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

and

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

and

THE LAND REGISTRAR FOR THE RESTIGOUCHE COUNTY LAND REGISTRY OFFICE

and

THE LAND REGISTRAR FOR THE THUNDER BAY LAND REGISTRY OFFICE

and

THE REGISTRAR OF THE REGISTER OF

PERSONAL AND MOVABLE REAL RIGHTS

Mis-en-cause

AMENDED MOTION FOR THE ISSUANCE OF AN ORDER AUTHORIZING THE SALE OF CERTAIN ASSETS OF THE PETITIONERS
(Four Closed Mills)
(Section 11 of the *Companies' Creditors Arrangement Act* ("CCAA"))

TO THE HONOURABLE JUSTICE CLÉMENT GASCON J.S.C. OR ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF MONTRÉAL, THE 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 " **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 Petitioners and Partnerships under the CCAA.

[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.

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. Court**"). On April 17, 2009, ABH and certain of its subsidiaries (collectively with ABH, the "**18.6 Petitioners**")[4] obtained orders under s. 18.6 of the CCAA in respect of the Chapter 11 Proceedings.

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

5. Any undefined capitalized expressions used herein shall have the meaning set forth in the Initial Order and in the Purchase Agreement (as defined hereinafter).

B. <u>ORDERS SOUGHT</u>

6. The Petitioners hereby seek the issuance of the following orders in connection with the sale of all the Vendors' right, title and interest (the "**Sale**") in certain Purchased Assets (all undefined capitalized terms used in this paragraph are defined below):

   (a) an order authorizing the execution by Abitibi-Consolidated Company of Canada ("**ACCC**"), BMI and BCFPI (ACCC, BMI and BCFPI, together, the "**Vendors**") of, and the intervention of ACI in, an agreement entitled *Purchase and Sale Agreement* dated April 6, 2010 (<u>as amended</u>, the "**Purchase Agreement**"), by and between ACCC, BMI and BCFPI, as Vendors, American Iron & Metal LP (the "**Purchaser**") through its general partner American Iron & Metal GP Inc., as Purchaser, American Iron & Metal Company Inc., as Guarantor (the "**Guarantor**" and together with the Purchaser, "**AIM**"), and to which ACI intervened, an executed copy of which is communicated herewith as **Exhibit R-1**, and the completion of all transactions contemplated therein. <u>On April 21, 2010, the parties to the Purchase Agreement executed an amendment thereto in order to, *interalia*, correct certain land descriptions in connection with the sale of the Purchased Assets. A copy of the amendment to the Purchase Agreement is communicated herewith as **Exhibit R-1(a)**</u>;

   (b) an order authorizing the execution by ACI and ACCC of an agreement for a land swap (the "**Land Swap Agreement**"), by and between ACI, ACCC, Fort William First Nation Development Corp. ("**FWFNDC**") and Fort William First Nation, a draft copy of which is communicated herewith as **Exhibit R-**

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[4] The 18.6 Petitioners are AbitibiBowater Inc., AbitibiBowater US Holding 1 Corp., Bowater Ventures Inc., Bowater Incorporated, Bowater Nuway Inc., Bowater Nuway Mid-States Inc., Catawba Property Holdings LLC, Bowater Finance Company Inc., Bowater South American Holdings Incorporated, Bowater America Inc., Lake Superior Forest Products Inc., Bowater Newsprint South LLC, Bowater Newsprint South Operations LLC, Bowater Finance II, LLC, Bowater Alabama LLC and Coosa Pines Golf Club Holdings LLC.

2, and the completion of all transactions contemplated therein. The Land Swap Agreement was executed by the parties thereto on April 15, 2010. A copy of the executed Land Swap Agreement is communicated herewith as **Exhibit R-2(a)**;

(c) the issuance of vesting orders in connection with the transactions contemplated in the Land Swap Agreement and in the Purchase Agreement; and

(d) a number of orders typically requested along with the above-mentioned orders.

