SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-11-036133-094

DATE: **SEPTEMBER 29, 2009**

PRESENT: THE HONOURABLE MR. JUSTICE CLÉMENT GASCON, J.S.C.

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

And

THE AD HOC COMMITTEE OF THE SENIOR SECURED NOTEHOLDERS AND U.S. BANK NATIONAL ASSOCIATION, INDENTURE TRUSTEE FOR THE SENIOR SECURED NOTES

Respondents

And

DDJ CAPITAL MANAGEMENT, LLC

And

NEWSTART FACTORS, INC.

And

STICHTING PENSIONENFONDS ABP

And

THE FOOTHILL GROUP, INC.

And

FOOTHILL CLO I, LTD.

Intervening Parties, ès qualités

JG1793

JUDGMENT ON AMENDED MOTION FOR THE ISSUANCE OF AN ORDER AUTHORIZING THE SALE OF PETITIONER ABITIBI-CONSOLIDATED COMPANY OF CANADA'S INDIRECT INTEREST IN THE MCCORMICK HYDROELECTRIC FACILITY (#233)

THE MOTION AT ISSUE

[1] On April 17, 2009, the Court issued an order (the "**Initial Order**") pursuant to the CCAA[1] in respect of (i) Abitibi-Consolidated Inc. ("**ACI**") and subsidiaries thereof (collectively, the "**Abitibi Petitioners**"), (ii) Bowater Canadian Holdings Inc. and subsidiaries thereof (collectively, the "**Bowater Petitioners**") and (iii) certain partnerships[2].

[2] By virtue of this Initial Order, Ernst & Young Inc. ("**EYI**") was appointed as monitor of the Petitioners (the "Monitor"). A stay of proceedings in favour of the Petitioners was also granted until May 14, 2009 (the "Stay Period"). On May 14, 2009, it was extended until September 4, 2009 (the "First Stay Extension Order"), and thereafter, until December 15, 2009 (the "Second Stay Extension Order").

[3] In the context of these CCAA proceedings, the Petitioners now seek, by their Amended Motion, to implement certain transactions designed to transfer the indirect interest of Abitibi-Consolidated Company of Canada ("**ACCC**"), a subsidiary of ACI, in the business of Manicouagan Power Company ("**MPCo**") to Hydro-Québec or one of its wholly-owned subsidiary (collectively, "**HQ**").

[4] ACCC holds a 60% equity interest in MPCo (the "**ACCC Interest**"), while Alcoa Canada Ltd. ("**Alcoa Canada**") holds the remaining 40% equity interest (the "**Alcoa Interest**").

[5] At this stage, the Petitioners request this Court more particularly to:

a) authorize ACCC to sell the 60% interest it indirectly holds in the McCormick hydroelectric facility (the "**McCormick Hydroelectric Facility**") owned and operated by MPCo;

b) approve the terms and conditions of the Implementation Agreement and the exhibits thereto (the "**Implementation Agreement**") between ACI, ACCC, MPCo, Alcoa Canada and Alcoa Ltd. (collectively, Alcoa Canada and Alcoa Ltd. are referred to herein as "**Alcoa**"), to which HQ has intervened;

---

1 *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C-36 (the "**CCAA**").

2 For purposes of this Judgment, all capitalized terms, unless otherwise defined herein, have the same meaning as set out in the Amended Motion of the Petitioners.

c) authorize and direct ACI and ACCC to implement and complete the transactions and steps (the "**Proposed Transactions**") as contemplated in the Implementation Agreement and as outlined in Exhibit A to the Implementation Agreement (the "**Step Plan**"), with such alterations, amendments, deletions or additions as the parties agree, with the consent of the Monitor, and to perform the obligations in the Implementation Agreement;

d) declare that (i) the proceeds from the Proposed Transactions, net of certain payments, holdbacks, reserves and deductions, and (ii) the shares of ULC (as defined in the Amended Motion), shall constitute the proceeds of the disposition of ACCC's MPCo shares (collectively, the "**MPCo Share Proceeds**");

e) declare that the MPCo Share Proceeds will be subject to a replacement charge (the "**MPCo Noteholder Charge**") in favour of US Bank, National Association as Indenture Trustee and Collateral Trustee (the "**Trustee**") for the benefit of the holders (the "**Senior Secured Noteholders**") of the 13.75% senior secured notes due April 1, 2011 (the "**Secured Notes**"), with the same rank and priority as the security held by the Trustee in respect of the shares of MPCo held by ACCC.

