a lack of clarity as to which members are entitled to share in the proceeds of the letter of credit and how the proceeds are to be distributed.

7. RTC is entitled to rely on instructions from BCFPI and has requested instructions from BCFPI. It is in the interests of all of the members of the SERPs that BCFPI ask the Court to confirm the instructions that BCFPI will give to RTC.

III. DECLARATIONS AND ORDERS SOUGHT

8. The Petitioners hereby seek the following declarations and orders:

a) That the only persons entitled to continue to receive monthly SERP payments from the proceeds of the letter of credit (**Exhibit R-7**) held by RTC are the following:

(i) Canadian resident members of the SERPs who retired before December 31, 2003 (as listed in **Schedule A**);

(ii) Canadian resident members of the SERPs who retired after December 31, 2003 but before May 26, 2009, including Mr. Donald Campbell (as listed in **Schedule B**), but only on the value of their SERPs benefits accrued up to December 31, 2003; and

(iii) U.S. resident members of the SERPs, including Mr. Jerry Soderberg (as listed in **Schedule C**);

b) That RTC should pay the full monthly SERP 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.

IV. THE SERPS

9. Bowater Pulp and Paper Canada Inc. ("**BPPC**"), formerly "Avenor Inc.", implemented a SERP effective July 16, 1993 (the "**1993 SERP**"), the whole as appears from a copy of the 1993 SERP and the resolution of the Management Development and Compensation Committee filed as **Exhibit R-1**.

10. The 1993 SERP was restated into three SERPs on or about July 1, 1995:

    (a) Supplemental Retirement Benefit Plan for Grade 11 and under Employees of Bowater Pulp and Paper Canada Inc.;

    (b) Supplemental Retirement Benefit Plan for Grade 12 and under Employees of Bowater Pulp and Paper Canada Inc.; and

    (c) Senior Executive Retirement Plan (collectively the "**1995 SERPs**");

    the whole as appears from a copy of the 1995 SERPs filed as **Exhibit R-2**.

11. The rules of the 1995 SERPs were restated in 1997 (collectively the "**1997 SERPs**"), the whole as appears from a copy of the 1997 SERPs filed as **Exhibit R-3**.

12. Effective January 1, 2002, BPPC and BCFPI merged and continued their operations under the name of BCFPI. Effective on the merger date, BCFPI became the sponsor of the BPPC SERPs which were renamed:

    (a) Supplemental Retirement Benefit Plan for Grade 27 and under Employees of Bowater Canadian Forest Products Inc.;

    (b) Supplemental Retirement Benefit Plan for Grade 28 and under Employees of Bowater Canadian Forest Products Inc.; and

    (c) Senior Executive Retirement Plan (SERP) of Bowater Canadian Forest Products Inc. (collectively the "**2003 SERPs**");

    the whole as appears from a copy of the certificates of amendment filed as **Exhibit R-4**.

13. The purpose of the SERPs was to provide supplemental retirement benefits to be paid to the participants in addition to those payable from any registered pension plan of BCFPI.

14. The relevant sections of the 1995 SERPs, the 1997 SERPs and the 2003 SERPs have stated between 1995 and 2003 (in the 1995 SERPs, the date "November 28, 1997" read "July 1, 1995" in section 1.02):

    > *"1.02 This Supplemental Plan is effective as of November 28, 1997 and as of such date replaces and cancels the application of any prior plan or agreement, whether oral or written, between a participant therein and the Corporation and providing for supplemental retirement benefits to be paid to such participant in addition to those payable from any registered pension plan of the Corporation. However, this*

Supplemental Plan shall not apply to or otherwise modify benefits payable or the terms and conditions for payment of such benefits to any former employee who has retired from or otherwise terminated his employment with Avenor Inc. or its

predecessors or their affiliates prior to the effective date of this Supplemental Plan.

SECTION 4- CONTRIBUTIONS

4.01 No contribution shall be required from a Participant in respect of benefits payable under this Supplemental Plan.

4.02 The benefits payable under this Supplemental Plan shall, unless decided otherwise by Avenor Inc. at its entire discretion, be payable by the Corporation out of its operating funds as they become due and the Corporation shall be under no obligation whatsoever to pay contributions in advance to fund such benefits.

4.03 Notwithstanding Subsection 4.02, the Corporation will arrange for the payment of benefits provided under the Supplemental Plan to be secured through a letter of credit from a financial institution.

SECTION 9- PAYMENT OF RETIREMENT INCOME

9.01 The supplementary allowance payable to the Participant under Sections 5, 6, 7 or 8, as the case may be, of this Supplemental Plan, shall be paid in the same form, the same manner and subject to the same conditions as the lifetime pension payable from the Registered Plan of which he is a member. In the event that the Participant receives his benefits under the terms of such Registered Plan in accordance with the prescribed form thereunder or elects to receive such benefits in accordance with one of the optional forms provided for thereunder, he shall be deemed thereby to have elected to receive in the same manner all supplementary allowance payments hereunder which shall be adjusted, if applicable, in the same manner as the equivalent benefit under the Registered Plan.

....

13.04 NON-COMMUTABILITY OF BENEFITS

The benefits provided under the terms of this Supplemental Plan shall not be capable of surrender or commutation except as provided in the Supplemental Plan.

13.08 INTERPRETATION

a) This provision of this Supplemental Plan shall be interpreted in accordance with the laws of the Province of Quebec and shall be binding upon and enure to the benefit of the Corporation and its successors and assigns.

b) Headings wherever used herein are for reference purposes only, and do not limit or extend the meaning of any of the provisions of this Supplemental Plan.

SECTION 14- ADMINISTRATION

14.01 The Corporation shall decide on all matters relating to the interpretation, administration and application of this Supplemental Plan, consistently with the text of the Supplemental Plan.

14.02 To facilitate any action required to be taken by the Corporation under the Supplemental Plan, the Board of Directors of the Corporation may, at its discretion, delegate the responsibility for administration of the Supplemental Plan to any person(s) appointed specifically for this purpose to act on behalf of the Corporation.

SECTION 15- FUTURE OF THE PLAN

15.01 Notwithstanding anything to the contrary herein, the Corporation reserves the right to make amendments to this Supplemental Plan. Any such amendment shall be communicated in writing by the Corporation to the Participants indicating the effective date of such amendment which, subject to Subsection 15.02 below, shall not precede the date that such communication is deemed to have been received by the Participants pursuant to Subsection 13.07 hereunder. Furthermore, the Corporation will not have the right to make such amendment only in respect of one or more Participants but such amendment shall have to be made in respect of all Participants, excluding those Participants who have already commenced to receive benefits hereunder.

15.02 When an amendment is made to this Supplemental Plan pursuant to Subsection 15.01 above as a result of a corresponding amendment to the Registered Plan, such amendment shall take effect as of the same effective date as applicable in respect of the corresponding amendment to the Registered Plan.

