

CANADA

SUPERIOR COURT

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

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

No. : 500-11-036133-094

**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

<u>AMENDED</u> MOTION FOR A DECLARATORY ORDER IN RESPECT OF LATE CLAIMS, INACTIVE EMPLOYEE LATE CLAIMS AND SCHEDULED CLAIMS

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 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 and affiliates 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.
3. On April 16, 2009, AbitibiBowater Inc. ("**ABH**"), Bowater Inc. and certain of their U.S. and Canadian subsidiaries (the "**U.S. Debtors**") 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. and five other Bowater Petitioners filed for court protection in both the CCAA Proceedings and the Chapter 11 Proceedings (the "**Cross-Border Petitioners**")⁵.

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., Canoxel 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.

⁵ The Cross-Border Petitioners are Bowater Canadian Holdings Inc., Bowater Canada Finance Corporation, Bowater Canadian Limited, AbitibiBowater Canada Inc., BCFPI, Bowater LaHave Corporation and Bowater Maritimes Inc.

B. BACKGROUND

5. On August 26, 2009 this Court issued an Order (the "**First Claims Procedure Order**") setting out the procedures for the filing of certain claims against the Petitioners (the "**Claims Process**").
6. Pursuant to the First Claims Procedure Order, November 13, 2009 was established as the claims bar date (the "**Claims Bar Date**") with respect to the filing of claims with the Monitor, with the exception of creditors holding certain specifically excluded claims.
7. By order dated September 3, 2009, the U.S. Court entered an order establishing the same Claims Bar Date in the Chapter 11 Proceedings (the "**U.S. Claims Order**").
8. On January 18, 2010, this Court approved a process for the review and determination of claims filed against the Petitioners, the Partnerships and the Cross-Border Petitioners, as well as the Cross-Border Claims Protocol which specifically addresses certain cross-border issues with respect to claims filed against the Cross-Border Petitioners (the "**Second Claims Procedure Order**").
9. On February 23, 2010, this Court issued an Order (the "**Third Claims Procedure Order**" and together with the First Claims Procedure Order and the Second Claims Procedure Order, the "**Claims Procedure Orders**") setting out the procedures for the filing of certain claims (primarily claims of employees who were active as of April 17, 2009 and restructuring claims) against the Petitioners and setting April 7, 2010 as the bar date for certain claims that were excluded from the First Claims Procedure Order (the "**Second Claims Bar Date**" and together with the First Claims Bar Date, the "**Claims Bar Dates**").
10. By Order dated February 18, 2010, the U.S. Court issued an order establishing the same Second Claims Bar Date in the Chapter 11 Proceedings.
11. As reported by the Monitor in the Forty-Fourth of the Monitor dated June 7, 2010 (the "**Forty-Fourth Report**"), the claims review, determination and reconciliation process is ongoing.

C. ORDERS SOUGHT

12. The Petitioners respectfully seek the following orders from this Court:
 - (i) an order declaring that notwithstanding the Claims Bar Dates and the Claims Procedure Orders, the claims which fall in the categories of (a) Late Claims (b) Inactive Employee Late Claims [...] (c) Scheduled Claims and (d) Misfiled Claims (all capitalized terms as defined below) shall be deemed to be timely filed claims for the purposes of the Claims Process;
 - (ii) an order authorizing the Monitor to determine Late Claims, [...] Inactive Employee Claims and Misfiled Claims in accordance with the Claims

Procedure Orders; and

- (iii) an order authorizing the Monitor to take any and all steps which the Monitor, in its sole discretion and in consultation with the Petitioners, may deem necessary in order to give effect to the above orders;

the whole as set forth in the conclusions to this motion.

D. GROUND FOR THIS MOTION

13. The Petitioners submit that notwithstanding the Claims Bar Dates, the filing of the Late Claims, Inactive Employee Late Claims, [...] Scheduled Claims and Misfiled Claims should be approved by this Court as being fair and reasonable.

