

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	
	)	Chapter 11
	)	
ABITIBIBOWATER INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 09-11296 (KJC)
	)	
Debtors.	)	Jointly Administered
	)	
	)	Hearing Date: December 20, 2012 at 2:30 p.m. (ET)
	)	Objection Deadline: December 13, 2012 at 4:00 p.m. (ET)
	)	

**REORGANIZED DEBTORS' MOTION FOR ENTRY OF FINAL DECREE CLOSING  
CERTAIN CASES AND AMENDING CAPTION OF REMAINING CASE**

Resolute Forest Products Inc. (f/k/a AbitibiBowater Inc.) and its affiliated reorganized debtors in the above-captioned cases (each a “Reorganized Debtor,” and collectively, the “Reorganized Debtors,” and prior to the Effective Date (as defined below), the “Debtors”), by and through their undersigned counsel, hereby move (the “Motion”) the Court for entry of a final decree closing the majority of their chapter 11 cases, specifically, those of AbitibiBowater US Holding 1 Corp., AbitibiBowater US Holding LLC, AbitibiBowater Canada Inc., Abitibi-Consolidated Alabama Corporation, Abitibi-Consolidated Corporation, Abitibi-

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<sup>1</sup> The Reorganized Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: AbitibiBowater Inc. (6415), AbitibiBowater US Holding 1 Corp. (N/A), AbitibiBowater US Holding LLC (N/A), AbitibiBowater Canada Inc. (N/A), Abitibi-Consolidated Alabama Corporation (4396), Abitibi-Consolidated Corporation (9050), Abitibi-Consolidated Finance LP (4528), Abitibi Consolidated Sales Corporation (7144), Alabama River Newsprint Company (7247), Augusta Woodlands, LLC (9050), Bowater Alabama LLC (7106), Bowater America Inc. (8645), Bowater Canada Finance Corporation (N/A), Bowater Canadian Forest Products Inc. (N/A), Bowater Canadian Holdings Incorporated (N/A), Bowater Canadian Limited (N/A), Bowater Finance Company Inc. (1715), Bowater Finance II LLC (7886), Bowater Incorporated (1803), Bowater LaHave Corporation (N/A), Bowater Maritimes Inc. (N/A), Bowater Newsprint South LLC (1947), Bowater Newsprint South Operations LLC (0168), Bowater Nuway Inc. (8073), Bowater Nuway Mid-States Inc. (8290), Bowater South American Holdings Incorporated (N/A), Bowater Ventures Inc. (8343), Catawba Property Holdings, LLC (N/A), Coosa Pines Golf Club Holdings LLC (8702), Donohue Corp. (9051), Lake Superior Forest Products Inc. (9305) and Tenex Data Inc. (5913). On December 21, 2009, ABH LLC 1 (2280) and ABH Holding Company LLC (2398) (the “SPV Debtors”) commenced chapter 11 cases, which cases are jointly administered with the above-captioned Debtors. The Debtors’ and SPV Debtors’ corporate headquarters are located at, and the mailing address for each Debtor is, 1155 Metcalfe Street, Suite 800, Montreal, Quebec H3B 5H2, Canada.

Consolidated Finance LP, Abitibi Consolidated Sales Corporation, Alabama River Newsprint Company, Augusta Woodlands, LLC, Bowater Alabama LLC, Bowater America Inc., Bowater Canadian Forest Products Inc., Bowater Canadian Holdings Incorporated, Bowater Canadian Limited, Bowater Finance Company Inc., Bowater Finance II LLC, Bowater Incorporated, Bowater LaHave Corporation, Bowater Maritimes Inc., Bowater Newsprint South LLC, Bowater Newsprint South Operations LLC, Bowater Nuway Inc., Bowater Nuway Mid-States Inc., Bowater South American Holdings Incorporated, Bowater Ventures Inc., Catawba Property Holdings, LLC, Coosa Pines Golf Club Holdings LLC, Donohue Corp., Lake Superior Forest Products Inc., Tenex Data Inc., ABH LLC 1 and ABH Holding Company LLC (collectively, the “Closing Cases”),<sup>2</sup> pursuant to sections 105 and 350(a) of title 11 of the United States Code (the “Bankruptcy Code”), Rule 3022 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 5009-1(a) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), and amending the caption of these cases effective upon entry of an order granting this Motion. The Reorganized Debtors’ confirmed chapter 11 plan has been substantially consummated, approximately 96% of the distributions required to be made under the plan have been made, and only a few disputed claims remain to be resolved. Accordingly, final decrees can be entered in the Closing Cases, leaving the chapter 11 case of AbitibiBowater Inc. (“ABH”), the lead case and parent company whose stock is being distributed, open for purposes of resolving the few