15.03 No amendment made to this Supplemental Plan by the Corporation pursuant to this Section 15 can have the effect of reducing the amount or value of the benefits accrued by the Participants under this Supplemental Plan prior to the effective date of such amendment."

V. THE TRUST AND THE LETTER OF CREDIT

15. Pursuant to section 4.02 of the SERPs, BCFPI had the obligation to pay the benefits under the SERPs out of its operating funds as the benefits become due. There were no contributions by the participants (section 4.01), and BCFPI was under no obligation to pay contributions in advance to fund the benefits (section 4.02).

16. Pursuant to section 4.03 of the SERPs, BCFPI was required, however, to establish a trust to hold documentary credits or letters of guarantee or investments to secure the payment of the benefits under the SERPs to the members.

17. On August 14, 1996, BPPC entered into a trust agreement with Montreal Trust Company ("**MTC**") (the "**Trust Agreement**") so that MTC would hold a letter of credit initially in

#10528530 v10

the amount of $30,000,000 to secure the payment of the benefits under the SERPs, the whole as appears from a copy of the resolution of the board of directors of Avenor Inc. and the Trust Agreement produced herewith as **Exhibit R-5**.

18. Essentially, the Trust Agreement provided that MTC was to hold the letter of credit until such time as BPPC defaulted in the payment of the benefits under the SERPs. MTC was then to call the letter of credit and hold the proceeds in trust for all eligible members of the SERPs, and distribute the proceeds to the eligible members of the SERPs to the extent that the proceeds were sufficient for that purpose.

19. MTC was bound by the terms of the SERPs and was bound to perform only such duties as were imposed upon it pursuant to the Trust Agreement and each related SERP. MTC was entitled to act on the instructions or written directions of BPPC.

20. Effective January 1, 2003, MTC was replaced by RTC as trustee of the Trust Agreement holding the letter of credit, the whole as appears from a copy of an agreement filed as **Exhibit R-6**.

21. The letter of credit held by MTC and by RTC after the replacement of MTC was renewed annually at various face amounts determined by BCFPI until it was called for payment on May 26, 2009, as described below. At that time, the face amount of the letter of credit was $23,065,000, the whole as appears from a copy of the letter of credit dated April 1, 2008 and amended May 5, 2008 filed as **Exhibit R-7**.

VI. PURPORTED CHANGES TO THE 2003 SERPs

22. Since 2003, there have been a number of letters and notices to the members of the SERPs and purported changes to the SERPs that would affect which members' benefits are secured by the letter of credit.

1. *LETTERS AND NOTICES TO MEMBERS*

23. On November 24, 2003, BCFPI sent a letter to the 38 active (i.e. not retired) SERPs members. The last paragraph of the letter stated that only the benefits of retired SERPs members and only SERP benefits accrued up to December 31, 2003 would be secured by a letter of credit:

> *"Nous vous avisons également que les prestations des régimes SERP pour le service à compter du 1er janvier 2004 dans toutes les exploitations canadiennes ne seront pas garanties par lettre de crédit. Les prestations des SERP PD pour le service jusqu'au 31 décembre 2003 continueront d'être garanties de cette façon dans le cas des anciens employés de BPPC travaillant au Canada. Pour les employés qui ont choisi le régime CD, le SERP CD applicable au service à compter du 1er janvier 2003 n'est pas garanti par lettre de crédit. Cette restriction de l'utilisation des lettres de crédit n'a aucun effet sur le calcul de vos prestations de retraite totales."*

#10528530 v10

"Please be advised that SERP benefits for service from January 1st, 2004 for all Canadian operations will not be secured by way of a letter of credit. DB SERP benefits for service up to December 31st, 2003 will continue to be secured that way for former BPPC employees working in Canada. For employees who have elected the DC plan, the DC SERP applicable to service from January 1st, 2003 is not secured by a letter of credit. This limitation of the use of a letter of credit does not affect the calculation of your total pension benefits."

the whole as appears from a copy of the letters of November 24, 2003 produced as **Exhibit R-8**.

24. On May 27, 2005, BCFPI sent a notice to the 33 active SERPs members to further clarify what had been said in the 2003 letter, namely that only the benefits of retired SERPs members and only SERP benefits accrued up to December 31, 2003 would be secured by a letter of credit:

"Le 27 mai 2005

Avis aux anciens employés de BPPC admissibles aux prestations de retraite supplémentaires

Nous désirons, par le présent avis, vous donner quelques explications concernant la lettre de crédit qui s'applique aux participants aux régimes supplémentaires de retraite non agréés de Bowater Produits forestiers du Canada inc., soit le " Supplemental Retirement Benefit Plan " des salariés des classes salariales 27 et inférieures, le " Supplemental Retirement Benefit Plan " des salariés des classes 28 et supérieures et le " Senior Executive Retirement Plan " pour les cadres supérieurs. Ces régimes prévoient le versement de prestations aux anciens employés de Bowater Pâtes et Papiers Canada.

...

Cette année, au moment du renouvellement de la lettre de crédit, la Société a examiné la méthode de calcul à la lumière du libellé de l'article 4.03 et a établi que la lettre de crédit sera calculée selon la méthode suivante :

- *La lettre de crédit garantira le paiement des prestations aux retraités et aux survivants qui reçoivent déjà une rente en vertu des régimes, mais ne garantira pas à l'avance le versement des prestations qui pourraient éventuellement être payables aux employés actifs ou aux employés dont l'emploi a pris fin mais n'étant pas encore prestataires (participants avec rente différée).*
- *Comme vous l'indiquait la lettre décrivant l'harmonisation des régimes de retraite que vous avez déjà reçue, la lettre de crédit permettra uniquement le versement des prestations correspondant aux années de service accumulées jusqu'au 31 décembre 2003 ou jusqu'au 31 décembre 2002 pour les participants qui ont adhéré au régime à cotisations déterminées (régime CD) à compter du 1er janvier 2003.*

- *De plus, la lettre de crédit n'assurera le versement que des prestations correspondant aux années de service accumulées jusqu'au 31 décembre 2003 ou jusqu'au 31 décembre 2002 pour les participants qui ont adhéré au régime à cotisations déterminées (régime CD) à compter du 1er janvier 2003, sur la base du salaire en vigueur au 31 décembre 2003 et selon les dispositions relatives à la retraite anticipée qui auraient été applicables si la cessation d'emploi ou la retraite avait eu lieu le 31 décembre 2003 prenant en considération la rente maximale versée du régime enregistré à la date à laquelle débute le versement de la rente.*

- *Les prestations dont la lettre de crédit doit garantir le versement seront calculées comme si les régimes avaient été terminés et les prestations établies à la date d'évaluation, pour les participants qui reçoivent déjà une rente à cette date.*

La Société révise actuellement la lettre de crédit en fonction des principes décrits ci-dessus. La valeur de la lettre de crédit fera périodiquement l'objet de nouveaux calculs.