1. Late Claims & Inactive Employee Late Claims

14. The Monitor reported in the Forty-Fourth Report that it had received 109 claims subsequent to the Claims Bar Dates (the "**Late Claims**") divided into two categories: Late Trade Claims and Late Employee Claims. Both categories were summarized by entity in the Monitor's Forty-Fourth Report, at Appendices "H" and "I".
15. The above total does not include any late claims filed by former employees who were not employed as of April 16, 2009 (the "**Inactive Employees**"). As reported in the Twenty-Seventh Report of the Monitor dated December 9, 2009, pre-populated proof of claim forms were mailed out to the Inactive Employees who had not filed a claim by the First Claims Bar Date advising them to complete and submit their claim by January 15, 2010. The Monitor has reported receiving 289 Inactive Employees claims for a total of CDN\$6 million (the "**Inactive Employee Late Claims**").
16. The Petitioners submit that the filing of the Late Claims and the Inactive Employee Late Claims in the Claims Process should be authorized provided such claims are subject to the Second Claims Procedure Order. Indeed, as reported by the Monitor:
- (a) the claimants in respect of the Late Claims and the Inactive Employee Late Claims appear to have acted in good faith and did not "lie in the weeds" with an intent to gain an advantage over the other creditors; and
 - (b) the Petitioners are not aware of any prejudice that could be suffered by other creditors as a result of the late filing of the Late Claims and the Inactive Employee Late Claims.
17. The Monitor has informed the Petitioners that it will be issuing a Report containing an update on Late Claims and Inactive Employee Late Claims prior to the hearing on the present motion.

2. Scheduled Claims

18. Pursuant to the U.S. Claims Order, subject to certain exceptions, any person or entity asserting a claim against a U.S. Debtor in the Chapter 11 Proceedings was required

to file a proof of claim with Epiq Bankruptcy Solutions LLC ("**Epiq**"), the U.S. claims agent. However, any person or entity asserting a claim against a Cross-Border Petitioner in the Chapter 11 Proceedings was required to file a proof of claim with the Monitor. The U.S. Claims Order further provided that proofs of claim timely filed against any Cross-Border Petitioner with the Monitor shall be deemed timely filed against the applicable Cross-Border Petitioner(s) in the Chapter 11 Proceedings.

19. The Claims Procedure Orders also provided that a proof of claim timely filed against a Cross-Border Petitioner in accordance with the U.S. Claims Order is deemed to be a proof of claim that has been timely delivered to the Monitor in the CCAA Proceedings in accordance with the Claims Procedure Orders.
20. Pursuant to the U.S. Bankruptcy Code, each U.S. Debtor is required to publish a list of their creditors and the amount owed to each creditor (the "**Scheduled Claims**"). The amount owed to a creditor may be categorized as a disputed, contingent or unliquidated claim and, in such case, no amount may be listed. Pursuant to the U.S. claims process, if a Scheduled Claim is not listed as disputed, contingent or unliquidated and the creditor does not contest the amount listed on the schedule, the creditor is not required to file a proof of claim in the Chapter 11 Proceedings and the claim will be deemed allowed in the Chapter 11 Proceedings for the scheduled amount.
21. Under the U.S. Bankruptcy Code, the U.S. Debtors can file amended schedules to correct any errors to the Scheduled Claims as initially listed at the commencement of the Chapter 11 Proceedings. In the event a creditor disagrees with the amount so amended, it is able to file a proof of claim within a prescribed time period to dispute the amended amount and such claim will be dealt with in the U.S. claims process (this process is referred to herein as the "**Amended Schedule Process**").
22. Under the Claims Procedure Orders, creditors of the Cross-Border Petitioners were required to file a proof of claim with the Monitor in accordance with the Claims Process and Scheduled Claims were not permitted to be automatically accepted for the purposes of the CCAA Proceedings. However, certain creditors of the Cross-Border Petitioners with Scheduled Claims did not file a proof of claim with the Monitor and, under the Claims Procedure Orders, unless relief is given, such claims are forever barred.
23. As a result, when the Cross-Border Petitioners' claims are finally determined pursuant to the Claims Determination Order, the total claims against the Cross-Border Petitioners under the Chapter 11 Proceedings will be greater than the total claims against the Cross-Border Petitioners in the CCAA Proceedings (the "**Claims Delta**").
24. In order to rectify this difference and to ensure that the Claims Process is fair to all of the creditors, the Monitor recommended in the Forty-Fourth Report that the Scheduled Claims identified in the Claims Delta be deemed to be filed and accepted claims for the purposes of the CCAA Proceedings, subject to any amendments by the Cross-Border Petitioners of the Scheduled Claims as a result of the Amended

Scheduled Process.

