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/Respondents

and

ERNST & YOUNG INC.,

Monitor/Petitioner

MOTION OF THE MONITOR FOR A DECLARATORY ORDER IN RESPECT OF ADDITIONAL LATE CLAIMS AND LATE ELECTIONS

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 MONITOR RESPECTFULLY SUBMITS 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]

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[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.

[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

(i) Late Claims

5. On August 26, 2009 this Honourable Court issued an Order (the "**Claims Order**") setting out the procedures for the filing of certain claims against the Petitioners (the "**Claims Process**").

6. Pursuant to a further Order of this Honourable Court, the Claims Process was supplemented and modified, including the issuance of an Order approving the methodology applicable to the review and determination of claims (collectively with the Claims Order, referred to herein as the "**Claims Procedure Orders**").

7. Pursuant to the Claims Procedure Orders, 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.

8. On February 23, 2010, this Honourable Court issued an Order setting out the procedures for 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 initial Claims Procedure Order, subject to a 30-day rolling bar date for restructuring claims (the "**Second Claims Bar Date**"). The "Claims Bar Date" and the "Second Claims Bar Date" are collectively referred to herein as the "**Claims Bar Dates**".

9. Pursuant to an Order dated July 21, 2010 (the "**Late Claims Order**"), this Honourable Court declared that, notwithstanding the Claims Procedure Orders and the Claims Bar Dates established therein, the claims filed against the Petitioners with the Monitor that were within certain categories were deemed, as of the date of that Order, to be timely filed with the Monitor for the purpose of the Claim Process. Those categories of Claims included: (a) trade claims and employee claims which were filed after the Claims Bar Date and (b) the claims by former employees who were not employed as of April 16, 2009 and which were filed after the Claims Bar Dates, each as summarized in the Forty-Fourth Report of the Monitor dated June 7, 2010 (the "**Forty-Fourth Report**").

10. Subsequent to the issuance of the Late Claims Order and the Forty-Fourth Report, the Monitor has continued to receive additional late claims. As set out in the Sixty-Fifth Report of the Monitor dated October 7, 2010 (the "**Sixty-Fifth Report**"), the Monitor has received 88 additional late claims (the "**Additional Late Claims**") which are summarized by entity in the Sixty-Fifth Report (and which summary may be updated from time to time).

(ii) Late Elections

11. On September 14, 2010, the creditors who hold affected unsecured claims against the Petitioners, other than Bowater Finance Canada Corporation, (the "**Affected Unsecured Creditors**") voted in favour of the resolution in respect of the plan of

compromise and arrangement (as may be amended, re-amended or supplemented from time to time) (the "**CCAA Plan**") prepared by the Petitioners.

12. Upon Implementation of the CCAA Plan, Affected Unsecured Creditors will receive either: (i) a cash distribution in an amount equal to 50% of the face amount of their proven claim (the "**Cash Distribution**") if their Affected Unsecured Claim is less than CDN$6,073 (US$5,000), or (ii) a distribution of new common stock of the reorganized ABH ("**New ABH Common Stock**") upon emergence from these CCAA Proceedings.

13. Any Affected Unsecured Creditor whose claim is less than CDN$6,073 (US$5,000) was entitled to elect not to receive the Cash Distribution and instead receive New ABH Common Stock by filing an election (an "**Election**") with the Monitor by 5:00 pm on Monday, September 13, 2010 (the "**Election Deadline**").

14. Any Affected Unsecured Creditor whose claim is more than CDN$6,073 (US$5,000) was entitled to elect, pursuant to an Election filed with the Monitor by the Election Deadline, to reduce their claim, for distribution purposes, to CDN$6,073 (US$5,000) and thereby receive a Cash Distribution equal to the lesser of 50% of their proven claim and CDN$3,036.50.

15. However, a number of creditors' claims have yet to be resolved, including certain employee claims which may also be subsequently adjusted as a result of any supplemental distribution under the CCAA Plan.

16. It is difficult for such Affected Unsecured Creditors to file an Election before their claim has been fully resolved and the Monitor submits that the filing of the Late Elections (as defined below) should be authorized.

C. ORDERS SOUGHT

17. The Monitor respectfully seeks the following orders from this Court:

    (i) an order declaring that notwithstanding the Claims Bar Dates and the Claims Procedure Orders, the Additional Late Claims, as summarized in the Sixty-Fifth Report and which summary may be updated from time to time by the Monitor upon notice to the Service List and without further Order of this Honourable Court, shall be deemed to be timely filed claims for the purposes of the Claims Process;

    (ii) an order authorizing the Monitor to determine the Additional Late Claims filed subsequent to the Late Claims Order in accordance with the Claims Procedure Orders;

    (iii) an order declaring that notwithstanding the Election Deadline as established by the CCAA Plan, Late Elections (as defined below) shall be deemed to be timely filed elections for the purposes of distributions under the CCAA Plan, provided that such Late Elections are filed with the Monitor prior to

the date of the initial distribution under the CCAA Plan; and

(iv) 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.