[6] Initially, the Senior Secured Noteholders had filed a written Contestation to the Amended Motion, which the Intervening Parties supported in part. The Senior Secured Noteholders were in disagreement with the way in which they were being treated in the contemplated transaction.

[7] The Senior Secured Noteholders have advanced approximately US$413 million to ACCC in April 2008, under the terms of a Senior Secured Loan. With accrued interest, the approximate amount presently owing in respect of this Senior Secured Loan is in excess of US$450 million, and interest continues to accrue on the Notes monthly.

[8] To secure the obligations of ACCC, ACCC, ACI and other guarantors granted security to the Trustee, which includes a Senior Secured Notes Hypothec. The Senior Secured Notes' Hypothec provides specific rights to the Senior Secured Noteholders with respect to the equity interest detained by ACCC in MPCo that is at issue here.

[9] However, during the course of the hearing, the Senior Secured Noteholders filed a Reamended Contestation that included numerous alternative conclusions that were acceptable to them. Since most of these alternative conclusions mirrored the conclusions of the Amended Motion and the suggestions contained in the Monitor Sixteenth Report, these were, in the end, agreed upon as acceptable by the Petitioners, the Monitor and the Intervening Parties.

[10] In view of this, the Amended Motion sought is thus not contested by anyone anymore.

THE RELEVANT BACKGROUD

[11] In short, the following facts explain the presentation of the motion at issue.

[12] MPCo owns and operates the McCormick Hydroelectric Facility, which is located on the Manicouagan River, in the Province of Quebec. The McCormick Hydroelectric Facility consists of a dam, seven hydroelectric-generating units with a total capacity of 335 MW and certain electricity transmission and distribution facilities.

[13] MPCo is a stand-alone company and has 17 employees. It has not filed for protection in these CCAA Proceedings.

[14] MPCo has two main customers: i) Alcoa and ii) ACCC's Baie-Comeau newsprint mill (the "**Baie-Comeau Mill**") which, together, utilize approximately 98% of MPCo's generation capacity. MPCo also sells electricity to other small customers in the region, including the town of Baie-Comeau.

[15] The electricity sold by MPCo to ACCC and Alcoa is sold pursuant to power purchase agreements that expire in 2011. MPCo sells the electricity it produces to ACCC and Alcoa at a price that approximates MPCo's cost of production. This price is significantly below the current market price for electricity for large customers in the Province of Quebec.

[16] In December 1996, ACCC and Alcoa Canada entered into an agreement (the "**MPCo Shareholder Agreement**") which provides, among other things, for a right of first refusal ("**ROFR**") in favour of Alcoa Canada should ACCC wish to sell its 60% interest in MPCo to a third party.

[17] HQ, which is owned by the Province of Quebec, holds, subject to limited exceptions, exclusive rights for the distribution of electricity in the territory of the Province of Quebec. The McCormick Hydroelectric Facility is a "private electric power system" which allows it to distribute, as an exception to HQ's monopoly, electricity within a specified territory subject to certain regulations including limitations on electricity prices and restrictions with respect to exporting electricity outside Quebec.

[18] MPCo is required to distribute electricity generated from the McCormick Hydroelectric Facility to each of its current customers (i.e. ACCC and Alcoa Canada), unless these customers choose to enter into a new distribution agreement with HQ. However, as such agreements with HQ would likely be at current market prices, which are much higher than the rates charged by MPCo, this is unlikely to occur.

[19] Following the merger of ACI and BI on October 29, 2007, the Petitioners began a comprehensive review of the combined operations to reduce costs, improve profitability

and generate liquidity. As part of this review, the Petitioners decided to dispose of certain non-core assets, including the ACCC Interest.

[20] The following factors played a significant role in the decision to sell the ACCC Interest:

a) MPCo's water rights on the Manicouagan River (the "**MPCo Water Rights**") will expire in 2011. The Quebec Government could renew the MPCo Water Rights for an additional period of 25 years, but such renewals typically would be subject to the fulfillment of certain terms and conditions to be negotiated with the Quebec Government; and

b) ACCC was advised by the Quebec Ministry of Natural Resources and Wildlife (the "**MNR**") that one of the potential conditions for the renewal of MPCo Water Rights could be a significant capital investment in the Province of Quebec.