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<sup>2</sup> On January 26, 2011, the Reorganized Debtors filed the *Debtors’ Motion for Order Dismissing the Chapter 11 Case of Bowater Canada Finance Corporation Pursuant to Section 1112(b) of the Bankruptcy Code* (the “BCFC Motion”) [Docket No. 4269], whereby the Reorganized Debtors sought authority to dismiss Case No. 09-11319 (KJC) filed by Bowater Canada Finance Corporation (the “BCFC Case”). The BCFC Motion was adjourned to allow the Reorganized Debtors to resolve the informal objection of various parties. The Reorganized Debtors will be filing a certification of counsel requesting entry of an order dismissing the BCFC Case in light of a settlement reached between those parties. Accordingly, the Reorganized Debtors do not seek relief with respect to the BCFC Case pursuant to this Motion. Moreover, Case No. 09-14486 filed by ABH LLC 2 was dismissed pursuant to this Court’s *Order Approving Debtors’ Motion for an Order Dismissing the Chapter 11 Case of ABH LLC 2 Pursuant to Bankruptcy Code Section 1112(b)* [Docket No. 1707], entered on February 18, 2010.

outstanding matters that remain. In further support of the Motion, the Reorganized Debtors respectfully represent as follows:

### **JURISDICTION**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware* dated as of February 29, 2012. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. The statutory predicates for the relief requested herein are sections 105 and 350(a) of the Bankruptcy Code, Bankruptcy Rule 3022, and Local Rule 5009-1(a).

### **BACKGROUND**

3. On April 16, 2009 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”).<sup>3</sup> On April 17, 2009, certain of the Debtors (the “Cross-Border Debtors”)<sup>4</sup> and non-debtor subsidiaries of AbitibiBowater (the “CCAA Debtors” and together with the Cross-Border Debtors, the “Canadian Debtors”)<sup>5</sup> applied for protection from their creditors under Canada’s Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the “CCAA”), in the Superior

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<sup>3</sup> The SPV Debtors commenced their Chapter 11 Cases on December 22, 2009.

<sup>4</sup> The Cross-Border Debtors are: Bowater Canada Finance Corporation, Bowater Canadian Holdings Incorporated, AbitibiBowater Canada Inc., Bowater Canadian Forest Products Inc., Bowater Maritimes Inc., Bowater LaHave Corporation and Bowater Canadian Limited.

<sup>5</sup> The CCAA Debtors are: Bowater Mitis Inc., Bowater Guerette Inc., Bowater Couturier Inc., Alliance Forest Products (2001) Inc., Bowater Belledune Sawmill Inc., St. Maurice River Drive Company, Bowater Treated Wood Inc., Canoxel Hardboard Inc., 9068-9050 Quebec Inc., Bowater Canada Treasury Corporation, Bowater Canada Finance Limited Partnership, Bowater Shelburne Corporation, 3231078 Nova Scotia Company, Bowater Pulp and Paper Canada Holdings Limited Partnership, Abitibi-Consolidated Inc., Abitibi-Consolidated Company of Canada, Abitibi-Consolidated Nova Scotia Incorporated, 32117925 Nova Scotia Company, Terra-Nova Explorations Ltd., The Jonquiere Pulp Company, The International Bridge and Terminal Company, Scramble Mining Limited, 9150-3383 Quebec Inc., Star Lake Hydro Partnership, Saguenay Forest Products Inc., 3224112 Nova Scotia Limited, La Tuque Forest Products Inc., Marketing Donohue Inc., Abitibi-Consolidated Canadian Office Products Holdings Inc., 3834328 Canada Inc., 6169678 Canada Incorporated, 4042410 Canada Inc., Donohue Recycling and 1508756 Ontario Inc.

Court, Commercial Division, for the Judicial District of Montreal, Canada (the “Canadian Court” and the filing, the “Canadian Proceedings”).