Le redressement du montant de la lettre de crédit n'a aucune incidence sur le calcul de vos prestations de retraite individuelles. Celles-ci continueront d'être établies conformément aux dispositions des régimes, quelles que soient la valeur et la méthode de calcul de la lettre de crédit. Si vous avez des questions, veuillez communiquer avec Georges Cabana au (514) 954-2101."

"May 27, 2005

Notice to former BPPC employees eligible for Supplementary Pension benefits

The purpose of this notice is to clarify the status of the letter of credit that pertains to the members of the Bowater Canadian Forest Products Inc. Supplemental Retirement Benefit Plan for Grade 27 and Under, the Supplemental Retirement Benefit Plan for Grade 28 and Over and the Senior Executive Retirement Plan, which provide benefits to former employees of Bowater Pulp and Paper Canada Inc.

...

During this year's annual renewal process for the letter of credit, the Company reviewed the methodology applied to the calculation of the letter of credit in light of the language quoted above. The Company determined that the letter of credit will be calculated based on the following methodology:

- *The letter of credit will secure the payment of benefits to retirees and survivors who have started to receive their pension under the plans; it will not secure in advance the payment of benefits that may become payable sometime in the future to active employees or to terminated employees who are not yet in pay status (terminated vested participants).*

- *As you have been previously notified in the letter describing the pension re-design, the letter of credit will only secure benefits attributable to service accrued through December 31, 2003, or through December 31, 2002 for members who have elected to participate in the DC plan effective January 1, 2003.*

- *Further, the letter of credit will only secure the payment of benefits attributable to service that is accrued through December 31, 2003 or through December 31, 2002 for members who have elected to participate in the DC plan effective January 1, 2003, based upon the earnings determined as of December 31, 2003 and based on the early retirement provisions that would have applied if termination of employment or retirement had occurred on December 31, 2003 taking into account the maximum pension payable from the registered plan at pension commencement.*

- *The benefits to be secured by the letter of credit are to be calculated as though the plans were wound up and benefits settled on the valuation date for members in receipt of a pension on that date.*

The Company is currently updating the letter of credit in accordance with the principles described above. The amount of the letter of credit will be recalculated on a periodic basis.

The calculations applicable to the letter of credit do not affect the calculation of your individual pension benefits. Your future retirement benefits will continue to be computed in accordance with the plan provisions, regardless of the amount of, or method of calculation applicable to, the letter of credit. If you should have any questions, please contact Georges Cabana at (514) 954-2101."

the whole as appears from a copy of the letters of May 27, 2005 produced as **Exhibit R-9.**

25. On May 30, 2005, a letter was sent to seven SERPs members who were deferred vested members on that date which stated:

"Le 30 mai 2005

Avis aux anciens employés de BPPC admissibles aux prestations de retraire supplémentaires

Nous désirons, par le présent avis vous donner quelques explications concernant la lettre de crédit qui s'applique aux participants aux régimes supplémentaires de retraite non agréés de Bowater Produits forestiers du Canada inc., soit le "Supplemental Retirement Benefit Plan" des salariés des classes salariales 27 et inférieures, le "Supplemental Retirement Benefit Plan" des salariés des classes 28 et supérieures et le "Senior Executive Retirement Plan" pour les cadres supérieurs. Ces régimes prévoient le versement de prestations aux anciens employés de Bowater Pâtes et Papiers Canada inc. (BPPC).

...

Cette année, au moment du renouvellement de la lettre de crédit, la Société a examiné la méthode de calcul à la lumière du libellé de l'article 4.03 et a établi que la lettre de crédit garantira le paiement des prestations aux retraités et aux survivants qui reçoivent déjà une rente en vertu des régimes. Elle ne garantira pas à l'avance le versement des prestations qui pourraient éventuellement être payables aux employés actifs ou aux employés dont l'emploi a pris fin mais n'étant pas encore prestataires (participants avec rente différée). Les prestations dont la lettre de crédit doit garantir le versement seront calculées comme si les régimes avaient été terminés et les prestations établies à la date d'évaluation, pour les participants qui reçoivent déjà une rente à cette date.

La Société révise actuellement la lettre de crédit en fonction des principes décrits ci-dessus. La valeur de la lettre de crédit fera périodiquement l'objet de nouveaux calculs.

Le redressement du montant de la lettre de crédit n'a aucune incidence sur le calcul de vos prestations de retraite individuelles. Celles-ci continueront d'être établies conformément aux dispositions des régimes, quelles que soient la valeur et la méthode de calcul de la lettre de crédit. Si vous avez des questions, veuillez communiquer avec Georges Cabana au (514) 954-2101."

"May 30, 2005

Notice to former BPPC employees eligible for Supplementary Pension benefits

The purpose of this notice is to clarify the status of the letter of credit that pertains to the members of the Bowater Canadian Forest Products Inc. Supplemental Retirement Benefit Plan for Grade 27 and Under, the Supplemental Retirement Benefit Plan for Grade 28 and Over and the Senior Executive Retirement Plan, which provide benefits to former employees of Bowater Pulp and Paper Canada Inc. (BPPC).

...

During this year's annual renewal process for the letter of credit, the Company reviewed the methodology applied to the calculation of the letter of credit in light of the language quoted above. The Company has determined that the letter of credit will secure the payment of benefits to retirees and survivors who have started to receive their pension under the plans. It will not secure in advance the payment of benefits that may become payable sometime in the future to active employees or to terminated employees who are not yet in pay status (terminated vested participants). The benefits to be secured by the letter of credit are to be calculated as though the plans were wound up and benefits settled on the valuation date for members in receipt of a pension on that date.

The Company is currently updating the letter of credit in accordance with the principles described above. The amount of the letter of credit will be recalculated on a periodic basis.