[21] The number of purchasers potentially interested in acquiring the ACCC Interest was limited to three potential third party purchasers (Alcoa, another third party and HQ) on account of the following factors:

a) MPCo is only entitled to distribute its electricity on its territory to its existing grandfathered customers, thereby limiting the potential for expansion of its customer base;

b) MPCo would have to continue to supply both the Baie-Comeau Mill and Alcoa pursuant to its existing power purchase agreements at the current rates (which are below current market rates), unless ACCC and Alcoa agreed to a rate change;

c) the prices at which electricity may be sold by a private electric power system, such as MPCo, are subject to legislative limitations;

d) electricity generated by MPCo may not be exported outside of Quebec without the authorization of the Quebec government, thereby limiting MPCo's revenue potential;

e) the MPCo Water Rights on the Manicouagan River expire in 2011 and there is no certainty that a potential purchaser could obtain a renewal. A renewal of the MPCo Water Rights would likely require significant capital investments by MPCo and/or its shareholders; and

f) Alcoa and another third party each had a ROFR in respect of the ACCC Interest and a ROFR tends to discourage potential purchasers from spending time and money on due diligence.

[22] Accordingly, it was not likely that a potential purchaser would be in a position to maximize the value of MPCo in the same manner as HQ, given the latter's ability to sell the electricity produced by MPCo to any third-party at market rates and HQ's likely success in obtaining the renewal of the MPCo Water Rights.

[23] Hence, the efforts of the Petitioners and their advisors were focused upon negotiating with HQ. The initial discussions with HQ in respect of the ACCC Interest began in November 2008 and a letter of intent (the "LOI") was executed with HQ on February 19, 2009, namely prior to the CCAA proceedings. It provided, *inter alia*, for the sale of the ACCC Interest for gross proceeds of CDN$615 million and an exclusivity period in favour of HQ until March 23, 2009.

[24] Upon the execution of the LOI, ACCC sent a notice to Alcoa providing Alcoa with the opportunity to purchase the ACCC Interest for CDN$615 million, in accordance with Alcoa's ROFR. On March 6, 2009, Alcoa confirmed that it would not exercise its right to purchase the ACCC Interest.

[25] During the course of its due diligence investigation, HQ required that the sale of the ACCC Interest, originally contemplated as a sale of shares, be structured as an asset sale so that HQ would not be indirectly liable, as the 60% shareholder of MPCo, for certain potential contingent liabilities. In addition, as HQ is a non-taxable entity, the Proposed Transactions were required to be structured by HQ to allow the net profits from the New LP (as defined in the Amended Motion) to flow directly to HQ from the New LP without any deductions for taxes.

[26] As a result of this structural change from a share sale to an asset sale, Alcoa's consent was required to the terms of the Implementation Agreement, as the MPCo assets were to be transferred out of MPCo to ACCC and then from ACCC to New LP.

[27] Based on these parameters, the Petitioners and Alcoa negotiated the terms of the Implementation Agreement to which HQ has intervened.

[28] Alcoa agreed that it would support an asset sale on the basis that it would not incur any direct or indirect cost, expense or liability as a result of the MPCo transaction, including any incremental tax exposure.

THE IMPLEMENTATION AGREEMENT

[29] The Implementation Agreement sets out the terms of the transactions to be carried out by ACCC, MPCo, HQ and Alcoa in order to effect the sale of the ACCC Interest to HQ and transfer the MPCo assets and power purchase agreements to a limited partnership to be held 60% by HQ and 40% by Alcoa.

[30] Many of the steps set out in the Implementation Agreement are necessary in order to utilize some of ACCC's tax attributes to shelter some of the gains and to allow

the net profits from the New LP to flow directly to HQ from the New LP without any liability for taxes.

[31] The Implementation Agreement sets out the terms and conditions of the Proposed Transactions, of which the following are most significant:

a) ACCC will acquire Alcoa's 40% interest in MPCo in exchange for a promissory note;

b) MPCo will be wound up into ACCC;

c) ACCC will cause all of the assets and liabilities (except for certain excluded liabilities) of MPCo to be transferred to New LP;

d) an unlimited liability company ("**GP**") will be formed and will be the general partner of New LP holding a 0.001% interest in the New LP. ACCC will become the 99.999% limited partner of New LP;

e) ACCC will sell to HQ a 59.9994% interest in New LP and its rights in the MPCo power purchase agreements for gross proceeds of CDN$615 million;

f) ACCC will repay the promissory note issued to Alcoa referred to in step (i) above by way of a transfer of a 39.9996% interest in New LP to Alcoa; and

g) ACCC will transfer a 60% and 40% interest in GP to HQ and Alcoa, respectively, for nominal consideration.

