CANADA
PROVINCE OF **QUEBEC**
DISTRICT OF **MONTREAL**

File No: **500-11-036133-094**

SUPERIOR COURT
Commercial Division
(sitting as the court designated pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended)

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

ABITIBIBOWATER INC. a legal person incorporated under the laws of the State of Delaware, having its principal executive offices at 1155 Metcalfe Street, in the City and District of Montréal, Province of Quebec, H3B 5H2;

- and -
ABITIBI-CONSOLIDATED INC., a legal person incorporated under the laws of Canada, having its principal executive offices at 1155 Metcalfe Street, in the City and District of Montréal, Province of Quebec, H3B 5H2;

- and -
BOWATER CANADIAN HOLDINGS INC., a legal person incorporated under the laws of the Province of Nova Scotia, having its principal executive offices at 1155 Metcalfe Street, in the City and District of Montréal, Province of Quebec, H3B 5H2;

- and -
the other Petitioners listed on Appendices "A", "B" and "C"; **Petitioners**

Petitioners
- and -
ERNST & YOUNG INC., a legal person under the laws of Canada, having a place of business at 800 René-Lévesque Blvd. West, Suite 1900, in the City and District of Montréal, Province of Quebec, H3B 1X0; **Monitor**

OUTLINE OF ARGUMENT OF THE AD HOC COMMITTEE OF UNSECURED NOTEHOLDERS OF ABITIBIBOWATER INC. AND CERTAIN OF ITS AFFILIATES

(Petitioners' Amended Second Motion for the Sale of Non-Core Properties)

1. The Ad Hoc Committee of Unsecured Noteholders of Abitibibowater Inc. and certain of its affiliates (the "Noteholders") support the relief sought by the Petitioners concerning the sale of non-core properties to the receiver appointed by Order of this Honourable Court dated July 21, 2010 (the "Receiver").

2. The Noteholders submit that the process proposed by the Petitioners is consistent with the spirit and words of the *Companies' Creditors Arrangement Act* (the "CCAA"). It is consistent and appropriate to take steps to crystallize, recognize and compromise known future unliquidated environmental liabilities of the Petitioners. To fail to do so, as sought by the various provincial governments who contest this motion (the "Provinces"), is to seek an unfair preference for one stakeholder interest at the expense of all other existing stakeholders.

3. Abitibi is insolvent. It cannot pay all of its known liabilities including its environmental liabilities. While some provincial laws promote the principle that a "polluter pays", the law equally promotes the principle that a "debtor pays". It is a fundamental tenet of the laws of Quebec and all provinces of Canada, that those who borrow money must repay their debts in accordance with their terms. The Petitioners are also legally required to pay their known liabilities to trade creditors, employees, pensioners, taxation authorities and to compensate those whose contracts have been disclaimed, among a host of other stakeholders. However, the Petitioners are unable to fulfill their legal obligations. They cannot pay their liabilities – whether incurred as polluter or debtor or tax payer or employer – they do not have sufficient assets to pay.

4. Rather than going bankrupt however, the CCAA provides the possibility for the Petitioners to restructure their affairs. It is the law of Canada that in order to avoid the devastating consequences of bankruptcy, the Petitioners can compromise their liabilities

with secured and unsecured creditors. These liabilities include contingent liabilities that are known but unliquidated at the date of commencement of the CCAA process.

CCAA, sections 2(1), 5 and 6

5. The Provinces argue that they have not advanced claims against the Petitioners so there is nothing to compromise. They ignore that the Claims Procedure Orders pronounced by this Honourable Court in these proceedings were designed to identify all claims to share in the Petitioners' assets and bar those that do not come forward. The bar prevents creditors from avoiding a compromise of their known future unliquidated claims simply by refusing to advance a claim in the CCAA process.

6. There can be no doubt that Parliament intends for known future unliquidated claims related to environment remediation to be included with the CCAA process. Subsection 11.8(9) of the CCAA provides expressly for this outcome:

> Section 11.8(9) – Claim for clean-up costs – A claim against a debtor company for costs of remedying any environmental condition or environmental damage affecting real property of the company ***shall be a claim under this Act***, whether the condition arose or the damage occurred before or after the date on which proceedings under this Act were commenced. (emphasis added)

7. Moreover, subsection 11.8(8) of the CCAA provides a priority for certain environmental remediation claims. It is clear therefore that Parliament intended to include known environmental claims in the CCAA process and to prescribe the outcome for such claims – whether the environmental condition arose or the damage was incurred in the past or in the future. Case law relating to other types of contingent or unliquidated claims is of no assistance in determining the intention of Parliament when Parliament has made its intention clear by including express words in the statute.