25. The Petitioners submit that this procedure will be administratively less burdensome upon the estates as it will eliminate the need to continually reconcile the claims register in the Chapter 11 Proceedings with the Monitor's claims database for the Cross-Border Petitioners for purpose of voting on the CCAA Plan, making distributions under the Plans easier and also facilitating the Rights Offering (each capitalized term as defined in the Forty-Fourth Report).
26. In the interest of ensuring that the Claims Process is fair, the Petitioners, with the assistance of the Monitor and their counsel, have developed a claims voting protocol with respect to the Cross-Border Petitioners to facilitate a simplified voting process under the Plans. If there are differences in the eligibility of creditors eligible for voting purposes under each of the CCAA Plan and the U.S. Plan (each as defined herein), the voting process will be more complicated and cumbersome.
27. The Monitor has informed the Petitioners that the report which it plans to file prior to the hearing on the present motion will contain, in addition to an update on the filing of Late Claims and Inactive Employee Late Claims, a review of the Scheduled Claims in connection with the Cross-Border Petitioners.

3. Misfiled Claims

- 27.1 The Petitioners and the Monitor have identified numerous proofs of claim filed with Epiq pursuant to the U.S. Claims Order that should have been filed against the Petitioners pursuant to the Claims Procedure Order in the CCAA Proceedings (the "Misfiled Claims").
- 27.2 While the Claims Procedure Orders provide that claims filed with the Monitor against the Cross-Border Petitioners are deemed to be timely filed proofs of claim in the Chapter 11 Proceedings, the Claims Procedure Orders do not provide that proofs of claim filed in the Chapter 11 Proceedings against the Petitioners (including the Cross-Border Petitioners) or the Partnerships are deemed to be timely filed in the CCAA Proceedings.
- 27.3 The Monitor, in consultation with the Petitioners and U.S. Debtors and their respective legal counsel, has drafted a letter to be sent to the creditors who filed Misfiled Claims. A copy of said letter was attached as Appendix "I" to the Forty-Fourth Report. The purpose of the letter is to advise each creditor that it has filed a Misfiled Claim and to encourage it to voluntarily withdraw their claim in the Chapter 11 Proceedings and to authorize the transfer of the Misfiled Claim to the CCAA Proceedings.
- 27.4 The Misfiled Claim will be considered a late claim and the Petitioners recommend to this Court that such claims be allowed in the CCAA Proceedings. If so allowed, the Misfiled Claim will then be subject to the Claims Determination Order.
- 27.5 The purpose of the letter is to present a fair solution to each creditor involved while

attempting to resolve claims efficiently in the Chapter 11 Proceedings in accordance with the U.S. claims process. In the event that the creditor does not voluntarily withdraw its Misfiled Claim, the U.S. Debtors will file the necessary objections to disallow the Misfiled Claim.

27.6 The Monitor has informed the Petitioners that it will report further to this Court on its progress in resolving issues associated with the Misfiled Claims in due course.

E. CONCLUSION

28. The Petitioners submit that provisional execution of this order notwithstanding appeal appears warranted in the circumstances, given the Petitioners' timeline towards emergence from the present proceedings and the importance of resolving claims process-related issues prior to said emergence.