7. These orders are set-out in the two proposed vesting orders which are being filed in connection with the Sale:

(a) a proposed vesting order in connection with the Purchase Agreement (the "**Closed Mills Vesting Order**") communicated as **Exhibit R-3**. A blackline between Exhibit R-3 and a revised version of the proposed vesting order which integrates, *inter alia*, changes suggested by certain Land Registrars is communicated herewith as **Exhibit R-3(a)**; and

(b) a proposed vesting order in connection with the Land Swap Agreement (the "**Land Swap Vesting Order**") communicated as **Exhibit R-4**. A blackline between Exhibit R-4 and a revised version of the proposed vesting order which integrates minor changes thereto is communicated herewith as **Exhibit R-4(a)**

8. Two of the entities making up the Vendors are Cross-Border Petitioners, namely BCFPI and BMI. As a result, the Petitioners will also be seeking, on April 27, 2010, an order from the U.S. Court requesting authority for BCFPI and BMI to enter into and consummate the Sale.

C. PURCHASE AND LAND SWAP AGREEMENTS

9. The Purchase Agreement contemplates the Sale of four decommissioned pulp and paper mills (the "**Closed Mills**") as well as the real property and equipment related thereto, save and except for the Excluded Assets, as said term is defined in the Purchase Agreement (collectively with the Closed Mills, the "**Purchased Assets**"):

(a) A pulp and paper mill built in 1927 and situated on approximately 54.7 hectares in Beaupré, Quebec (the "**Beaupré Mill**"). The Beaupré Mill was permanently closed in 2009. ACCC is the beneficial owner and ACI is the registered owner (on title) of the Beaupré Mill.

(b) A pulp and paper mill built in 1914 and situated on approximately 34.8 hectares in Donnacona, Quebec (the "**Donnacona Mill**"). The Donnacona Mill was permanently closed in 2008 and is owned by BCFPI.

(c) A pulp and paper mill built in 1926 and situated on approximately 43.8 hectares in Dalhousie, New Brunswick (the "**Dalhousie Mill**"). The Dalhousie Mill was permanently closed in 2008 and is owned by BMI.

(d) A pulp and paper mill built in 1922 and situated on approximately 66 hectares in Thunder Bay, Ontario (the "**Fort William Mill**"). The Fort William Mill was permanently closed in 2007. ACCC is the beneficial owner and ACI is the registered owner (on title) of the Fort William Mill.

10. The Purchased Assets include the paper machines located at the Closed Mills (the "**Paper Machines**"). The Petitioners no longer require the Paper Machines for their own operations and would like to realize value from their disposition, whether as operating machinery (under limited circumstances) or scrap metal.

11. The Land Swap Agreement contemplates the transfer of an unused portion of vacant land from ACI to FWFNDC in exchange for the transfer of a roughly equal area from FWFNDC to ACI (the "**Swap Lands**"). This land swap serves two objectives:

(i) ensuring that the Purchaser is provided with road access to the Fort William Mill after the Sale is completed. Currently, the only public road access to the Fort William Mill is over a driveway and gatehouse area which is leased from FWFNDC. As part of the Second Closing (as defined below) a portion of the Swap Lands will be transferred together with the Fort William mill site to AIM, in order to provide road access to the mill site; and

(ii) ensuring that ACI retains access to its landfill lands. After the transaction, ACI will retain ownership as bare trustee for ACCC over a landfill area which is currently part of the Fort William site. By retaining the Swap Lands that are not transferred to AIM, ACI will thereby ensure its continued access to said landfill lands.

12. The sale of the Fort William Mill necessarily depends, *inter alia*, on the consummation of the transactions contemplated by the Land Swap Agreement. In light of these issues, the Purchase Agreement contemplates a two-part closing:

(i) an initial closing will take place five (5) business days following entry of the court orders approving the Sale (the "**First Closing**"). At that time, AIM will pay $8.7 million and certain related tax costs, and will also assume certain liabilities. In exchange, AIM will receive three of the four closed mills, namely the Beaupré, Donnacona and Dalhousie Mills;

(ii) a second closing will take place upon the completion of the transactions contemplated in the Land Swap Agreement (the "**Second Closing**"). At that time, AIM will pay $100,000 and certain related tax costs, and will assume certain liabilities. In exchange, AIM will acquire the Fort William Mill.