8. Although the facts underlying the Provinces' claims differ from the facts in the prior matter involving Newfoundland and Labrador, what is the same is that like Newfoundland and Labrador, the Provinces seek to maximize Abitibi's liability to pay money to correct known environmental conditions. The Provinces are not seeking to regulate levels of future pollution activity at the various properties. What the Provinces

seek is to increase the amount of money that they can obtain from the Petitioners in the future for existing environmental damage or future damage to be caused by existing conditions. This is the very thing that Parliament has determined is to be a claim in these proceedings in subsection 11.8(9) of the CCAA.

9. Ontario argues clearly and unabashedly in paragraphs 18 to 20 of its Contestation that in its view, subsection 11.8 of the CCAA provides it with insufficient realization and would undermine the polluter pays principle. The Noteholders would say that the priority provided in that section in favour of holders of environment claims undermines the principles of *pari passu* sharing among creditors. But neither Ontario's nor the Noteholders' assessment of the utility of the statute nor their reasons for wanting more money governs the interpretation of the CCAA. Parliament has exercised its undoubted jurisdiction to legislate for bankruptcy and insolvency and has dictated how this type of known future unliquidated liability is to be treated in CCAA proceedings. It is Parliament's intention that governs the interpretation of the CCAA and not the value-maximizing goals of competing stakeholders.

10. The Provinces are competing for the same scarce dollars as all creditors - this is why the CCAA applies. What is at stake here is the core insolvency issue: how does a debtor distribute limited assets? The Provinces would like to be excused from participating in the CCAA compromise process and to be able to make claims in future against the restructured Petitioners. Every stakeholder wishes that the Petitioners would pay them their full amounts due. But in a restructuring to defer is to prefer. Pre-existing claims cannot be brought against the restructured debtor as that is a preference that violates the *pari passu* sharing principle that is the basis of the national insolvency regime under the *Bankruptcy and Insolvency Act* and the CCAA. That is why the Claims Procedure Orders require claims to be identified or barred. The Provinces did not appeal the Claims Procedure Orders and are bound by them. If they fail to make claims for known, future unliquidated liabilities, then, like any other claimant who does not observe the Claims Procedure Orders, their claims are barred.

> *Husky Oil Operations Ltd. v. Minister of National Revenue*, [1995] 3 S.C.R. 453, at paras. 8 and 9; See Petitioners' Book of Authorities

11. The proposed sales to the Receiver are prudent and reasonable measures to enhance the business of the Petitioners for emergence from CCAA. Like disclaiming unprofitable contracts and closing under-performing divisions, a debtor selling unprofitable properties is a recognized, prudent and reasonable step in restructuring an insolvent business. The Noteholders support during the Petitioners' lengthy CCAA process has been predicated upon their ongoing steps to restructure their balance sheet while treating stakeholders fairly, equitably and rateably. The Noteholders have repeatedly opposed efforts by individuals or groups of stakeholders to take steps to prefer themselves and avoid *pari passu* sharing.

12. Environmentally damaged properties in Newfoundland and Quebec have already been placed with the Receiver in these proceedings. The evidence is uncontested that the properties sought to be transferred to the Receiver have existing environmental damage albeit remediation costs for some remain to be liquidated. The CCAA is to be interpreted in a manner so as to facilitate successful restructuring. Recognizing the *pari passu* sharing principle and avoiding manoeuvres designed to prefer one interest over all other stakeholders facilitates restructurings. The Court should interpret the statute to assist CCAA debtors to restructure free of pre-existing liabilities and free of preferences that tilt the playing field among stakeholders.