D. GROUNDS FOR THIS MOTION

(i) Additional Late Claims

18. The Monitor submits that, notwithstanding the Claims Bar Dates, the filing of the Additional Late Claims subsequent to the Late Claims Order should be approved by this Honourable Court as being fair and reasonable for the reasons noted below.

19. As described above, subsequent to the issuance of the Late Claims Order and the Forty-Fourth Report, the Monitor has continued and continues to receive Additional Late Claims. As at October 7, 2010, the Monitor has received 88 Additional Late Claims.

20. The Monitor submits that the filing of the Additional Late Claims subsequent to the Late Claims Order should be authorized, provided such claims are subject to the Claims Procedure Orders, for the following reasons:

    (i) the claimants in respect of the Additional 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

    (ii) the Monitor is of the view that the other creditors will not suffer any material prejudice as a result of the late filing of the Additional Late Claims.

(ii) Late Elections

21. The Monitor submits that notwithstanding the Election Deadline established by the CCAA Plan, the filing or amendment of elections subsequent to the Election Deadline ("**Late Elections**") should be approved by this Court as being fair and reasonable for the reasons noted below.

22. Pursuant to the CCAA Plan, Affected Unsecured Creditors who wish to receive New ABH Common Stock or reduce their claim to CDN$6,073 in order to receive a Cash Distribution should have filed their Election with the Monitor by the Election Deadline.

23. As noted above and in the Sixty-Fifth Report, a number of creditors' claims have yet to be resolved, including certain employee claims which may also be subsequently adjusted as a result of any supplemental distribution under the CCAA Plan.

24. It is difficult for such Affected Unsecured Creditors to file an Election before their claim has been fully resolved.

25. The Monitor submits that the filing of the Late Elections (or amendments to Elections) should be authorized as it is not aware of any material prejudice that would be suffered by the other creditors as a result of the late filing of the Late Elections.

E. CONCLUSION

26. The Monitor respectfully submits that this Motion should be granted in accordance with its conclusions.

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

WHEREFORE, MAY THIS COURT:

[1] **GRANT** this Motion of the Monitor for a Declaratory Order in Respect of Additional Late Claims and Late Elections (the "**Motion**");

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

[3] **DECLARE** that notwithstanding the Claims Bar Dates and the Claims Procedure Orders, the claims which fall in the categories of Additional Late Claims as defined and summarized in the Sixty-Fifth Report and which summary may be updated from time to time by the Monitor upon notice to the Service List and without further Order of this Honourable Court, shall be deemed to be timely filed claims for the purposes of the Claims Process;

[4] **AUTHORIZE** the Monitor to determine the Additional Late Claims filed subsequent to the Late Claims Order in accordance with the Claims Procedure Orders;

[5] **DECLARE** that notwithstanding the Election Deadline as established by the CCAA Plan, Late Elections shall be deemed to be timely filed elections for the purposes of distributions under the CCAA Plan, provided that such Late Elections are filed with the Monitor prior to the date of the initial distribution under the CCAA Plan; and

[6] **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.

[7] **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, October 7, 2010

Thorntongroutfinnigan

THORNTONGROUTFINNIGAN LLP
Attorneys for the Monitor

Fishman Flanz Meland Paquin

FISHMAN FLANZ MELAND PAQUIN LLP
Attorneys for the Monitor

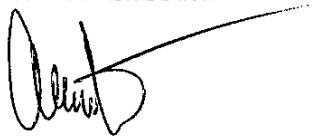
AFFIDAVIT

I, the undersigned, **Alex Morrison**, having my principal place of business at 222 Bay Street, 16th Floor, Ernst & Young Tower, Toronto, ON M5K 1J7, solemnly declare the following:

1. I am a Senior Vice President at Ernst & Yong Inc., the court appointed Monitor in these proceedings.

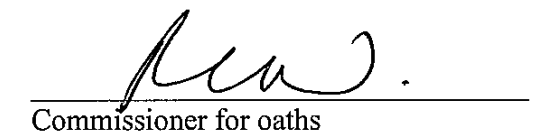
2. All the facts alleged in the *Motion for a Declaratory Order in Respect of Additional Late Claims and Late Elections* are true.

AND I HAVE SIGNED



ALEX MORRISON

Solemnly declared before me at Toronto,
on the 7th day of October, 2010



Commissioner for oaths

NOTICE OF PRESENTATION

TO : SERVICE LIST

TAKE NOTICE that the *Motion of the Monitor for a Declaratory Order in Respect of Additional Late Claims and Late Elections* 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 October 15, 2010 at 9:00 am, in a room to be announced to the Service List.

DO GOVERN YOURSELVES ACCORDINGLY.

Montréal, October 7, 2010

Thornton Grout Finnigan.

THORNTON GROUT FINNIGAN LLP and
FISHMAN FLANZ MELAND PAQUIN LLP
Attorneys for the Monitor