13. Pursuant to the Purchase Agreement, the Petitioners therefore expect to realize $8.8

million for the Closed Mills. In addition, the Petitioners will be paid 40% of the net proceeds from any subsequent sale of the Paper Machines, of which the Purchaser undertakes to pay $5 million within ninety (90) days of the First Closing regardless of whether any such sale takes place.

D. SALE PROCESS

1. *Phase I Marketing Process*

14. In October 2009, the Petitioners began a structured private sale process (the "**Phase I Marketing Process**") with the Monitor's approval and subject to the Monitor's supervision. The Closed Mills had been identified in connection with the Petitioners' restructuring business plan as assets that were not part of a larger strategic plan and therefore suitable for sale through the Chapter 11 and CCAA Proceedings.

15. Bid packages were prepared outlining the conditions of the sale, the deadline to submit bids and a summary of the available assets which at the time included the Mackenzie pulp and paper mill in addition to the Closed Mills (the "**Phase I Assets**").

16. On or about October 2, 2009, the Monitor distributed the bid packages to forty nine (49) parties which the Company thought may have an interest in purchasing the assets, including industry players, demolition companies and auctioneers. During the course of the Phase I Marketing Process, the Company was contacted by another eleven (11) parties expressing interest in one or more of the assets, bringing the total number of potential purchasers contacted during the Phase I Marketing Process to sixty (60) (collectively, the "**Initial Parties**").

17. Twelve (12) of the Initial Parties executed confidentiality agreements and were invited to visit the sites and tour the facilities to conduct their own assessment of the Phase I Assets. The Petitioners responded to requests for additional due diligence materials and made management available to answer questions about the assets. The Monitor initially requested potential buyers to submit bids by November 2, 2009, a deadline later extended to November 9, 2009.

18. By November 16, 2009, the Monitor had received six offers for the Phase I Assets. The offers, including one from AIM, ranged in value (based on a varying combination of upfront purchase price and consideration from future sales of the Paper Machines) from a negative cash out-lay for the Petitioners to as much as US$47,000,000, assuming that the maximum estimated proceeds on the sale of the paper machines was achieved.

19. The Petitioners along with the Monitor, analyzed the offers based on various criteria, including a buyer's willingness to assume environmental and remediation costs at the Closed Mills, its ability to absorb such costs over the long run, its up-front cash outlay, and its financial wherewithal to close a sale.

20. Based on these factors and the Petitioners' diligence on the bidders, the Petitioners, with the Monitor's review and approval, selected the best bid based on the information then available to Management and proceeded to negotiate a letter of intent (the "**LOI**") with the bidder (the "**Initial Bidder**"). Unfortunately however, notwithstanding the Petitioners' best efforts to consummate the sale with the Initial Bidder - including negotiating a purchase sale agreement that was never executed - the Initial Bidder was unable to consummate the sale in accordance with the agreed upon timetable.

2. *Phase II Marketing Process*

21. The Petitioners had originally included the Mackenzie pulp and paper mill in the Phase I Assets. For a variety of reasons, however, including the integrated nature of the Mackenzie site and the complexity of selling the Mackenzie sawmill assets and land to one party while at the same time negotiating the sale of the on-site pulp and paper mill assets to another party, the Petitioners decided to remove the Mackenzie pulp and paper mill from the Phase I Assets in order to include it in a parallel and pending sale of the Mackenzie sawmill, real property and related assets.

