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*)

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 on Schedules "A", "B" and "C"

Petitioners

And

ERNST & YOUNG INC.

Monitor

MOTION TO ENFORCE THE INITIAL ORDER AND TO DECLARE ILLEGAL THE CHARGING OF STORAGE FEES, THE REGISTRATION OF A LIEN AND THE PROPOSED SALE OF THE PROPERTY
(Section 11(3) of the *Companies' Creditors Arrangement Act*, R.C.S. 1985 c. C-36)

TO THE HONOURABLE CLÉMENT GASCON J.S.C. OR TO 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:

1. On April 17, 2009, this Honourable Court issued an order (as amended on April 22, May 6 and May 8, and as extended on May 14, the "**Initial Order**") extending the protection of the *Companies' Creditors Arrangements Act* (the "**CCAA**") to Abitibi-Consolidated Inc. ("**ACI**") and the subsidiaries listed in Schedule "A" hereto (collectively with ACI, the "**Abitibi Petitioners**"), as well as to Bowater Canadian Holdings Incorporated ("**BCHI**") and the subsidiaries listed on Schedule "B" hereto (collectively with BCHI, the "**Bowater Petitioners**") (the Abitibi Petitioners and Bowater Petitioners are collectively referred to as the "**Petitioners**").

2. Pursuant to the Initial Order Ernst & Young Inc. was appointed as monitor of the Petitioners (the "**Monitor**") and a stay of proceedings (the "**Stay of Proceedings**") was ordered until May 14, 2009 (extended to September 4, 2009) (the "**Stay Period**").

3. In addition to protecting the Petitioners, the Stay of Proceedings issued by this Court also extends to the following:

   (a) AbitibiBowater Inc. ("**ABH**") and the petitioners listed on Schedule "C" hereto (collectively with ABH, the "**18.6 Petitioners**") which have filed proceedings under Section 18.6 of the CCAA in relation to the voluntary proceedings initiated by, *inter alia*, the 18.6 Petitioners under Chapter 11 of the U.S. Bankruptcy Code (the "**U.S. Proceedings**") in the United States Bankruptcy Court for the District of Delaware (the "**U.S. Court**"); and

   (b) the entities listed on Schedule "D" hereto (the "**Partnerships**") which are not petitioners in these proceedings but which form an integral part of the business of the Petitioners.

4. The Stay of Proceedings provides, among others things, that no right, legal or conventional, may be exercised and no proceeding, at law or under a contract, may be commenced or proceeded with by anyone, against or in respect of the Petitioners, as it appears from this extract of the Initial Order:

> **[10]** **ORDERS** that, until and including May 14, 2009, or such later date as the Court may order (the "**Stay Termination Date**",

> the period from the date of this Order to the Stay Termination Date being referred to as the "**Stay Period**"), no right, legal or conventional, may be exercised and no proceeding, at law or under a contract, by reason of this Order or otherwise, however and wherever taken (collectively the "**Proceedings**") may be commenced or proceeded with by anyone, whether a person, firm, partnership, corporation, stock exchange, government, administration or entity exercising executive, legislative, judicial, regulatory or administrative functions (collectively, "**Persons**" and, individually, a "**Person**") against or in respect of the Petitioners, the 18.6 Petitioners and the entities listed on Schedule "D" hereto (the "**Partnerships**"), or any of the present or future property, assets, rights and undertakings of the Petitioners, the 18.6 Petitioners or the Partnerships, of any nature and in any location, whether held directly or indirectly by the Petitioners, the 18.6 Petitioners or the Partnerships, in any capacity whatsoever, or held by others for the Petitioners, the 18.6 Petitioners or the Partnerships (collectively, the "**Property**"), and all Proceedings already commenced against the Petitioners, the 18.6 Petitioners, the Partnerships or any of the Property, are stayed and suspended until the Court authorizes the continuation thereof, the whole subject to the provisions of the CCAA.

A) <u>The Issue at Bar</u>

5. Bowater Canadian Forest Products Inc. ("**BCFPI**") is one of the subsidiaries of BCHI listed in Schedule "B". It carries on a lumber business.

6. BCFPI is party to contracts of carriage with Ultra Transport Inc. ("**ULTRA**"), a carrier based in Orillia, Ontario, which performed transportation services for BCFPI before the issuance of the Initial Order.

7. As at the date of the Initial Order, ULTRA was carrying two shipments of lumber worth approximately $27,000.

8. The freight charges with respect to those two shipments of lumber were $3,575.82.

9. There were other freight charges outstanding in a total amount of $15,903.60 all of which related to prior shipments of lumber which had been delivered to BCFPI's customers prior to the filing date.