[32] The Petitioners expect that the gross proceeds of approximately CDN$615 million from the Proposed Transactions will be applied as follows (subject to adjustments):

a) about $25 million for the payment of the taxes reimbursed to Alcoa at closing;

b) about $31 million to HQ for the payment of the ACCC Debt estimated by HQ;

c) about $30.75 million by way of a 2-year purchase price holdback by HQ (the "**HQ Holdback**");

d) up to $282.3 million to be held by ULC as Permitted Investments (the "**ULC Reserve**");

e) up to US$87.5 million for the repayment of the ACI DIP Facility, of which about US$58.4 million is currently outstanding, plus any accrued interest and expenses; and

f) about $10 million in other amounts paid or payable in connection with or pursuant to the Transaction Documents.

[33] The net proceeds after adjustments, holdback, reserves and payment of the ACI DIP Facility (if fully drawn) will stand at approximately CDN$138 million.

[34] As appears from the conclusions of the Amended Motion, the following measures will be taken in connection with the Proposed Transactions to ensure that the rights of the Senior Secured Noteholders are protected:

a) the granting of a replacement charge (the "**MPCo Noteholder Charge**") in favour of the Senior Secured Noteholders with the same rank and priority as the existing security held in respect of the shares of MPCo held by ACCC over: (i) the net proceeds from the Proposed Transactions; and (ii) the shares of ULC;

b) the granting of a guarantee in favour of the Senior Secured Noteholders by ULC (the "**ULC Subordinated Guarantee**");

c) an order (the "Subrogation **Order**") which provides that the Senior Secured Noteholders shall be subrogated in the ACI DIP Charge in accordance with paragraph 61.10 of the Initial Order to the extent that any payment from the transaction proceeds is made to the ACI DIP Lender under the ACI DIP Agreement;

d) an order (the "**Net** Cash **Proceeds Order**") which provides that the cash component of the MPCo Share Proceeds and the ULC Reserve shall be paid to and be held by the Monitor; and

e) an order (the "**ULC** Borrowing **Order**") which provides that the Abitibi Petitioners may not borrow any portion of the ULC Reserve except on terms and conditions permitted under the Implementation Agreement, including as to amount, security, priority, interest rates, fees, default, reporting and repayment, and except upon approval of the Court made on notice to the Trustee.

[35] The parties to the Proposed Transactions have agreed to use reasonable commercial efforts to finalize all of the legal documentation to implement the Proposed Transactions by September 30, 2009 and to close the Proposed Transactions by October 15, 2009. If the Proposed Transactions have not closed by December 31, 2009, any party may terminate any of its obligations to complete the Proposed Transactions.

ANALYSIS AND DISCUSSION

[36] The Court has jurisdiction to approve a sale of assets in the course of CCAA proceedings, notably when such a sale of assets is in the best interest of the stakeholders generally[3].

[37] In determining whether to authorize a sale of assets under the CCAA, the Court should consider, amongst others, the following key factors:

- have sufficient efforts to get the best price been made and have the parties acted providently;
- the efficacy and integrity of the process followed;
- the interests of the parties; and
- whether any unfairness resulted from the working out process.

[38] These principles were enunciated in *Royal Bank* v. *Soundair Corp.*[4]. They are equally applicable in a CCAA sale situation[5].

[39] In this case, the Court considers that all these factors are satisfied.

[40] First, the Petitioners' sales process for the ACCC Interest was proper even if limited to only one potential purchaser. There were valid and compelling reasons for the narrow focus of the sales process. Suffice to highlight in that regard the unique characteristics of the asset, the market in which the asset is situated and the external factors that most likely deterred or failed to attract potential purchasers.

[41] The regulatory environment, the restrictions on pricing for the sale of electricity and the significant risk that the expiry of the MPCo Water Rights could disrupt the power production at MPCo indefinitely easily explain why the market for the ACCC Interest was severely limited.

[42] The Petitioners have acted in good faith and with due diligence in their efforts to sell the ACCC Interest.

---

3 See, notably, *Nortel Networks Corp., Re*, 2009 CarswellOnt 4467, at para. 35 (Ont. S.C.J.); *Boutiques San Francisco, Re*, (2004), 7 C.B.R. (5th) 189 (S.C.); *Calpine Canada Energy Ltd, Re*, (2007), 35 C.B.R. (5th) 1 (Alta Q.B.).

4 *Royal Bank* v. *Soundair Corp.*, (1991), 7 C.B.R. (3d) 1 (Ont. C.A.), at para. 16.