4. The Debtors comprised 34 entities within a corporate family of which ABH was the parent. Each debtor filed a separate chapter 11 petition. ABH was created by the pre-petition merger of Bowater, Inc. (“Bowater”) and Abitibi-Consolidated Inc. (“ACI”). Prior to the Petition Date, ABH functioned as a holding company with no independent operations, and principally conducted business through four direct subsidiaries: Bowater, Bowater Newsprint South LLC, ACI and AbitibiBowater U.S. Holding LLC (“ABUSH”). Bowater and its former subsidiary, Bowater Newsprint South LLC (“Newsprint South”), and their direct and indirect subsidiaries comprised the Bowater Group (comprising Bowater and its direct and indirect subsidiaries). ABUSH and ACI functioned, pre-petition, as the holding companies for the Donohue Group and Abitibi Group, respectively, as such terms are defined in the *Declaration of William G. Harvey in Support of Chapter 11 Petitions and Various First Day Applications and Motions* (the “First Day Declaration”) [Docket No. 20]. More information regarding the Debtors’ pre-petition corporate structure can be found in the First Day Declaration.

5. On November 23, 2010, the Court entered its *Finding of Facts, Conclusions of Law and Order Confirming Debtors’ Second Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (as Amended)* (the “Confirmation Order”) [Docket No. 3940] confirming the Debtors’ chapter 11 plan (as confirmed, the “Plan”). The Plan went effective on December 9, 2010 (the “Effective Date”). *See Notice of (A) Occurrence of the Effective Date of the Plan and (B) Deadlines to File Administrative Claims, Fee Claims and Rejection Damages Claims* [Docket No. 4040]. The Plan allocates shares of New ABH Common Stock, that is, of ABH, as reorganized, to each of the Debtors’ estates based

on each Debtor's value. Creditors of the various Debtors received a *pro rata* distribution of New ABH Common Stock on account of their claims based on the claims asserted against each Debtor. Other than payment in cash of administrative expenses and convenience claims, the Plan does not require other distributions on account of prepetition claims.

6. Pursuant to the Plan and the Confirmation Order, Avidity Partners LLC (the "Post-Effective Date Claims Agent") was vested with the authority to dispute claims in Classes 1, 5 and 6 (as defined in the Plan) filed in an amount of \$75,000 or more, and in conjunction therewith, also granted standing to prosecute certain avoidance actions to recover any alleged transfers made to an entity that received payments or transfers during the applicable "look back" period, as more fully described in Section 4.3 of the Plan, to the extent such payments or transfers equaled or exceeded \$350,000. The Plan authorizes the Post-Effective Date Claims Agent to prosecute avoidance actions, and renders any claim held by a defendant to such an action disputed under section 502(d) of the Bankruptcy Code (a "Section 502(d) Claim").

### **BASIS FOR RELIEF**

7. The Reorganized Debtors have substantially consummated the Plan and the Closing Cases are, for all intents and purposes, fully administered. Approximately 96% of the New ABH Common Stock allocated for distribution under the Plan has been distributed. Notably, only 36 claims out of the 8,231 claims that were filed in the Chapter 11 Cases remain disputed. Of these, 32 claims are Section 502(d) Claims that have been liquidated but remain disputed solely on account of the related avoidance actions. All restructuring steps contemplated under the Plan have been consummated, all assets have vested in the Reorganized Debtors, and ABH (now known as Resolute Forest Products) has been successfully running and operating its

business since its emergence in 2010. The four unresolved claims that are not Section 502(d) Claims are subject to pending claim objections that have either been adjourned to allow the parties additional time to reach a consensual resolution or have been taken under advisement by the Court and remain subject to final adjudication. In short, the majority of Closing Cases are fully administered, with nothing remaining to be done at those estates. Moreover, the few open matters that remain can be resolved in ABH's lead case.

8. The Reorganized Debtors also seek the entry of an order modifying the caption of the Remaining Case to reflect that AbitibiBowater Inc. is the remaining Debtor with an open and pending bankruptcy case. The Reorganized Debtors propose that the new caption read as follows:

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	:	Chapter 11
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ABITIBIBOWATER INC., <sup>1</sup>	:	Case No. 09-11296 (KJC)
	:	
Reorganized Debtor.	:	
	:	
	:	
	:	
	X	

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<sup>1</sup> The Reorganized Debtor in this proceeding, along with its last four digits of its federal tax identification number, is AbitibiBowater Inc. (6415). The Reorganized Debtor's mailing address is 111 Duke Street, Suite 5000, Montreal, Quebec H3B 2M1, Canada.