The calculations applicable to the letter of credit do not affect the calculation of your individual pension benefits. Your future retirement benefits will continue to be computed in accordance with the plan provisions, regardless of the amount of, or method of calculation applicable to, the letter of credit. If you should have any questions, please contact Georges Cabana at (514) 954-2101."

the whole as appears from a copy of the letters of May 30, 2005 produced as **Exhibit R-10.**

2. *DRAFT AMENDMENTS TO THE 2003 SERPS*

26. BCFPI requested that restatements of the SERPs be prepared effective as of January 1, 2003, including amendments that would reflect the content of the 2003 letters and the 2005 letters (the "**2003 Draft Restatement**"). The 2003 Draft Restatement amended sections 1.02 and 4.04 of the BCFPI SERPs and read as follows:

> "*1.02 The restated text of this Supplemental Plan is effective as of January 1, 2003 and as of such date replaces and cancels the application of any prior plan or agreement, whether oral or written, between a participant therein and the Corporation and providing for supplemental retirement benefits to be paid to such participant in addition to those payable from any registered pension plan of the Corporation. However, this Supplemental Plan shall not apply to or otherwise modify benefits payable or the terms and conditions for payment of such benefits to any former employee who has retired from or otherwise terminated his employment with Bowater Canadian Forest Products Inc. or its predecessors or their affiliates prior to the effective date of this Supplemental Plan.*
>
> *4.03 Notwithstanding Subsection 4.02, the Corporation will arrange for the payment of benefits provided under the Supplemental Plan to be secured through a letter of credit from a financial institution. For greater certainty, such letter of credit shall not apply during active employment with the Corporation and shall only apply from pension commencement. Furthermore, the letter of credit shall only apply in respect of benefits provided under this Supplemental Plan for Credited Service prior to January 1, 2004, based on Final Average Earnings and Average Incentive Target up to December 31, 2003 and taking into account the early retirement reduction that would have applied if employment had terminated or retirement had occurred on December 31, 2003 but taking into account the maximum pension applicable under the Registered Plan at pension commencement. The letter of credit shall not apply either in respect of Participants subject to US tax as a result of being a US citizen, a US resident or being employed by Bowater Inc. or any affiliated company in the US, unless they have elected in writing to be covered by the letter of credit."*

the whole as appears from a copy of the 2003 Draft Restatement filed as **Exhibit R-11.**

27. A copy of the 2003 Draft Restatement was sent to RTC by letter dated September 30, 2005, the whole as appears from a copy of said letter filed as **Exhibit R-12.**

28. A further restatement of the SERPs, "effective January 1, 2003, including amendments up to January 1, 2009 inclusive", was executed by an officer of BCFPI on July 22, 2009 (the "**2009 Restatement**"), the whole as appears from the 2009 Restatement filed as **Exhibit R-13.**

29. A copy of the 2009 Restatement was sent to RTC on July 23, 2009, the whole as appears from a copy of the cover letter filed as **Exhibit R-14.**

30. Notwithstanding a thorough research of its books and records, Petitioner has not been able to locate a resolution of its Board of Directors amending sections 1.02 and 4.03 of the BCFPI SERPs as they read in the 2003 Draft Restatement, nor adopting the 2003 Draft Restatement. The Board of Directors did not adopt a resolution to give effect to the 2009 Restatement.

3. *ACTUARIAL VALUATIONS OF THE SERPS LIABILITIES*

31. At various times it determined, BCFPI obtained actuarial valuations of its liabilities pursuant to the SERPs from Mercer for the purpose of establishing the face amount of the letter of credit to be held by MTC or RTC. Actuarial valuations as of June 2005 and March 31, 2008 were performed in compliance with the 2003 Draft Restatement and the 2003 and 2005 letters sent to the SERPs members, the whole as appears from a copy of the June 2005 actuarial valuation filed as **Exhibit R-15** and the March 31, 2008 actuarial valuation filed as **Exhibit R-16** (one page of this Exhibit is filed under seal).

32. The March 31, 2008 actuarial valuation disclosed the following information:

> "*To Bowater Canadian Forest Products Inc.*
>
> *At your request, we have conducted an actuarial valuation of the liabilities as at March 31, 2008 in respect of certain Supplemental Retirement Plans of Bowater Canadian Forest Products Inc. The purpose of this valuation is to determine the face amount of the letter of credit as of such date. We are pleased to present the results of the valuation.*
>
> *The Supplemental Retirement Plans covered by the letter of credit are:*
>
> *1. Supplemental Retirement Benefit Plan for Grade 27 and under Employees of Bowater Canadian Forest Products Inc.*
>
> *2. Supplemental Retirement Benefit Plan for Grade 28 and over Employees of Bowater Canadian Forest Products Inc.*
>
> *3. Senior Executive Retirement Plan (SERP) of Bowater Canadian Forest Products.*
>
> *These plans cover only members of the registered pension plans of the former Bowater Pulp and Paper Canada Inc.*

For tax reasons U.S. taxpayers are not covered by the letter of credit unless they elect to be covered. We understand that U.S. taxpayers have been notified by Bowater Canadian Forest Products Inc. to this effect.

The Supplemental Retirement Plans as they apply to benefits covered by the letter of credit automatically provide benefits to members of the following registered plans:

- *Employees' Retirement Plan (1988) of Bowater Canadian Forest Products Inc.*

- *Executive Staff Retirement Plan (1976) of Bowater Canadian Forest Products Inc.*

- *Supervisory Employees' Retirement Plan (1976) of Bowater Canadian Forest Products Inc.*

who are impacted by the limits of the Income Tax Act. The terms of the Supplemental Retirement Plans require that certain benefits as described above be secured through a trust which is a Retirement Compensation Arrangement ("RCA") for the purpose of the Income Tax Act. The benefits to be secured are described in notices provided to affected members.

Based on the terms of the Supplemental Retirement Plans and on notices provided to active and vested terminated members, the letter of credit covers pensions in payment relative to benefits for service up to December 31, 2003 (December 31, 2002 for any member who elected to participate in the DC plan effective January 1, 2003), based on earnings up to December 31, 2003 taking into account the early retirement reductions that would have applied if termination or retirement had occurred on December 31, 2003 and also taking into account the maximum pension applicable at pension commencement.

In accordance with the RCA Trust Agreement between Avenor Inc. and Montreal Trust Company, the amount of the letter of credit shall be equivalent to Bowater Canadian Forest Products Inc.'s determination of its liabilities to beneficiaries. Such determination shall be based on actuarial valuations which the Trustee shall be under no obligation to review or assess."

the whole as appears from **Exhibit R-16.**

VII. CURRENT SITUATION

33. On or about May 1, 2009, ABH advised RTC that ABH and its subsidiaries had suspended the payments of all SERPs benefits and would not renew the letter of credit securing those benefits, the whole as appears from a copy of said letter filed as **Exhibit R-17.**

34. On May 26, 2009, RTC advised ABH that it would call for payment on the letter of credit that it held, the whole as appears from a copy of a letter filed as **Exhibit R-18**, and on or about May 26, 2009, RTC called for payment on the letter of credit and received an amount of approximately $ 23,065,000.

35. The rules of the Income Tax Act (Canada) (the "**ITA**"), applicable to "Retirement Compensation Arrangements", required RTC to pay a refundable tax to the Canada Revenue Agency ("**CRA**") of 50% of the amount it received upon calling the letter of credit. In addition, the ITA requires that 50% of any income (interest, dividend or capital gain) realized by RTC on the assets held under the Trust Agreement be paid to the CRA as a refundable tax. These amounts will be refunded by the CRA after the end of each calendar year during which RTC pays SERP benefits to the SERP members determined by the judgment of this Court on this Motion.