5 See, for instance, *Tiger Brand Knitting Co., Re*, (2005), 9 C.B.R. (5th) 315 (Ont. S.C.J. [Commercial List]), leave to appeal refused (2005), 19 C.B.R. (5th) 53 (Ont. C.A.); *PSINet Ltd., Re*, 2001 CarswellOnt 3405 (Ont. S.C.J.), at para. 6; *Canadian Red Cross Society / Société Canadienne de la Croix-Rouge, Re*, 1998 CarswellOnt 3346, at para. 47 (Ont. Gen. Div.).

[43] Second, even though the sale of the ACCC Interest was not widely canvassed in the market, in order to assess the reasonableness of the Purchase Price contemplated in the Proposed Transactions, the Monitor performed certain financial analyses.

[44] Based on the compiled trading multiples, the review of transaction multiples and the discounted cash-flows analysis that he made, the Monitor was of the view that a Purchase Price of CDN$615 million for the ACCC Interest was fair and reasonable based on the assumptions, forecasts and other financial information that he considered.

[45] The Proposed Transactions will generate estimated net proceeds before holdbacks and reserves of approximately CDN$547.9 million, of which up to CDN$97.2 million will be used to repay the ACI DIP Facility.

[46] Third, the evidence indicates that the sale is warranted at this time because the Petitioners need cash to repay the ACI DIP Facility in accordance with the ACI DIP Agreement and to continue and implement their restructuring. Moreover, the projected costs of holding onto MPCo are too high, as the renewal of the water rights expiring in 2011 would require important infrastructure investments.

[47] From that standpoint, the sale will benefit the whole economic community because it will allow the Petitioners to monetize certain non-liquid assets, use net cash proceeds to repay certain secured creditors (including the Senior Secured Noteholders) and secure cash to fund their ongoing restructuring effort, for the benefit of all stakeholders.

[48] In fact, it is fair to say there may well be material prejudice to the Petitioners' stakeholders if the transaction does not proceed because the value of MPCo's assets would likely be far less in a liquidation scenario than in the proposed going concern sale.

[49] In addition, despite the fact that ACCC will have to purchase electricity at a higher price as a result of the transaction, the Petitioners are of the view that the Baie-Comeau Mill will remain competitive.

[50] Fourth, the MPCo sale and the Proposed Transactions form part of the Petitioners' continuing objective and strategy to reduce costs and improve profitability. The ACCC Interest is not required to continue the operations of the Abitibi Petitioners, nor is it vital for the Petitioners to retain it to successfully restructure their business.

[51] Fifth, the Amended Motion provide to the Senior Secured Noteholders assurances that prove, in the end, to be satisfactory to safeguard their rights and protect the value of their security.

[52] Finally, even though it is highly unusual in a CCAA proceeding to have significant levels of pre-filing obligations satisfied in full other than through a plan of arrangement as it is the case here with the HQ pre-filing claims, the Court finds that the unique

situation at hand, coupled with the importance of the sale in the present restructuring, justify adopting a flexible approach to the issue.

[53] The payment of these intercompany payables was imposed as an essential condition by HQ in order to enter into the MPCo transaction. Furthermore, this condition was negotiated prior to the CCAA proceedings, when the Purchase Price agreed upon was arrived at. This price remains the same even today.

[54] While it is important to maintain a fair and delicate balance between the positions of all stakeholders in a CCAA restructuring, equitable treatment does not entail inflexibility at all costs. Here, it is clear that the chances of a successful restructuring are enhanced considerably by the Proposed Transactions. From that perspective, there is a definite benefit to all stakeholders by the approval of the Implementation Agreement.

[55] To some extent, the situation bears some analogy with that of a critical vendor or key supplier. This is, no doubt, a critical asset sale with the only available purchaser in the market. Having to concede the payment of these HQ claims may not be the perfect outcome, but it remains, all things considered, an acceptable one under the circumstances.

[56] Indeed, although this aspect of the Proposed Transactions is unusual, the Monitor notes, rightly so, that HQ could have achieved the same net economic terms had it simply required, in order to complete the transaction, a lower Purchase Price on account of all pre-transaction outstanding liabilities, including the pre-filing liabilities stayed as a result of the filing by the Petitioners.

[57] Furthermore, the Monitor notes as well that, to the extent ACCC pays a liability on behalf of BCFPI (approximately CDN$9 million), ACCC will benefit from the intercompany charge described in the Initial Order.