22. After removing the Mackenzie pulp and paper mill assets from the Phase I Assets, the Petitioners decided to terminate discussions with the Initial Bidder and to re-solicit bids on the remaining assets - *i.e.*, the Closed Mills. Given the limited interest generated by the Phase I Marketing Process, the fact that three of the six bids submitted in November 2009 were commercially unreasonable, and the Petitioners' estimated timeline to emerge from the CCAA Proceedings, the revised bids on the Closed Mills (the "**Phase II Bids**") were solicited only from the three parties who submitted the highest bids during the Phase I Marketing Process (collectively, the "**Phase I Finalists**"). The Monitor approved of the Petitioners' decision.

23. In February 2010, the Monitor distributed revised bid packages prepared by the Petitioners (including a draft purchase and sale agreement substantially in the form of the Purchase Agreement) to the Phase I Finalists with a request to submit Phase II Bids on or before March 1, 2010. To accommodate the bidders' request, the Petitioners extended the Phase II Bid deadline to March 3, 2010. The Petitioners and the Monitor received responsive bids from each of the Phase I Finalists, including one from AIM, a revised bid from the Initial Bidder, and another bid from another Interested Party (the "**Third Bidder**"). Based on their prior dealings with the Initial Bidder and discussions with the Initial Bidder in respect of its Phase II bid, the Petitioners determined that the Initial Bidder's revised offer was not likely to lead to a consummated sale.

24. Management and the Monitor contacted AIM and the Third Bidder (the "**Phase II Finalists**") to discuss: (a) the various terms and conditions of the respective bids; (b) each party's ability to improve the up-front cash portion of their bids; (c) the parties' willingness to include a sharing component related to equipment sales; (d) each party's plans and ability to mitigate the Company's potential environmental concerns; (e) remaining due diligence requirements; (f) financing conditions, if any; and (g) to request a proof of financial ability to close the transaction.

25. On the basis of further discussions with the Phase II Finalists to clarify their offers and the proposed up-front cash down at closing, the Petitioners, with the Monitor's approval, determined that AIM had submitted the best offer. Accordingly, the Petitioners started negotiating the Purchase Agreement with AIM. AIM is a well-known demolition company and established business in Quebec. The Petitioners, with the Monitor's agreement, were satisfied that AIM was in a position to close the Sale quickly and was motivated to do so. AIM's offer was not contingent on obtaining financing, and in fact, AIM provided the Vendors with a bank-issued proof of funds letter.

26. Sometime after the Petitioners selected AIM's bid as the best offer for the Closed Mills, and after expiration of the Phase II bid deadline, the Third Bidder submitted an unsolicited revised bid. The Petitioners and the Monitor reached out to the Third Bidder to discuss its revised offer. In the end, however, the Petitioners determined, with the Monitor's approval, that AIM's bid remained the best offer. Notably, AIM had demonstrated its ability to fund the acquisition of the Purchased Assets, and among other things, had agreed to assume all environmental liabilities associated with the Closed Mills. Accordingly, the Vendors, with the Monitor's review and approval, executed the Purchase Agreement with AIM.

E. GROUNDS FOR THIS MOTION

27. The Closed Mills were marketed by the Petitioners as a bundled group to maximize their value, minimize the Petitioners' potential future environmental liability associated with the sites and ensure its ability to dispose of all four sites through the Chapter 11 and CCAA Proceedings.

28. The proposed Sale is the product of good faith, arm's length negotiations between the Vendors and AIM. The Petitioners do not share any common ownership with AIM and are not otherwise affiliated with AIM, its officers or directors.

29. The Petitioners believe that the marketing and sale process was fair and reasonable. While the Petitioners did receive other offers that were on their faces higher in amount than AIM's offer, none of the other bidders satisfactorily demonstrated an ability to consummate a sale within the timeframe and on financial terms that were acceptable to the Petitioners.