36. The balance of the proceeds is held by RTC in 30-day Government of Canada Treasury Bills.

37. During the months of May and June 2009, RTC requested information from ABH on the identity of the individuals whose SERPs benefits were secured by the letter of credit which had been drawn, the whole as appears from a copy of e-mails and a letter filed as **Exhibit R-19**.

38. In September 2009, McCarthy Tétrault LLP, on behalf of RTC, requested further information from ABH by transmitting to ABH a copy of a letter dated August 21, 2009 that it had received from Woods LLP on behalf of a number of members of the SERPs, the whole as appears from a copy of the letter filed as **Exhibit R-20**.

39. On or about October 7, 2009, an attorney from the law firm Woods LLP, on behalf of some SERPs members, wrote to ABH requesting confirmation that the SERPs benefits of individuals whose name appeared on a list attached to said letter were secured by the letter of credit held by RTC, the whole as appears from a copy of said letter filed as **Exhibit R-21**.

40. On November 18, 2009, the undersigned attorneys responded on behalf of BCFPI, to the letters from Woods LLP and the requests from RTC and McCarthy Tétrault LLP, the whole as appears from a copy of said answers filed as **Exhibit R-22**.

41. On January 29, 2010, the undersigned attorneys received a phone call from Langlois Kronström Desjardins on behalf of two other members of the SERPs, the whole as appears from a copy of an e-mail filed as **Exhibit R-23**.

42. There have also been communications from various members of the SERPs asking for information about the distribution of the proceeds of the letter of credit.

VIII. MEMBERS OF THE SERPS ENTITLED TO SHARE IN THE PROCEEDS OF THE LETTER OF CREDIT

43. As described above, there are differences between the following:

(a) Those members whose benefits are secured by the letter of credit under the terms of the SERPs (without taking into account the 2003 Draft Restatement or the 2009 Restatement);

(b) The notices sent to various members, either advising them that their benefits were secured by the letter of credit when they should not have been, or advising them that all or some part of their benefits were not secured by the letter of credit despite the language of the 2003 SERPs; and

(c) The list of members the value of whose benefits was used by Mercer in establishing the last actuarial valuation of the amount of the letter of credit to be held by RTC.

44. In these circumstances, the Petitioner believes that the most fair outcome is to give effect to the reasonable expectations of the beneficiaries by giving effect to the various letters sent by BCFPI.

1. *CANADIAN MEMBERS WHO RETIRED BEFORE DECEMBER 31, 2003*

45. There are, at the date of this Motion, 48 members of the SERPs who are Canadian and who retired before December 31, 2003, including 44 retirees and four beneficiaries. Petitioner attaches as **Schedule A** a list of the 48 members of this group.

46. The benefits of the Canadian members who retired before December 31, 2003 are clearly covered by the letter of credit:

- The language of the 2003 SERPs (**Exhibit R-4**) provides that the payment of benefits is to be secured by a letter of credit;

- The Canadian members who retired before December 31, 2003, were never advised that their benefits, in whole or in part, were not covered by the letter of credit;

- The draft amendments to the 2003 SERPs that are reflected in the 2003 Draft Restatement (**Exhibit R-11**) and the 2009 Restatement (**Exhibit R-13**) provide that the benefits of the Canadian members who retired before December 31, 2003 are covered by the letter of credit; and

- The actuarial valuations prepared by Mercer in 2005 and 2008 (**Exhibits R-15** and **R-16**) included the benefits of the Canadian members who retired before December 31, 2003 in the calculation of the amount of the letter of credit.

47. Based on the foregoing, the Petitioner asks that this Court declare that the Canadian members who retired before December 31, 2003 and who are listed on **Schedule A** are

entitled to continue to receive, from May 1, 2009, their monthly SERP payments from the proceeds of the letter of credit. Petitioner files as **Schedule F**, under seal, the amounts payable on a monthly basis to each member from the proceeds of the letter of credit.

2. *CANADIAN MEMBERS WHO RETIRED AFTER DECEMBER 31, 2003*

(a) Generally

48. There are, at the date of this Motion, six members of the SERPs who are Canadian and who retired after December 31, 2003. Petitioner attaches as **Schedule B** a list of the six members of this group.

49. Although the language of the 2003 SERPs (**Exhibit R-4**) provides that the payment of benefits is to be secured by a letter of credit, BCFPI's intention was clearly that only SERP benefits accrued up to December 31, 2003, would be secured by the letter of credit:

- Letters were sent on November 24, 2003 to the SERP members who were active as of that date in order to advise them that only the benefits of retired SERP members and only SERP benefits accrued up to December 31, 2003, would be secured by the letter of credit (**Exhibit R-8**);

- This change is also reflected in the 2003 Draft Restatement (**Exhibit R-11**) and the 2009 Restatement (**Exhibit R-13**);

- The actuarial valuations prepared by Mercer in 2005 and 2008 (**Exhibits R-15** and **R-16**) limit the liabilities of the SERPs towards these members who retired after December 31, 2003 to the value of the benefits that accrued up to December 31, 2003, such that the face value of the letter of credit was based on the pre-December 31, 2003 earnings and service.

50. Based on the foregoing, the Petitioner asks that this Court declare that the Canadian resident members who retired after December 31, 2003, but before May 26, 2009, and who are listed on **Schedule B** are entitled to continue to receive, from May 1, 2009, their monthly SERP payments from 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. **Schedule F**, under seal, discloses the monthly SERP payments based on SERP liabilities accrued up to December 31, 2003 and, also, all accrued SERP liabilities.

(b) Donald Campbell

51. Mr. Campbell was on salary continuance on April 17, 2009 when the Initial Order was issued. As a result of the Initial Order, his salary continuance was discontinued and his active employment was terminated as of April 15, 2009. Thereafter, Mr. Campbell elected to retire on May 1, 2009. Due to an error in his pension calculations, he has not started to receive a monthly annuity from the registered pension plan in which he participated.

52. The Petitioner therefore proposes to treat him as a Canadian resident member who retired after December 31, 2003 as opposed to an active employee. If the Court accepts the Petitioner's position that SERPs liabilities that accrue after December 31, 2003 are not secured by the letter of credit, then the result is the same whether he is treated as retired or as active.

3. *U.S. MEMBERS*

(a) Generally

53. There are, at the date of this Motion, two members of the SERPs who are U.S. citizens, one retiree who is a Canadian resident (Mr. Warren Woodworth) and one beneficiary who is a U.S. resident (Mrs. Alyce Flenniken). For reasons set out more fully below, the Petitioner proposes to include Mr. Jerry Soderberg in this group. All three members of this group retired prior to December 31, 2003, such that the debate in the preceding section does not apply to them. Petitioner attaches as **Schedule C** a list of the three members of this group.

