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

MOTION OF THE MONITOR FOR AN ORDER APPROVING THE ABITIBI US SERP SETTLEMENT AGREEMENTS

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**" or the "**Company**"), 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]

5. On September 23, 2010, this Honourable Court issued an order (the "**Sanction Order**") approving the Plan of Reorganization and Compromise, as amended, supplemented and restated (the "**CCAA Plan**") in respect of the Petitioners, save

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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.

and except for BCFC.[6] The Petitioners, not including BCFC, are referred to herein as the "**Applicants**").

6. In the Chapter 11 Proceedings, the U.S. Debtors filed with the U.S. Bankruptcy Court a plan related to the joint reorganization of the U.S. Debtors under the U.S. Bankruptcy Code (the "**U.S. Plan**"). On November 23, 2010, the U.S. Bankruptcy Court entered an order confirming the U.S. Plan.

7. The CCAA Plan was implemented on December 9, 2010 (the "**Implementation Date**") and the effective date under the U.S. Plan was also December 9, 2010. The CCAA Plan and the U.S. Plan are collectively referred to herein as the "**Restructuring Plans**".

8. On December 10, 2010, ACI was renamed AbiBow Canada Inc. as a result of the corporate reorganization undertaken pursuant to these CCAA Proceedings.

B. Background

Supplemental Executive Retirement Plans

9. Prior to the date of the Initial Order, the Company sponsored approximately 24 different supplemental executive retirement plans ("**SERPs**") for its current and former employees. As part of its restructuring process, the Company terminated the existing SERP plans and reinstated the accrued benefits for its current employees and retirees.

10. Under the Restructuring Plans, the participants were given the option to (i) reinstate their benefits under a new SERP plan (the "**Post-Emergence SERP**") or (ii) retain an unsecured claim in the Restructuring Plans for amounts owing under the terminated SERP plans (the "**Terminated SERPs**").

11. One of the Terminated SERPs was a plan referred to as the "**Abitibi US SERP**" which had approximately 61 participants and, as set forth in the Restructuring Plans, was sponsored by ABH and its U.S. Debtors, as well as the Petitioners. This plan was unique given the multiple sponsors and may have resulted in claimants having aggregate claims well in excess of the amount owed to them. Section 7.10 of the CCAA Plan states that creditors may not receive a recovery of greater than 100% of its proven claim if it has a claim against multiple debtors.

12. A total of thirteen participants opted to file claims (the "**Claimants**") in the restructuring proceedings and the remaining 48 participants opted into the Post-Emergence SERP.

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[6] On December 31, 2010, BCFC made an assignment in bankruptcy under the provisions of the *Bankruptcy and Insolvency Act* (Canada).

13. ABH engaged its actuarial advisors, Mercer LLC ("**Mercer**"), to provide advice and assistance in calculating the benefits due and payable to each participant under the various SERP plans. Mercer's valuations were used by ABH and the Monitor to value the claims of the Abitibi US SERP participants and prepare settlement agreements to be sent to each Claimant (the "**Settlement Agreements**").

14. The Company sent each Claimant a detailed letter summarizing the proposed allocation of shares on account of their Abitibi US SERP claim and a proposed Settlement Agreement for review, comment and signature. The Settlement Agreements also deal with certain other unresolved claims of the Claimants, all of which are against the U.S. Debtors only.

15. Settlement Agreements have been executed between the Applicants, the U.S. Debtors, the Monitor, Avidity LLC (the post-effective date claims agent in the Chapter 11 Proceedings (the "**U.S. Claims Agent**")) and certain Claimants.

16. The Settlement Agreements are subject to approval by this Honourable Court as well as the U.S. Bankruptcy Court.

Abitibi US SERP Allocation

17. In order to ensure that the Claimants did not receive in excess of 100% of their claims (based on a share value outlined in the Information Circular dated August 2, 2010 (the "**Information Circular**"), the Monitor, the Company and the U.S. Claims Agent agreed upon a fair and reasonable approach to allocate the claims against the various entities and determine the related distributions under the Restructuring Plans.

18. The allocation approach agreed upon between the Monitor, the Company and the U.S. Claims Agent took into consideration a number of complex and difficult legal issues. These issues included: (i) difficulty in establishing the parties intent at the time the ABH US SERP was first drafted and subsequent amendments with respect to which companies would be liable to make payments thereunder; (ii) ambiguity with respect to the identity of the liable sponsoring legal entities in the text of Abitibi US SERP; (iii) the fact that not all the Claimants filed proofs of claim against each of the potentially liable companies; and (iv) consideration of the discount rate used for the purposes of valuing the unfunded and unsecured Abitibi US SERP claims.