9. After the estate is fully administered, the court, on its own motion or on motion of a party-in-interest, must grant a final decree closing a chapter 11 case pursuant to section 350(a) of the Bankruptcy Code and Bankruptcy Rule 3022. Local Rule 5009-1(a) further provides that “upon written motion, a party in interest may seek the entry of a final decree at any time after the confirmed plan has been substantially consummated provided that all required fees due under 28 U.S.C. § 1930 have been paid.” Del. Bankr. LR 5009-1(a).

10. Neither the Bankruptcy Code nor the Bankruptcy Rules define the term “fully administered.” Courts take guidance from the 1991 Advisory Committee Note to Bankruptcy Rule 3022, which enumerate the following factors to consider in determining whether an estate has been fully administered: (1) whether the order confirming the plan has become final, (2) whether deposits required by the plan have been distributed, (3) whether the property proposed by the plan to be transferred has been transferred, (4) whether the debtor or the successor of the debtor under the plan has assumed the business or the management of the property dealt with by the plan, (5) whether payments under the plan have commenced, and (6) whether all motions, contested matters, and adversary proceedings have been finally resolved. Courts rely on these factors as a guide; not all of them need be present for a court to close a case. *See In re SLI, Inc.*, Case No. 02-12608, 2005 WL 1668396, at \*2 (Bankr. D. Del. June 24, 2005).

11. Under this standard, the Reorganized Debtors’ Chapter 11 Cases are fully administered, and a final decree can be entered for the Closing Cases. First, the Confirmation Order is final.<sup>6</sup> Second, the restructuring steps contemplated by the Plan have been implemented

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<sup>6</sup> Two appeals were filed following entry of the Confirmation Order by equity holders who challenged the Debtors’ enterprise value and alleged that they were entitled to a distribution under the Plan, notwithstanding the Court’s findings to the contrary. The Reorganized Debtors believe the appeals, assigned Civil Action Nos. 11-cv-

and completed. Third, all property proposed by the Plan to be transferred under the Plan has been transferred. Fourth, the Reorganized Debtors have assumed the business and management of the property under the Plan. Fifth, ABH, on behalf of the Reorganized Debtors, has made the cash payments required under the Plan and has distributed approximately 96% of the New ABH Common Stock (as defined in the Plan) that was allocated for Class 6 Unsecured Claims; thus distributions have been substantially completed.<sup>7</sup> Sixth, all pending motions, contested matters and adversary proceedings have been resolved except with respect to the following matters:

- a. **Pending Preference Actions.** Thirty-two claims have been liquidated but remain disputed under section 502(d) of the Bankruptcy Code as a result of pending preference actions. The Post-Effective Date Claims Agent is prosecuting these actions, all of which have been assigned separate adversary case numbers and have their own dockets.
- b. **Pending Claim Objections.** In addition to the Section 502(d) Claims, there are four claims that are disputed and unresolved, including: (a) two duplicative claims (the “Levin Claim”) filed by the Levin Group against Bowater, asserted in the amount of \$88 million;<sup>8</sup> (b) a claim filed by Donald Brain, a former employee, that is subject to the *Joint Forty-Third Omnibus (Substantive) Objection to Claims by Reorganized Debtors and Claims Agent Pursuant to Section 502(b) of the Bankruptcy Code, Bankruptcy Rules 3003 and 3007, and Local Rule 3007-1* [Docket No. 4786]; and (c) a claim relating to a potential mechanic’s lien filed by Clow Darling<sup>9</sup> that is subject to the adjourned *Debtors’ Tenth Omnibus (Substantive) Objection to Claims Pursuant to Section 502(b) of the Bankruptcy Code, Bankruptcy Rules 3003 and 3007, and Local Rule 3007-1* [Docket No. 2921] (collectively with the Section 502(d) Claims, the “Unresolved Claims”).

12. All expenses arising from the administration of the Closing Cases, including court fees, United States Trustee fees, professional fees, and expenses, have been paid

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00005-LPS and 11-523, respectively, are equitably moot, and in any event, the Confirmation Order was never stayed and the Plan has gone effective.