[58] All in all, the completion of the Proposed Transactions will both materially advance the restructuring of the Petitioners and benefit stakeholders, while the failure of the Proposed Transactions would greatly complicate the restructuring if not completely frustrate it.

[59] The balance of interests clearly favours approval. The Monitor supports and recommends the approval sought. The recommendation of the Monitor, a court-appointed officer experienced in the insolvency field, carries great weight with the Court in any approval process. Absent some compelling, exceptional factor to the contrary, a Court should accept an applicant's proposed sale process where it is recommended by the Monitor and supported by the stakeholders[6].

---

[6] See, in this respect, *Consumers Packaging Inc., Re*, 2001 CarswellOnt 3331, at para. 2; *Ivaco Inc., Re*, 2004 CarswellOnt 2397, at para. 21; *Boutiques Euphoria Inc, Re*, 500-11-030746-073, Que. S.C., August 29, 2007, Gascon J., at paras. 90 to 95.

[60] In view of the urgency in closing the Proposed Transactions rapidly, and to take away any uncertainty in a context where, after much discussions and compromises, the conclusions sought are acceptable to all, the Court is satisfied that provisional execution of this Judgment should be ordered.

FOR THESE REASONS, THE COURT:

[1] **GRANTS** the Petitioners' *Amended Motion for the Issuance of an Order Authorizing the Sale of Petitioners' Interests in Manicouagan Power Company* (the "**Motion**").

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

[3] **DECLARES** that, unless otherwise provided, undefined capitalized terms and expressions used herein shall have the respective meanings ascribed thereto in the Second Amended Initial Order of the Honourable Mr. Justice Clement Gascon, J.S.C. of the Court dated May 6, 2009, as amended (the "**Initial Order**").

Approval of Implementation Agreement and Related Transactions

[4] **ORDERS** that the terms and conditions of a certain Implementation Agreement (the "**Implementation Agreement**) among Abitibi-Consolidated Inc., Abitibi Consolidated Company of Canada ("**ACCC**"), Manicouagan Power Company ("**MPCo**"), Alcoa Canada Ltée and Alcoa Ltd. (collectively, "**Alcoa**"), to which has intervened HQ Energie Inc., a wholly-owned subsidiary of Hydro-Quebec, a copy of which is filed as Exhibit R-1 to the Motion, are approved.

[5] **ORDERS AND DECLARES** that Petitioners are authorized to implement and complete the transactions and steps contemplated in the Implementation Agreement and the Step Plan (Exhibit A thereto) (the "**Proposed Transactions**") with such non-material alterations, amendments, deletions or additions as the parties thereto may agree to with the consent of the Monitor, and to perform the obligations contained in the Implementation Agreement.

[6] **ORDERS** that in completing the Proposed Transactions, subject to the terms and conditions of the Implementation Agreement, the Petitioners are authorized:

a) to execute the agreements and to execute and deliver any documents and assurances governing or giving effect to the Implementation Agreement (including, without limitation, the directions of payment contemplated therein) as the Petitioners, in their discretion, may deem to be reasonably necessary or advisable to conclude the Proposed Transactions, including, without limitation, the execution of such deeds, contracts or documents, as may be contemplated in the Implementation Agreement and all such deeds, contracts or documents are hereby ratified, approved and confirmed (collectively with the Implementation Agreement, the "**Transaction Documents**"); and

b) to take such steps as are, in the opinion of the Petitioners, necessary or incidental to the performance of their obligations pursuant to the Implementation Agreement.

[7] **ORDERS AND DECLARES** that this Order shall constitute the only authorization required by the Petitioners to proceed with the Proposed Transactions and that no shareholder or regulatory approval shall be required in connection with the Proposed Transactions save and for those contemplated in the Implementation Agreement.

[8] **ORDERS AND DECLARES** that the assets or shares of MPCo to be transferred to ACCC under the Implementation Agreement shall not become subject to any charges, liens or encumbrances granted in respect of ACCC or its assets, including, without limitation, any and all CCAA Charges, and that the assets to be transferred by ACCC to the New LP (as defined in the Implementation Agreement) shall be transferred to the New LP free and clear of any charges, liens or encumbrances including, without limitation (i) the CCAA charges and any and all other encumbrances, liens, assignments, charges, hypothecs, pledges, mortgages, title retention agreements, security interests of any nature, adverse claims, exceptions, reservations, easements, servitudes, rights of occupation, matters capable of registration against title, options, rights of pre-emption, privileges or any contract to create any of the foregoing, or (ii) any liability or obligation of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, secured or unsecured, joint or several, solidary or not solidary, due or to become due, vested or unvested, executory, determined, determinable or otherwise and whether or not the same is required to be accrued on any financial statements, the whole save and except for the liabilities to be assumed by the New LP pursuant to the Implementation Agreement.