(b) Alyce Flenniken and Warren Woodworth

54. The SERPs liabilities to Mrs. Flenniken and Mr. Woodworth appear to be covered by the letter of credit:

- The language of the 2003 SERPs (**Exhibit R-4**) clearly provides that the benefits of all members, including the U.S. members, are covered by the letter of credit; and
- The U.S. members have not received any notice or letter from BCFPI whereby they were advised that their benefits in whole or in part, are not covered by the letter of credit.

55. There were, however, negative tax consequences in the United States if the benefits of a U.S. member are secured by a letter of credit. The tax rules of the Internal Revenue Code (the "**IRC**") provide that securing SERPs benefits of SERPs members who are taxpayers of the United States resulted in the obligation for such SERPs members to include in income for the year during which such security is granted, the value of the benefits so secured.

56. For that reason, in the 2003 Draft Restatement (**Exhibit R-11**) and in the 2009 Restatement (**Exhibit R-13**), the liabilities of the SERPs to the members of this group are not secured by the letter of credit unless they elected in writing to be covered by the letter of credit.

57. The value of the SERP liabilities to Mrs. Flenniken and Mr. Woodworth were not included in the calculation of the face value of the letter of credit held by RTC in 2005 or 2008 for tax reasons. The 2008 actuarial valuation stated:

> *"For tax reasons U.S. taxpayers are not covered by the letter of credit unless they elect to be covered. We understand that U.S. taxpayers have been notified by Bowater Canadian Forest Products Inc. to this effect."*

58. The Petitioner does not have any indication in its files that the U.S. members were at any time invited to make such an election.

(c) Jerry Soderberg

59. Mr. Soderberg is a citizen and a resident of the United States.

60. On August 4, 1995, Mr. Soderberg was given confirmation, through two letters, of changes to his compensation package which included participation in the Avenor SERP, as appears from two letters dated August 4, 1995 filed under seal as **Exhibit R-24.**

61. On January 6, 1997, Mr. Soderberg was advised that his SERP benefits were secured by a letter of credit held by MTC, as appears from a letter dated January 6, 1997 filed under seal as **Exhibit R-25.**

62. On February 25, 1997, Mr. Soderberg was advised that although he was and would continue to be a participant of the Avenor America Inc. pension plan (a U.S. pension plan), he would remain entitled to the pension benefits set forth in the letter dated August 4, 1995 describing his pension entitlements, including the participation in the Avenor SERP, as appears from a letter dated February 25, 1997 filed under seal as **Exhibit R-26.**

63. On January 6, 1997, Mr. Soderberg was granted a change of control agreement (the "**Change of Control Agreement**") by Avenor. During August 1998, there was a change of control of Avenor. Mr. Soderberg's Change of Control Agreement was therefore triggered. On September 3, 1998, Mr. Soderberg was informed of the computation of his benefits pursuant to the Change of Control Agreement and fully released and discharged Avenor Inc. and BPPC, of which Petitioner is successor, from all further obligations, as appears from a copy of the receipt and release filed under seal as **Exhibit R-27.**

64. On October 2, 1998, Mr. Soderberg, who had retired on October 1, 1998, was advised that he would start to receive a pension from the U.S. pension plan and that his SERP benefits would be assumed by Bowater Inc. and paid from the U.S. as appears from a letter dated October 2, 1998 filed under seal as **Exhibit R-28.**

65. Mr. Soderberg did not and does not participate in a Canadian registered pension plan although the rules of the SERPs provide that the SERPs pay pension benefits in excess of benefits provided by a Canadian registered pension plan.

66. The value of the SERP liabilities to Mr. Soderberg was not included in the calculation of the face value of the letter of credit held by RTC in 2005 or 2008.

67. Based on the foregoing, and in particular based on the failure to notify Mrs. Flenniken and Mr. Woodworth and based on the letters to Mr. Soderberg, the Petitioner asks that this Court declare that the U.S. members who are listed on **Schedule C** are entitled to continue to receive, from May **1**, 2009, their monthly SERP payments from the proceeds of the letter of credit as set out in **Schedule F**, under seal.

4. *ACTIVE EMPLOYEES*

68. There are, at the date of this Motion, eleven members of the SERPs who are active employees. Petitioner attaches as **Schedule D** a list of the eleven members in this group.

69. The language of the 2003 SERPs (**Exhibit R-4**) provides that the payment of the benefits is to be covered by a letter of credit. Petitioner submits that the benefit of the active employees should not be covered by the letter of credit:

- The active employees received letters dated November 24, 2003 (**Exhibit R-8**) and May 27, 2005 (**Exhibit R-9**) which specify that the letter of credit does not secure the payment of benefits that may become payable some time in the future to active employees;

- The 2003 Draft Restatement (**Exhibit R-11**) and the 2009 Restatement (**Exhibit R-13**) both provide that the letter of credit does not secure benefits during active employment with the corporation and shall only apply from pension commencement;

- The actuarial valuations prepared by Mercer in 2005 and 2008 (**Exhibits R-15** and **R-16**) do not include the benefits of the active members.

70. Based on the foregoing, the Petitioner asks that this Court declare that the active employees who are listed on **Schedule D** are not entitled to receive monthly SERP payments from the proceeds of the letter of credit.

5. *DEFERRED VESTED MEMBERS*

71. There are, at the date of this Motion, six members of the SERPs who are deferred vested members. Petitioner attaches as **Schedule E** a list of the six members in this group.

72. Although the language of the 2003 SERPs (**Exhibit R-4**) provides that the benefits of all members, including deferred vested members, are secured by the letter of credit, Petitioner submits that the benefits of the deferred vested members should not be secured by the letter of credit:

- The deferred vested members received letters dated May 30, 2005 (**Exhibit R-10**) which specify that the letter of credit does not secure the payment of benefits that may become payable some time in the future to deferred employees;

- Moreover, the 2003 Draft Restatement (**Exhibit R-11**) and the 2009 Restatement (**Exhibit R-13**) both provide that the letter of credit does not apply during to deferred vested members and shall only apply from pension commencement;
- The actuarial valuations prepared by Mercer in 2005 and 2008 (**Exhibits R-15** and **R-16**) do not include the benefits of the deferred vested members.

73. Based on the foregoing, the Petitioner asks that this Court declare that the deferred vested employees who are listed on **Schedule E** are not entitled to receive monthly SERP payments from the proceeds of the letter of credit.