30. The Petitioners submit that the sale of the Purchased Assets as contemplated in the Purchase Agreement is in the best interest of and will generally benefit all of their stakeholders, in that, *inter alia*:

    (a) the sale of the Purchased Assets forms part of Petitioners' continuing objective and strategy to elaborate a restructuring plan, which will allow them (or any successor thereof) to be profitable over time. Such plan will include the following previously announced measures: (a) disposing of non-strategic assets, (b) reducing indebtedness, and (c) reducing financial costs;

(b) the Purchased Assets are not required to continue the operations of the Petitioners, nor are they vital for the Petitioners to successfully restructure their business;

(c) each of the Closed Mills faces potential environmental liabilities and other clean-up costs. The Petitioners also incur monthly expenses to maintain the sites in their closed state, including tax, utility, insurance and security costs;

(d) the proposed transaction involving the Purchased Assets is on attractive terms in the current market and will provide the Petitioners with additional liquidity. In addition to realizing cash proceeds from the Closed Mills and additional proceeds from the sales of the Paper Machines, the projected Sale will also relieve the Vendors of potentially significant environmental liability; and

(e) the Petitioners' creditors will not suffer any prejudice as a result of the proposed sale of the Purchased Assets and the issuance of the proposed vesting orders since the proceeds of the Sale will be remitted to the Monitor in trust and shall stand in the place and stead of the Purchased Assets. As a result, all liens, charges and encumbrances on the Purchased Assets will attach to such proceeds with the same priority as they had with respect to the Purchased Assets immediately prior to the sale.

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

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

WHEREFORE, MAY THIS COURT:

1. **GRANT** this *<u>Amended</u> Motion for the Issuance of an Order Authorizing the Sale of Certain Assets of the Petitioners (Four Closed Mills)* (the "**Motion**").

2. **EXEMPT**, if applicable, the Petitioners from having to serve this Motion and from any notice or delay of presentation.

3. **ISSUE** vesting orders substantially in the form of the draft orders communicated as <u>**Exhibit R-3(a)**</u> and <u>**Exhibit R-4(a)**</u> in support of the Motion;

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

Montréal, <u>April 22</u>, 2010

Stikeman Elliott LLP

Stikeman Elliott LLP
Attorneys for the Petitioners

AFFIDAVIT

I, the undersigned, Luc Lachapelle, 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 Business Support of AbitibiBowater Inc.

2. All the facts alleged in the *Amended Motion of the Issuance of an Order Authorizing the Sale of Certain Assets of the Petitioners (Four Closed Mills)* are true.

AND I HAVE SIGNED

LUC LACHAPELLE

Solemnly declared before me at Montréal, on the 22st day of April, 2010

Commissioner for oaths

COMMISSAIRE À L'ASSERMENTATION EX OFFICIO
MÉLANIE ALLAIRE
avocate
202544-2
PROVINCE DE QUÉBEC

NOTICE OF PRESENTATION

TO : SERVICE LIST

TAKE NOTICE that the *Amended Motion for the Issuance of an Order Authorizing the Sale of Certain Assets of the Petitioners (Four Closed Mills)* will be presented for adjudication before the Honourable Judge Clément Gascon of the Superior Court, sitting in practice in and for the District of Montréal, in the **Montréal Court House, 1 Notre-Dame Street East**, on **April 26, 2010** at **9:30 a.m.**, in a Room to be announced to the Service List.

DO GOVERN YOURSELVES ACCORDINGLY.

Montréal, April 22, 2010

Stikeman Elliott LLP

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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- and -

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U.S. BANK NATIONAL ASSOCIATION *& al*
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- and -

THE LAND REGISTRAR FOR THE LAND REGISTRY OFFICE FOR THE REGISTRATION DIVISION OF MONTMORENCY *& al*
Mis-en-cause

BS0350 **n/dos.:** 041053-1170

AMENDED MOTION FOR THE ISSUANCE OF AN ORDER AUTHORIZING THE SALE OF CERTAIN ASSETS OF THE PETITIONERS (Four closed Mills)
(Section 11 of the Companies' Creditors Arrangement Act ("CCAA"))

ORIGINAL

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