> *Metcalfe & Mansfield Alternative Investments II Corp., (Re)* (2008), 92 O.R. (3d) 513 (C.A.) at paras. 50, 51 and 95; See Petitioners' Book of Authorities

13. The Noteholders otherwise adopt and support the arguments advanced by the Petitioners.

14. **WHEREFORE, MAY IT PLEASE THIS COURT TO:**

15. **GRANT** the Petitioners' Second Amended Motion for the Sale of Non-Core Properties; and

16. **DISMISS** the Contestations of the Provinces of New Brunswick, British Columbia and Ontario.

Toronto, September 3, 2010

Goodmans LLP

Goodmans LLP per F.L. Myers
Co-Counsel for the Ad Hoc Committee of Unsecured Noteholders of Abitibibowater Inc. and certain of its Affiliates.
Toronto, September 3, 2010

Lavery de Billy SENCRL/LLP

Lavery, de Billy, S.E.N.C.R.L./L.L.P. per FM
Co-Counsel for the Ad Hoc Committee of Unsecured Noteholders of Abitibibowater Inc. and certain of its Affiliates.
Montreal, September 3, 2010.

\5882954.3

APPENDIX "A"

ABITIBI PETITIONERS

1. Abitibi-Consolidated Company of Canada
2. Abitibi-Consolidated Inc.
3. 3224112 Nova Scotia Limited
4. Marketing Donohue Inc.
5. Abitibi-Consolidated Canadian Office Products Holding Inc.
6. 3834328 Canada Inc.
7. 6169678 Canada Inc.
8. 4042140 Canada Inc.
9. Donohue Recycling Inc.
10. 1508756 Ontario Inc.
11. 3217925 Nova Scotia Company
12. La Tuque Forest Products Inc.
13. Abitibi-Consolidated Nova Scotia Incorporated
14. Saguenay Forest Products Inc.
15. Terra Nova Explorations Ltd.
16. The Jonquière Pulp Company
17. The International Bridge and Terminal Company
18. Scramble Mining Ltd.
19. 9150-3383 Quebec Inc.
20. Abitibi-Consolidated (U.K.) Inc.

APPENDIX "B"

BOWATER PETITIONERS

1. Bowater Canada Finance Corporation
2. Bowater Canadian Limited
3. Bowater Canadian Holdings. Inc.
4. 3231378 Nova Scotia Company
5. AbitibiBowater Canada Inc.
6. Bowater Canada Treasury Corporation
7. Bowater Canadian Forest Products Inc.
8. Bowater Shelburne Corporation
9. Bowater LaHave Corporation
10. St-Maurice River Drive Company Limited
11. Bowater Treated Wood Inc.
12. Canexel Hardboard Inc.
13. 9068-9050 Quebec Inc.
14. Alliance Forest Products Inc. (2001)
15. Bowater Belledune Sawmill Inc.
16. Bowater Maritimes Inc.
17. Bowater Mitis Inc.
18. Bowater Guérette Inc.
19. Bowater Couturier Inc.

APPENDIX "C"

18.6 PETITIONERS

1. AbitibiBowater US Holding 1 Corp.
2. AbitibiBowater Inc.
3. Bowater Ventures Inc.
4. Bowater Incorporated
5. Bowater Nuway Inc.
6. Bowater Nuway Mid-States Inc.
7. Catawba Property Holdings LLC
8. Bowater Finance Company Inc.
9. Bowater South American Holdings Incorporated
10. Bowater America Inc.
11. Lake Superior Forest Products Inc.
12. Bowater Newsprint South LLC
13. Bowater Newsprint South Operations LLC
14. Bowater Finance II, LLC
15. Bowater Alabama LLC
16. Coosa Pines Golf Club Holdings, LLC

IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF:
ABITIBIBOWATER INC. et al (Petitioner) - and – ERNST & YOUNG INC. (Monitor)

CANADA PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
Commercial Division
(sitting as the court designated pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as amended)

File No. **500-11-036133-094**

OUTLINE OF ARGUMENT OF THE AD HOC COMMITTEE OF UNSECURED NOTEHOLDERS OF ABITIBI
(Applicants' Motion for Sale of Non-Core Properties)

Goodmans LLP
Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, Canada M5H 2S7

Fred Myers LSUC#: 26301A
Tel: 416.597.5923
Fax: 416.979.1234

Lawyers for the Ad Hoc Committee of Unsecured Noteholders of Abitibi
\5883400.1

\5883400.1