<sup>7</sup> 2,556,528 shares of New ABH Common Stock will remain in reserve pending resolution of the Unresolved Claims, in the event that any holders of such Unresolved Claims are entitled to distributions thereon.

<sup>8</sup> The Debtors objected (the “Levin Claim Objection”) to the Levin Claim on September 21, 2010, and the Post-Effective Date Claims Agent assumed prosecution of the Levin Claim Objection after the Effective Date. At this time, the Levin Claim Objection remains under advisement and before the Court.

<sup>9</sup> On information and belief, the Debtors understand that the claim filed by Clow Darling will be withdrawn. However, as of the date hereof, the notice of withdrawal has not yet been filed, thus the Debtors have included the claim as one of the Unresolved Claims.



or will be paid in the amounts due as soon as reasonably practicable after the closure of the Closing Cases. Moreover, the Reorganized Debtors will complete all remaining quarterly reports and pay all appropriate fees when the cases are closed.

13. The pending avoidance actions and the Section 502(d) Claims should not prevent entry of final decrees in the Closing Cases. Each of these disputes can be finally adjudicated and administered in the related avoidance actions, each of which has their own docket. For this reason, courts have closed cases and entered final decrees in chapter 11 cases notwithstanding pending preference actions. *See, e.g., In re SLI, Inc.*, 2005 WL 1668396, at \*2 (declining to close case due to pending appeal of confirmation order, but noting that “[t]he administration of the bankruptcy case itself is not really implicated by that preference action, and thus its pendency provides no basis for keeping these cases open.”). Courts have also closed cases notwithstanding pending appeals relating to claim objections. *See, e.g., Nesselrode v. Provident Fin., Inc. (In re Provident Fin., Inc.)*, 2010 WL 6259973, at \*10 (9th Cir. BAP 2010) (noting “no evidence in the record shows that the pendency of [the creditor’s] appeal militates in favor of keeping [d]ebtor’s bankruptcy case open.”), *aff’d on other grounds*, 2012 WL 172887 (9th Cir. Jan. 17, 2012).

14. Similarly, the remaining Unresolved Claims other than the Section 502(d) Claims should also not prevent entry of a final decree in the Closing Cases. These four claims can be finally adjudicated in ABH’s lead case. ABH is the only entity whose stock is being distributed under the confirmed Plan. As a result, the disputed claim reserves relating to the Unresolved Claims can be maintained at the ABH level, and distributions of New ABH Common

Stock can be made at the ABH level as these claims are resolved.<sup>10</sup> Closing the Closing Cases will, accordingly, not prejudice any parties' rights because all such rights may be exercised in ABH's case.

15. Finally, keeping the Closing Cases open imposes a significant and expensive administrative burden on the Reorganized Debtors, and is unnecessary for this Court to fully administer the Chapter 11 Cases. Notably, the Reorganized Debtors conferred with the Office of the United States Trustee for the District of Delaware regarding their proposed designation of ABH's Chapter 11 Case as the Remaining Case, and the Office of the United States Trustee indicated that it did not object to this proposed course of action. The cases this Motion seeks to close are simply unnecessary to the continued administration of the Reorganized Debtors' estates and related matters.

### **NOTICE**

16. Notice of this Motion has been provided to the following parties, or, in lieu thereof, their counsel: (a) counsel to the Post-Effective Date Claims Agent in the Chapter 11 Cases; (b) the Office of the United States Trustee; (c) the Monitor appointed in the Canadian Proceeding; and (d) those parties entitled to notice pursuant to Bankruptcy Rule 2002, in accordance with Local Rule 2002-1(b). The Reorganized Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

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<sup>10</sup> Notably, the Reorganized Debtors will maintain existing disputed claims reserves and do not propose a de facto substantive consolidation of these cases. All that the Reorganized Debtors are proposing is to "roll up" the administration of these cases to the parent level, leaving open ABH's lead case for purposes of resolving the remaining claims and effecting the rest of the stock distributions required under the Plan.

WHEREFORE, the Reorganized Debtors respectfully request that this Court  
(a) enter an order closing the Closing Cases, (b) issue a final decree with respect to the Closing Cases, (c) change the caption of the Remaining Case, and (d) grant such other and further relief as is just and appropriate under the circumstances.

Dated: Wilmington, Delaware  
December 3, 2012

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Andrew L. Magaziner

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