10. ULTRA refused to deliver the two shipments of lumber to BCFPI's customers.

11. In a letter dated April 21, 2009, ULTRA's attorneys informed BCFPI that :

(i) it claimed a lien under the Ontario *Repair and Storage Liens Act* (the "**RSLA**") on about $27,000 worth of goods, consisting of two loads of lumber, for outstanding payments of $19,479.42 for past transportation services for BCFPI;

(ii) ULTRA was charging storage fees at the rate of $1,000 per day per trailer, for a total daily storage fee of $2,000;

(iii) as of April 21, 2009, one load of lumber had been in storage since April 14, 2009 and the other load since April 17, 2009 and consequently ULTRA was claiming $13,000 in storage fees; and

(iv) ULTRA would release the two loads of lumber only upon receipt of full transportation and storage fees up to the date of payment;

the whole as appears from copy of the letter dated April 21, 2009, communicated herewith as **Exhibit P-1**.

12. On April 30, 2009, BCFPI offered to pay to ULTRA the amount of $3,575.82 for the repossession of the lumber, the whole as appears from a copy of an email from BCFPI's attorney to ULTRA's attorney dated April 30, 2009, communicated herewith as **Exhibit P-2**.

13. In a second letter dated May 13, 2009, ULTRA's attorneys reiterated ULTRA's claims to a lien on the two loads of lumber pursuant to the RSLA and informed BCFPI of ULTRA's intention to sell by private sale said lumber if full payment of the storage fees to this date ($57,750) was not received on or before May 30, 2009, the whole as appears from a copy of the letter dated May 13, 2009, communicated herewith as **Exhibit P-3**.

14. On May 14, 2009, ULTRA's attorneys informed BCFPI that it would shortly receive a notice of sale (the "**Notice of Sale**") pursuant to the RSLA for the lumber in ULTRA's possession.

15. On May 14, 2009, BCFPI's attorneys reiterated BCFPI's offer to pay to ULTRA the amount of $3,575.82 for the repossession of the lumber, the whole as appears from a copy of an email from BCFPI's attorney to ULTRA's attorney dated May 14, 2009, communicated herewith as **Exhibit P-4**.

16. In a third letter dated May 25, 2009, ULTRA presented their view of the situation and, among others things, made the following offer to BCFPI:

(i) BCFPI already offered to pay $3,575.82 to reclaim the lumber in ULTRA's possession, which added to an outstanding amount due since April 7th for which ULTRA held invoice #10601, represents a total of $8,774.64;

(ii) BCFPI's load of lumber #335538, held by ULTRA in apprehension of BCFPI's bankruptcy, is worth approximately this much;

(iii) a registered lien was put on both loads April 17, 2009 and possessory liens were in place prior to this;

(iv) ULTRA offered to sell BCFPI's load #335538 and offset the product of the sale against the $8,774.64 set above; and

(v) upon receipt of a $10,000 deposit, along with a "Letter of Comfort" to guarantee ABH's obligations, ULTRA would deliver the load #317549 to BCFPI's destination of its choice;

the whole as appears from copy of the letter dated May 25, 2009, communicated herewith as **Exhibit P-5**.

17. On May 28, 2009, BCFPI refused the above offer.

B) <u>The Petitioners' Position</u>

18. ULTRA, as a carrier or shipper of goods, has a *common law* right to claim a possessory lien over the lumber for which the freight is unpaid and is still in its possession, but only up to the amount of the unpaid freight for the lumber in question.

19. The unpaid freight for the shipments in ULTRA's possession is $3,575.82, the whole as appears from invoices 11020 and 11021 respectively dated April 16, 2009 and April 20, 2009, communicated herewith as **Exhibit P-6**, *en liasse*.

20. Although invoices 11020 and 11021, Exhibit P-6, relate to pre-petition services, BCFPI is prepared to pay those invoices to obtain the release of the possessory lien.

21. Under the *common law*, the possessory lien of the carrier or shipper covers only the unpaid freight for the goods in question and not for past accounts. The other invoices invoked by ULTRA in support of its claim relate to freight for lumber which has already been delivered and ULTRA therefore lost whatever possessory lien it might have had with respect to said goods.

22. Moreover, ULTRA was never hired to store the lumber and it has no right to any storage fees for the lumber over which it is exercising a lien claim. The *common law* doctrine of the carrier's possessory lien clearly established that a lien claimant may not charge for the warehousing of the goods in its possession.