<u>Treatment of Proceeds and Related Matters Pending Further Order</u>

[9] **ORDERS AND DECLARES** that, subject to paragraph 11 hereof, (i) the net proceeds from the Proposed Transactions paid to or for the benefit of ACCC or any Abitibi Petitioner under or as contemplated by the Transaction Documents, and (ii) the shares of ULC (as defined in the Implementation Agreement), shall constitute and shall for all purposes be treated as proceeds of disposition of the shares of MPCo held by ACCC (the "**MPCo Share Proceeds**"); for greater certainty the MPCo Share Proceeds shall not include the following:

a) subject to paragraph 11 of this Order, any amount paid in satisfaction of the Abitibi Petitioners' obligations under the ACI DIP Agreement (whether as principal, interest, fees or otherwise);

b) subject to paragraph 13 of this Order, about $282.3 million (the "**ULC Reserve**") contributed to the ULC;

c) about $25 million (current estimate) paid in connection with taxes;

d) subject to paragraph 10 of this Order, about $30.75 million representing a commercially negotiated holdback on the purchase price payable by HQ to ACCC, as contemplated in the Intervention section of the Implementation Agreement (the "**HQ Holdback**");

e) subject to paragraph 10 of this Order, about $31 million in connection with MPCo intercompany accounts payable; and

f) any amounts paid or payable by ACCC or by ACI in connection with or pursuant to the Transaction Documents, including any fees, costs, expenses, indemnities and closing adjustments provided for therein.

[10] **ORDERS AND DECLARES** that the MPCo Share Proceeds extend to and include:

a) ACCC's interest in the HQ Holdback; and

b) ACCC's interest (without set off or recoupment) in claims arising from the satisfaction of related party claims in the amounts of $31.3 million and $0.9 million referred to as "Outstanding Balance Among ACCC/BCFPI and HQ" and referred to as "Prefiling amounts payable by the ACI Group to Alcoa and MPCo" respectively in paragraph 48 of the Monitor's 16th Report to the Court.

[11] **ORDERS** that in accordance with paragraph 61.10 of the Second Amended and Restated Initial Order, the Trustee for the benefit of the Senior Secured Noteholders has the benefit of and is entitled to be subrogated to the ACI DIP Charge to the extent of any repayment of the ACI DIP Facility from proceeds of or as part of the Proposed Transactions, provided that such subrogation to the ACI DIP Charge may only be enforced once all of the obligations of the ACI DIP Lender have been paid in full, and further **ORDERS** that upon payment in full of such obligations, the Borrowers under the ACI DIP Facility will be precluded from any other borrowings thereunder.

[12] **ORDERS** that the MPCo Share Proceeds will be subject to a replacement charge (the "**MPCo Noteholder Charge**") in favour of US Bank, National Association as Indenture Trustee and Collateral Trustee for the benefit of the holders of the Secured Notes (the "**Trustee**" and the "**Senior Secured Noteholders**" respectively) with the same rank and priority as the Senior Notes Security held by the Trustee in respect of the shares of MPCo held by ACCC, without requirement for further registration or action; provided further that the Trustee shall be authorized to require the shares of

ULC to be pledged by ACCC to the Trustee or, at the election of the Trustee, in favour of a nominee of the Trustee established for such purpose.

[13] **ORDERS** that the ULC Reserve is subject to a charge in favour of the Trustee for the benefit of the Senior Secured Noteholders subordinate to a charge in favour of Alcoa (as defined in the Implementation Agreement ("Alcoa") and on behalf of itself and on behalf of all Alcoa Indemnified Persons and MPCo Indemnified Persons, in each case as defined in the Implementation Agreement) on terms and conditions as to subordination and enforcement satisfactory to Alcoa, in its sole discretion.

[14] **ORDERS** that the ULC shall not incur any further liabilities except as may be approved by the Court on appropriate notice to the stakeholders including the Trustee, the ad hoc committee of senior secured noteholders (the "**Committee**"), and Alcoa and, in any case, only as permitted by the Transaction Documents, save for ordinary course charges such as bank fees in connection with the investment of the ULC Reserve in investment grade marketable securities.

[15] **ORDERS** that no investment of the ULC Reserve or any portion other than in investment grade marketable securities shall be made without approval of the Court made on notice to the Trustee, the Committee, Alcoa and the service list.