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

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

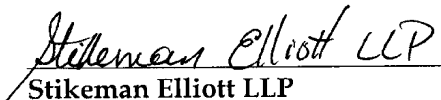
WHEREFORE, MAY THIS COURT:

- [1] **GRANT** this *Amended Motion for a Declaratory Order in respect of Late Claims, Inactive Employee Late Claims and Scheduled Claims* (the "**Motion**").
- [2] **EXEMPT**, if applicable, the Petitioners from having to serve this Motion and from any notice or delay of presentation.
- [3] **DECLARE** that notwithstanding the orders of this Court dated August 26, 2009, January 18, 2010 and February 23, 2010 (the "**Claims Procedure Orders**") and the claims bar dates established therein (the "**Claims Bar Dates**"), the claims filed against the Petitioners with Ernst & Young Inc. (the "**Monitor**") that fall within the following categories shall be deemed, as of the date of this Order, to be timely filed with the Monitor for purposes of the Petitioners' claim process:
 - (i) trade claims and employee claims which were filed after the Claims Bar Dates (the "**Late Claims**") as summarized in the Forty-Fourth Report of the Monitor dated June 7, 2010 (the "**Forty-Fourth Report**"), said summary as may be updated from time to time by the Monitor upon notice to the Service List;
 - (ii) claims by former employees who were not employed as of April 16, 2009 and which were filed after the Claims Bar Dates ("**Inactive Employee Late Claims**") as summarized in the Forty-Fourth Report, said summary as may be updated from time to time by the Monitor upon notice to the Service List; and

- (iii) claims by creditors of the Cross-Border Petitioners which were not filed in the present proceedings but which are nevertheless scheduled claims (as said schedules may be amended from time to time, the "**Scheduled Claims**") in the context of the Petitioners' proceedings in the United States Bankruptcy Court under Chapter 11 of the *U.S. Bankruptcy Code*;
 - (iv) claims filed by creditors with Epiq pursuant to the Petitioners' claims process in the United States that should have been filed against the Petitioners pursuant to the Claims Procedure Orders ("**Misfiled Claims**") as described in the Forty-Fourth Report or as may be updated from time to time by the Monitor upon notice to the Service List and without further order of this Court.
- [4] **AUTHORIZE** the Monitor to proceed with the review and determination of Late Claims, [...] Inactive Employee Late Claims and Misfiled Claims in accordance with the provisions of the order of this Court dated January 18, 2010.
- [5] **AUTHORIZE** the Monitor to take any and all steps which the Monitor, in its sole discretion and in consultation with the Petitioners, may deem necessary in order to give effect to the above orders.
- [6] **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 15, 2010


Stikeman Elliott LLP
Attorneys for the Petitioners

AFFIDAVIT

I, the undersigned, Bruce Robertson, having my principal place of business at 39, Winford Dr., Toronto, Ontario, M3C 3K5, solemnly declare the following:

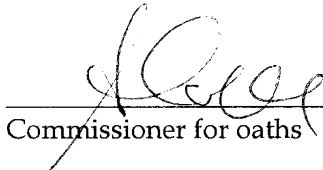
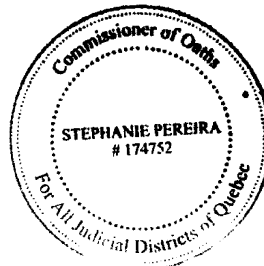
1. I am the Chief Restructuring Officer of AbitibiBowater Inc.
2. All the facts alleged in the Amended Motion for a Declaratory Order in respect of Late Claims, Inactive Employee Late Claims and Scheduled Claims are true.

AND I HAVE SIGNED



BRUCE ROBERTSON

Solemnly declared before me at Montréal,
on the 15th day of July, 2010


Commissioner for oaths

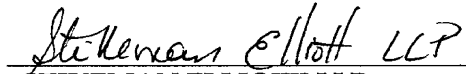
NOTICE OF PRESENTATION

TO: SERVICE LIST

TAKE NOTICE that the *Amended Motion for a Declaratory Order in respect of Late Claims, Inactive Employee Late Claims and Scheduled Claims* 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 **July 21, 2010** at **9:00 a.m.** in **Room 15.09**.

DO GOVERN YOURSELVES ACCORDINGLY.

Montréal, July 15, 2010


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

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PROVINCE OF QUEBEC
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BS0350 n/dos.: 041053-1170

AMENDED MOTION FOR A DECLARATORY
ORDER IN RESPECT OF LATE CLAIMS, INACTIVE
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