IX. DISTRIBUTION OF THE PROCEEDS OF THE LETTER OF CREDIT TO THE MEMBERS ENTITLED TO SHARE

74. In principle, there are three ways in which the proceeds of the letter of credit can be distributed to the members entitled to share in those proceeds:

    (a) RTC can make monthly payments to the members entitled to share in the proceeds of the letter of credit for the period from May 1, 2009 to the date of the judgment to be rendered on this Motion and can continue to make those monthly payments in the future until the funds are exhausted;

    (b) RTC can pay the monthly arrears up to the date of the judgment to be rendered on this Motion and then RTC can distribute the balance of the proceeds on a pro rata basis based on the value of each member's benefits as at the date of the judgment to be rendered on this Motion; or

    (c) RTC can distribute the proceeds on a pro rata basis based on the value of each member's benefits as at May 26, 2009.

75. The Petitioner submits that the first approach is fair to the members entitled to receive monthly SERP payments from the proceeds of the letter of credit. The second and third approaches would require an amendment to the SERP and the Trust Agreement in order to pay lump sums.

X. CONSEQUENTIAL AMENDMENTS TO THE TRUST AGREEMENT

76. In order to give effect to the judgment to be rendered on this Motion and to reflect other changes that have occurred between the execution of the Trust Agreement in 1995 and today and provide for future activities of the trust, it is necessary to make certain amendments to the Trust Agreement, which are reflected in the proposed Amendment No 1 to the Trust Agreement produced herewith as Exhibit R-29. We also produce as Exhibit R-29A an amended and restated version of the Trust Agreement produced as Exhibit R-5 that reflects the changes in Exhibit R-29.

77. The amendments relate in particular to the following areas:

(a) The parties to the Trust Agreement should be Bowater Canadian Forest Products Inc. and Royal Trust Company, the first paragraph in the preamble should refer to the current SERPs, and the preamble should describe the current situation;

(b) The beneficiaries in Section 1.06 of the Trust Agreement should be defined as those individuals identified by the Court as those whose benefits were secured by the Letter of Credit, as well as their beneficiaries, and BCFPI should provide any and all information required by RTC in order to pay benefits to those individuals;

(c) A committee of beneficiaries should be created and should take over from BCFPI the power to give directions to RTC, and RTC should issue reports either to the committee of beneficiaries or to the beneficiaries;

(d) RTC should retain the services of an actuary in order to provide periodic reports to the beneficiaries on the anticipated date at which the proceeds of the Letter of Credit will run out;

(e) Section 4.01(j) of the Trust Agreement currently provides that all fees, expenses and disbursements of RTC are paid out of the Trust Fund in the event the company becomes insolvent or bankrupt. This provision should be amended to ensure that all future fees, expenses and disbursements are paid out of the Trust Fund, even if BCFPI emerges from bankruptcy protection and thereby ceases to be insolvent;

(f) Pursuant to Section 8.01(ii), the Trust terminates when each of the SERPs has been terminated. In circumstances where the Letter of Credit has been called and the Trustee is distributing the funds on a monthly basis until they are exhausted, it is no longer appropriate to link the termination of the SERPs to the termination of the Trust and Section 8.01 should be amended such that the Trust will continue until the funds in the hands of the Trustee as well as any refundable tax credit have been exhausted.

(g) Finally, there are other provisions for example relating to the issuance of guarantees (Section 2.06) and indemnification (paragraphs 4.01(f) and 5.01) by BCFPI which are no longer appropriate and should be deleted, and certain standard clauses for the protection of RTC (Sections 9.001 to 9.003) which should be added.

78. There is no provision in the Trust Agreement dealing with amendments, so BCFPI seeks the assistance of this Court in order to make the amendments and to provide a mechanism for amendments in the future.

79. Moreover, in order to assist RTC and the Beneficiaries, BFPI has taken and will take the following steps:

(a) BCFPI has mandated Mercer Investment Consulting to prepare an investment policy for the proceeds of the Letter of Credit which will be produced as Exhibit

R-30. BCFPI will ask this Court to approve this investment policy, until such time as the committee of beneficiaries is established and gives contrary instructions;

(b) BCFPI has approached Phillips, Hager & North Investment Manager Ltd. ("PH&N"), which currently acts as investment manager of funds of registered pension plans sponsored by BCFPI and other companies of the AbitibiBowater group. PH&N has confirmed to BCFPI that it is prepared to manage the funds held by RTC; and

(c) BCFPI has approached Aon Consulting, which currently administers the registered pension plans of which substantially all of the beneficiaries of the Letter of Credit are beneficiaries. Aon has confirmed to BCFPI that it is prepared to provide the following services to RTC: maintaining and updating beneficiaries data, communications with beneficiaries and other related day-to-day activities.

XI. GROUNDS FOR THIS MOTION

80. The Petitioner has the obligation to the SERPs members to provide its assistance in resolving the various issues relating to the SERPs and to the monthly SERP payments to be made from the proceeds of the letter of credit.

81. The Petitioner has also the obligation to RTC to provide it with clear instructions as to the monthly SERP payments to be made from the proceeds of the letter of credit.

82. Moreover, it is in the interests of the Petitioners generally and of their creditors that the issues relating to the monthly SERP payments to be made from the proceeds of the letter of credit be resolved, because that will assist in assessing the claim of each member of the SERPs against BCFPI, if any, and their right to vote on the plan of restructuring to be filed by BCFPI and the other Petitioners.

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

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

WHEREFORE, MAY THIS COURT:

1. **GRANT** this "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" (the "**Motion**").

2. **EXEMPT**, if applicable, the Petitioners from any further service of this Motion and from any further notice or delay of presentation.

3. **DECLARE** that the service of this Motion by registered mail or mail to the SERPs members, who are not represented by attorneys, is valid.

4. **DECLARE** that the judgment to be rendered by this Court is binding on all members of the SERPs and their beneficiaries.

5. **DECLARE** that only the following members of the SERPs benefit from the letter of credit (**Exhibit R-7**) and are entitled to receive, from May 1, 2009, monthly SERP payments from the proceeds of the letter of credit held by The Royal Trust Company ("**RTC**"):

   (a) Canadian resident members of the SERPs who retired before December 31, 2003 (as listed in **Schedule A**);

   (b) Canadian resident members of the SERPs who retired after December 31, 2003 but before May 26, 2009, including Mr. Donald Campbell (as listed in **Schedule B**), but only on the value of their SERPs benefits accrued up to December 31, 2003; and

   (c) U.S. members of the SERPs, including Mr. Jerry Soderberg (as listed in **Schedule C**).

6. **DECLARE** that Active Employees and Deferred Vested Employees whose names are listed in **Schedules D** and **E** are not entitled to have the value of their accrued benefits under the SERPs secured by the amount held by RTC and that no person other than the persons referred to in paragraph 4 above is entitled to have the value of his or her accrued benefits under the SERPs secured by the amount held by the RTC, nor to receive any monthly SERP payment from the proceeds of the letter of credit held by RTC.

7. **DECLARE** that, for the purpose of the Trust Agreement (**Exhibit R-5**), RTC acting in accordance with this order shall be construed and have the same effect as if RTC relied and acted upon the written instructions of Bowater Canadian Forest Products Inc.