19. As set forth in the CCAA Plan, an individual creditor's final recovery will be ultimately determined by the creditor's proven claim in relation to the total proven claims of the relevant Applicant and such creditor will share on a pro rata basis in the shares of new ABH common stock (the "**New ABH Shares**") allocated to that Applicant. The pro rata share cannot be finalized until all the proven claims have been established for each Applicant.

20. To avoid Claimants receiving a recovery in excess of 100% of their claims and to avoid circular calculations in determining its distributions, the amount of shares allocated to each of the Claimants was fixed. The Settlement Agreements reflect an allowed claim amount against some combination of the U.S. Debtors and the Applicants, however, it fixes the number of shares from each entity that are to be distributed on account of each claim. Claimants will receive a onetime distribution of shares pursuant to the Settlement Agreements and will not participate in further distributions.

21. Although the amount of shares to be issued from ACCC, ACI and BCFPI under the Settlement Agreements are fixed, the number of New ABH shares being issued is no more that what each Claimant would have been entitled to if they had received a regular pro rata share allocation of New ABH shares that has been distributed to the other unsecured creditors pursuant to the CCAA Plan by the Monitor from ACCC, ACI and BCFPI. Therefore, the Settlement Agreements are not prejudicial to the other creditors.

The Settlement Agreements

22. Copies of the Settlement Agreements, with the names of the Claimants redacted, are attached as Appendix "G" to the Seventy-Seventh Report of the Monitor dated October 17, 2011 (the "**Seventy-Seventh Report**").

23. In summary, the Settlement Agreements provide that each Claimant shall have an allowed Abitibi US SERP claim against some combination of the following debtors: BI, BCFPI, Donohue Corp, Abitibi Consolidated Sales Corp., ACCC, and ACI (collectively, the "**Settlement Plan Sponsors**"). The allowed Abitibi US SERP claim shall constitute the Claimant's sole allowed claim arising under, in connection with, or relating to the Abitibi US SERP.

24. In full and complete satisfaction of the allowed Abitibi US SERP claim, each Claimant shall receive a designated and apportioned amount of New ABH Shares, calculated consistent with the terms of the Restructuring Plans, and allocated among the Applicants and U.S. Debtor set forth in paragraph 1 of each respective Settlement Agreement.

25. The remainder of the material terms of the Settlement Agreements are described in greater detail in the Seventy-Seventh Report.

26. All but one Claimant has fully executed their Settlement Agreement as the Company has been unable to locate one of the Claimants who filed claims against the U.S. Debtors only.

C. ORDER SOUGHT

27. The Monitor respectfully seeks the following order from this Court:

    (i) an order approving the Settlement Agreements.

D. GROUNDS FOR THIS MOTION

28. The Monitor submits that the Settlement Agreements:

    (i) resolve over 300 claims filed against multiple entities;

    (ii) the allocation of shares to each Claimant has been computed on a basis consistent with other claimants who had multiple claims under the Restructuring Plans;

    (iii) are fair and reasonable;

    (iv) avoid the need for expensive and time-consuming cross-border litigation that may result in inconsistent results; and

    (v) are not prejudicial to any other creditors.

E. CONCLUSION

29. The Monitor respectfully submits 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 Motion of the Monitor for an Order in Approving the Abitibi US SERP Settlement Agreements.

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

Montréal, October 17, 2011

Thornton Grout Finnigan

THORNTON GROUT FINNIGAN LLP and
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, 24th 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 of the Monitor for an Order Approving the Abitibi US SERP Settlement Agreements* are true.

AND I HAVE SIGNED

ALEX MORRISON

Solemnly declared before me at Toronto, on the 17th day of October, 2011

Commissioner for oaths

NOTICE OF PRESENTATION

TO: THE SERVICE LIST

TAKE NOTICE that the *Motion of the Monitor for an Order Approving the Abitibi US SERP Settlement Agreements* 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 Wednesday, October 19, 2011, at 2:15 pm, in a room to be announced to the Service List.

DO GOVERN YOURSELVES ACCORDINGLY.

Montréal, October 17, 2011

Thornton Grout Finnigan LLP

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

Commercial Division
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