23. Moreover, ULTRA has no right to register a lien under the RSLA because it is neither a repairer nor a storer.

24. In any event, the registration of the lien by ULTRA was in breach of the Initial Order and the Stay of Proceedings, which prohibits any proceedings against the Petitioners.

25. Finally, even if ULTRA had a lien which could be exercised under the RSLA, which it does not, the issuance of a Notice of Sale and the sale of the lumber would be a further breach of the Initial Order.

26. For these reasons, ULTRA must relinquish possession of the goods upon payment of $3,575.82.

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:

GRANT the present Motion;

DECLARE illegal the registration of the lien under the *Repair and Storage Lien Act* by Ultra Transport Inc. and the Notice of Sale which followed.

DECLARE that Ultra Transport Inc. has no right to any storage fees for the lumber in its possession.

ORDER Ultra Transport Inc. to return the lumber in its possession to Bowater Canadian Forest Products Inc. upon payment by Bowater Canadian Forest Products Inc. of $3,575.82.

ORDER Ultra Transport Inc. to reimburse Bowater Canadian Forest Products Inc. any amount received as a result of the sale of the lumber held by Ultra Transport Inc. in the eventuality that such sale is performed before judgment is rendered on the present Motion; and **DECLARE** that Bowater Canadian Forest Products Inc. reserves its right to claim any damages arising from the illegal sale of the lumber.

ORDER the provisional execution of this Motion to be rendered notwithstanding any appeal and without the necessity of furnishing any security.

THE WHOLE WITH COSTS.

Montréal, May 29, 2009

Stikeman Elliott LLP

Stikeman Elliott LLP
Attorneys for the Petitioners

SCHEDULE "A"
ABITIBI PETITIONERS

1. Abitibi-Consolidated Inc.
2. Abitibi-Consolidated Company of Canada
3. 3224112 Nova Scotia Limited
4. Marketing Donohue Inc.
5. Abitibi-Consolidated Canadian Office Products Holdings 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 Québec Inc.

SCHEDULE "B"

BOWATER PETITIONERS

1. Bowater Canadian Holdings Inc.
2. Bowater Canada Finance Corporation
3. Bowater Canadian Limited
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 Québec Inc.
14. Alliance Forest Products (2001) Inc.
15. Bowater Belledune Sawmill Inc.
16. Bowater Maritimes Inc.
17. Bowater Mitis Inc.
18. Bowater Guérette Inc.
19. Bowater Couturier Inc.

SCHEDULE "C"

18.6 CCAA Petitioners

1. AbitibiBowater Inc.
2. AbitibiBowater US Holding 1 Corp.
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

SCHEDULE "D"

PARTNERSHIPS

1. Bowater Canada Finance Limited Partnership
2. Bowater Pulp and Paper Canada Holdings Limited Partnership
3. Abitibi-Consolidated Finance LP

AFFIDAVIT

I, the undersigned, François Laliberté, having my principal place of business at Suite 800, 1155 Metcalfe Street, Montréal, Quebec, H3B 5H2 solemnly declare the following:

1. I am the Manager, Transportation of AbitibiBowater Inc.;

2. All the facts alleged in the *Motion to enforce the Initial Order and to declare illegal the charging of storage fees, the registration of a lien and the proposed sale of the collateral* pursuant to Section 11(3) the *Companies' Creditors Arrangement Act*, R.C.S. 1985 c. C-36, are true.

AND I HAVE SIGNED

FRANÇOIS LALIBERTÉ

Solemnly declared before me at Montréal, on the 29th day of May, 2009

Claude Sthamant

Commissioner for oaths for all the judicial districts of Québec

180 486-3

NOTICE OF PRESENTATION

TO : SERVICE LIST

TAKE NOTICE that the *Motion to enforce the Initial Order and to declare illegal the charging of storage fees, the registration of a lien and the proposed sale of the collateral* will be presented for adjudication before one of the Honourable Judges of the Superior Court, sitting in Commercial Division in and for the District of Montréal, at a date and time to be determined by this honourable Court.

DO GOVERN YOURSELVES ACCORDINGLY.

Montreal, May 29, 2009

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
DISTRICT OF MONTRÉAL

In the matter of Plan of Compromise or Arrangement of:

ABITIBIBOWATER INC. ***and al***

Petitioners

- and -

ERNST & YOUNG INC.

Monitor

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

MOTION TO ENFORCE THE INITIAL ORDER AND TO DECLARE ILLEGAL THE CHARGING OF STORAGE FEES, THE REGISTRATION OF A LIEN AND THE PROPOSED SALE OF THE PROPERTY
(Section 11(3) of the *Companies' Creditors Arrangement Act*, R.C.S. 1985 c. C-36)

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