8. **AUTHORIZE** BCFPI to amend the Trust Agreement (**Exhibit R-5**) and ORDER that the Trust Agreement (**Exhibit R-5**) is amended as of the date of the judgment in accordance with Amendment No 1 to the Trust Agreement (**Exhibit R-29**).

9. **AUTHORIZE** RTC to invest the funds which it holds pursuant to the Trust Agreement (**Exhibit R-5**) in accordance with the investment policy to be produced as **Exhibit R-30** and to appoint Phillips, Hager & North Investment Manager Ltd. as investment manager until such time as the committee of beneficiaries is established and gives contrary instructions.

10. **AUTHORIZE** RTC to retain Aon Consulting to maintain and update beneficiaries data, handle communications with beneficiaries and perform other related day-to-day activities.

11. **ORDER** RTC to resume monthly payment of SERPs benefits, including arrears since May 1, 2009 which are to be paid without interest, within 30 days of the judgment on the present Motion and in conformity with the judgment on the present Motion.

12. **ORDER** the provisional execution of this Order notwithstanding any appeal and without the necessity of furnishing any security.

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

Montréal, July 2, 2010

STIKEMAN ELLIOTT LLP
Attorneys for the Petitioners

SCHEDULE A

Canadian Members who Retired Before December 31, 2003 (as at May 26, 2009)

George Kenneth Allan	Retiree
Jean-Guy Allard	Retiree
Bruce I. Antonen	Retiree
Joseph Arthur Aubie	Retiree
Clifford R. Bowles	Retiree
Donald Bridges	Retiree
Serge Bureau	Retiree
Klaus Burhop	Retiree
Robert Chambers	Retiree
Jorgen Vibe Christensen	Retiree
Emmanuelle-Andree Collin	Retiree
Lorne Crawford	Retiree
Ola Ellen Crosby	Retiree
Patrick Falcigno	Retiree
Paul J.E. Gagne	Retiree
Joan Gibson	Beneficiary
William Goodfellow	Retiree
Doreen Hallett	Beneficiary
Arnold R. Hansen	Retiree
Roger Hebert	Retiree
Anthony Iasenza	Retiree
Jake Janzen	Retiree
John Johnston	Retiree
Lionel H. Lafreniere	Retiree
Andre G. Lamarche	Retiree
Norman W. Lord	Retiree
Patricia Kay Mance	Retiree
Mary L. Martin	Beneficiary
Donald Maskerine	Retiree
Linda M. McKee	Retiree

Ian Moss Mcarthur	Retiree
A. Reid Murphy	Retiree
James Francis D. O'Connor	Retiree
James Paterson	Retiree
John Poleschuk	Retiree
Francis D'Arcy Quinn	Retiree
Peter C. Redfern	Retiree
Marc Charles Regnier	Retiree
William R. Saxton[5]	Retiree
Gerald Seed	Retiree
Arden Sim	Beneficiary
Clifford Skarstedt	Retiree
Lystra Y. Sween	Retiree
David and Bette Toole	Retiree
Jean Claude Tremblay	Retiree
Wallace M. Vrooman	Retiree
John Hubert Whalen	Retiree
Joseph K. Zigay	Retiree

[5] Mr. William R. Saxton passed away on November 2, 2009.

SCHEDULE B

Canadian Members who Retired After December 31, 2003 (as at May 26, 2009)

Gary Bloomfield	Retiree
Edward Broadhurst	Retiree
Donald Campbell	Retiree
Jean-Paul Duguay	Retiree
Fernand Landry	Retiree
David J. Steuart	Retiree
Frank Wirtz	Retiree

SCHEDULE C

U.S. Members (as at May 26, 2009)

Alyce Flenniken	Beneficiary
Jerry P. Soderberg	Retiree
Warren Porter Woodworth	Retiree

SCHEDULE D

Active Members (as at May 26, 2009)

Roger Barber

Jean Beaulieu

Patrice Cayouette

Pierre Chartrand

Luke Drapeau

Linda Gauvin

William Harvey

William Kerr

Marc Levasseur

Georges Montplaisir

Michael Smart

SCHEDULE E

Deferred Vested Members (as at May 26, 2009)

Peter Benjung

Alan Blackstock

Marc André Collard

Murray Ross Hewitt

Karl Roberts

Gordon Thom

SCHEDULE F

Monthly SERP benefits

REDACTED VERSION -
COMPLETE SCHEDULE TO BE FILED UNDER SEAL

George Kenneth Allan	Retiree
Jean-Guy Allard	Retiree
Bruce I. Antonen	Retiree
Joseph Arthur Aubie	Retiree
Clifford R. Bowles	Retiree
Donald Bridges	Retiree
Serge Bureau	Retiree
Klaus Burhop	Retiree
Robert Chambers	Retiree
Jorgen Vibe Christensen	Retiree
Emmanuelle-Andree Collin	Retiree
Lorne Crawford	Retiree
Ola Ellen Crosby	Retiree
Patrick Falcigno	Retiree
Paul J.E. Gagne	Retiree
Joan Gibson	Beneficiary
William Goodfellow	Retiree
Doreen Hallett	Beneficiary
Arnold R. Hansen	Retiree
Roger Hebert	Retiree
Anthony Iasenza	Retiree
Jake Janzen	Retiree
John Johnston	Retiree
Lionel H. Lafreniere	Retiree
Andre G. Lamarche	Retiree
Norman W. Lord	Retiree
Patricia Kay Mance	Retiree
Mary L. Martin	Beneficiary

Donald Maskerine	Retiree
Linda M. McKee	Retiree
Ian Moss Mcarthur	Retiree
A. Reid Murphy	Retiree
James Francis D. O'Connor	Retiree
James Paterson	Retiree
John Poleschuk	Retiree
Francis D'Arcy Quinn	Retiree
Peter C. Redfern	Retiree
Marc Charles Regnier	Retiree
William R. Saxton[6]	Retiree
Gerald Seed	Retiree
Arden Sim	Beneficiary
Clifford Skarstedt	Retiree
Lystra Y. Sween	Retiree
David and Bette Toole	Retiree
Jean Claude Tremblay	Retiree
Wallace M. Vrooman	Retiree
John Hubert Whalen	Retiree
Joseph K. Zigay	Retiree
Gary Bloomfield	Retiree
Edward Broadhurst	Retiree
Donald Campbell	Retiree
Jean-Paul Duguay	Retiree
Fernand Landry	Retiree
David J. Steuart	Retiree
Frank Wirtz	Retiree
Alyce Flenniken	Beneficiary
Jerry P. Soderberg	Retiree
Warren Porter Woodworth	Retiree

[6] Mr. William R. Saxton passed away on November 2, 2009.