[16] **ORDERS** that the cash component of the MPCo Share Proceeds and the ULC Reserve shall be paid to and be held by the Monitor:

a) in the case of the MPCo Share Proceeds, in an interest bearing account subject to the terms of this Order, and shall not be released by the Monitor except upon approval of the Court made on notice to the Trustee, the Committee and the service list; and

b) in the case of the ULC Reserve, in an interest bearing account or investment grade marketable securities and shall not be released by the Monitor except pursuant to the terms of the Transaction Documents.

[17] **ORDERS** that, for greater certainty, nothing in this Order, including without limitation, the approval of the Implementation Agreement contained in paragraph 4 hereof and the authorizations contained in paragraphs 5 and 6 hereof, shall be construed as the Court granting authority or approval, in principle or otherwise, to the Abitibi Petitioners to borrow any portion of the ULC Reserve.

[18] **ORDERS** that, at the option of the Trustee, the ULC shall provide to the Trustee, concurrently with the completion of the Proposed Transactions, a guarantee (the "**ULC Subordinated Guarantee**) of the payment of the Secured Notes held by the Senior Secured Noteholders on the following terms:

a) the ULC Subordinated Guarantee to be for all purposes, and shall at all times remain, inferior, junior, subordinated and postponed the ULC's obligations to all Alcoa Indemnified Persons and all MPCo Indemnified Persons, in each case as defined in the Implementation Agreement (the "**Alcoa Obligations**") on terms and conditions as to subordination, postponement and enforcement satisfactory to Alcoa, in its sole discretion;

b) the Alcoa Obligations shall be paid in full before any payment on account of, or in respect of, the ULC Subordinated Guarantee (whether as principal, interest, fees or otherwise) is paid; and

c) any payments or distributions on account of, or in respect of, the Secured Notes which are received contrary to these provisions shall be received in trust for the benefit of the ULC, shall be segregated from other funds and property held by recipient and shall be immediately paid over to the ULC.

[19] **ORDERS**, consistent with paragraph 92 of the Initial Order, that:

a) nothing herein shall affect any determination of (i) the validity or perfection of the Senior Notes Security, (ii) whether such security is opposable to third parties or (iii) whether such security is avoidable under applicable Canadian or United States laws; and

b) the validity, perfection and opposability of the MPCo Noteholder Charge and of the ULC Subordinated Guarantee, as the case may be, are conditional upon and subject to the validity, perfection and opposability of the Senior Notes Security in respect of the shares of MPCo held by ACCC.

[20] **ORDERS AND DECLARES** that leave be reserved to the Abitibi Petitioners or to any party or intervenor to the Implementation Agreement, to apply for such orders or directions as may be required to complete the Proposed Transactions or otherwise in connection with the foregoing orders.

[21] **ORDERS** the provisional execution of this Order notwithstanding any appeal and without the necessity of furnishing any security.

[22] **WITHOUT COSTS**.

CLÉMENT GASCON, J.S.C. J.C.S.

Me Sean Dunphy, Me Guy P. Martel, Me Mélanie Béland and Me Joseph Reynaud
STIKEMAN, ELLIOTT
Attorneys for Petitioners

Me Avram Fishman and Me Gilles Paquin
FLANZ FISHMAN MELAND PAQUIN
Attorneys for the Monitor

Me Robert Thornton
THORNTON GROUT FINNINGAN
Attorneys for the Monitor

Me Patrice Benoît
GOWLING LAFLEUR HENDERSON LLP
Attorneys for Investissement Québec

Me Alain Riendeau
FASKEN MARTINEAU Du MOULIN
Attorneys for Silver Oak Capital LLC et al., DDJ Capital Management, LLC et al.

Me Gerald F. Kandestin
KUGLER, KANDESTIN
Attorneys for Alcoa

Me Frederick L. Myers and Me Robert J. Chadwick
GOODMANS LLP
Attorneys for the Ad hoc Committee of Bondholders

Me Marc Duchesne, Me François D. Gagnon,
Me Vanessa Jodoin and Me Michael J. MacNaughton
BORDEN LADNER GERVAIS
Attorneys for the Ad hoc Committee of the Senior Secured Noteholders and U.S. Bank National Association, Indenture Trustee for the Senior Secured Noteholders

Me Christian Roy
OGILVY RENAULT
Attorneys for Hydro-Québec

Dates of hearing: September 25, 28 and 29, 2009

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 JONQUIERE 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