

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

In re:)	
)	Chapter 11
ABITIBIBOWATER INC., <i>et al.</i> , ¹)	
)	Case No. 09-11296 (KJC)
)	
Debtors.)	(Joint Administration Pending)
)	
)	RE: DOCKET NO. 25

**FINAL ORDER PURSUANT TO SECTIONS
105, 362(d), 363(b)(1), 363(f), 363(m), 364(c)(1), 364(e) AND 365
OF THE BANKRUPTCY CODE (1) AUTHORIZING
CERTAIN DEBTORS TO CONTINUE SELLING RECEIVABLES AND
RELATED RIGHTS PURSUANT TO AN AMENDED SECURITIZATION
FACILITY, (2) MODIFYING THE AUTOMATIC STAY AND (3)
GRANTING OTHER RELATED RELIEF**

Upon the motion dated April 16, 2009 (the “**Motion**”)² of the above-captioned Debtors seeking an order of this Court, pursuant to sections 362(d), 363(b)(1), 363(f), 363(m), 364(c)(1), 364(e) and 365 of title 11 of the United States Code (the “**Bankruptcy Code**”):

¹ The debtors-in-possession in these cases, along with the last four digits of each Debtor’s federal or Canadian tax identification number, are: AbitibiBowater Inc. (6415), AbitibiBowater US Holding I Corp. (6050), AbitibiBowater US Holding LLC (N/A), AbitibiBowater Canada Inc. (3225), 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 (0999), Bowater Alabama LLC (7106), Bowater America Inc. (8645), Bowater Canada Finance Corporation (8810), Bowater Canadian Forest Products Inc. (2010), Bowater Canadian Holdings Incorporated (6828), Bowater Canadian Limited (7373), Bowater Finance Company Inc. (1715), Bowater Finance II LLC (7886), Bowater Incorporated (1803), Bowater LaHave Corporation (5722), Bowater Maritimes Inc. (5684), Bowater Newsprint South LLC (1947), Bowater Newsprint South Operations LLC (0186), 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). The corporate headquarters of the debtors-in-possession is located at, and the mailing address for each debtor-in-possession is, 1155 Metcalfe Street, Suite 800, Montreal, Quebec H3B 5H2, Canada.

² Capitalized terms used but not otherwise defined herein shall have the same meanings assigned thereto in the Motion.

(i) authorizing Abitibi Consolidated Sales Corporation (“ACSC”) and Abitibi-Consolidated Inc., a Chapter 15 debtor³ (“ACI” and together with ACSC the “Originators”) to enter into, and authorizing ACSC to cause Abitibi-Consolidated U.S. Funding Corp., a wholly-owned subsidiary of ACSC that is not a Debtor (“ACI Funding”) to enter into an Omnibus Amendment, substantially in the form attached to the Motion (the “Amendment”), to (a) that certain Amended and Restated Receivables Purchase Agreement, dated as of January 31, 2008 (as heretofore amended the “RPA”) among ACI Funding, Eureka Securitisation, plc (“Eureka”), Citibank, N.A. (“Citibank”), Citibank, N.A., London Branch (the “Agent”), ACI, in its capacity as Subservicer and an Originator, and ACSC, in its capacity as Servicer and an Originator and (b) that certain Amended and Restated Purchase and Contribution Agreement, dated as of January 31, 2008 (as heretofore amended the “PCA”, the RPA and PCA, each as amended by the Amendment, are collectively hereinafter referred to as the “Receivables Agreements”) among ACI and ACSC as Sellers and ACI Funding as Purchaser,

³ Notwithstanding anything in this Order to the contrary, this Order does not grant authority to ACI and nothing in this Order limits the jurisdiction of the Quebec Superior Court of Justice (Commercial Division) (the “Canadian Court”) over ACI or limits oversight of the monitor appointed in the proceeding of Abitibi-Consolidated Inc. under *Canada's Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “Canadian Proceeding”). References in this Order to ACI describe the Chapter 15 relief granted to ACI pursuant to this Court's recognition of the Securitization Provisions (as defined in the Omnibus Amendment) of the initial order of the Canadian Court entered in the Canadian Proceeding and grant of other Chapter 15 relief pursuant to the “Order Granting Provisional Relief” and the “Order Granting Recognition and Relief in Aid of Foreign Proceeding Pursuant to 11 U.S.C. §§1517, 1520, and 1520”, in each case, upon entry by this Court in the Chapter 15 case of In re Abitibi-Consolidated Inc., et al., Case No. 09-11348 (KJC).

which Amendment shall, among other things, waive certain defaults under the Receivables Agreements;

(ii) authorizing the Originators to continue selling and/or contributing Receivables (as defined in the PCA) to ACI Funding in accordance with the terms of the PCA (Receivables sold or contributed to ACI Funding, whether before or after the Filing Date (as defined below), together with the Related Security (as defined in the PCA) being referred to herein as “**Transferred Receivables**”);

(iii) authorizing ACI, ACSC and the other Debtors, as applicable, to otherwise perform or continue to perform, and authorizing ACSC to cause ACI Funding, as a wholly owned subsidiary of ACSC, to perform or continue to perform their respective obligations under each of the Receivables Agreements (including without limitation servicing obligations) and each of the other instruments and agreements related to the securitization facility contemplated by the Receivables Agreements, whether currently effective or hereafter entered into (such other instruments and agreements together with the Receivables Agreements and the Amendment, the “**Financing Agreements**”), including notably, but without limiting the generality of the foregoing: (a) the Undertaking Agreement (Servicer) dated as of October 27, 2005 by ACI in favor of Eureka, Citibank and the other Banks (as defined in the RPA) that are party to the RPA (as heretofore amended, including, without limitation, by Second Amendment of Undertaking Agreement (Servicer) dated as of January 31, 2008); (b) the Undertaking Agreement (Originator) dated as of October 27, 2005 by ACI in

favor of ACI Funding (as heretofore amended, including, without limitation, by Second Amendment of Undertaking Agreement (Originator) dated as of January 31, 2008); (c) the Deposit Account Control Agreement dated as of January 31, 2008 among ACI Funding, ACI, ACSC, Citibank and the Agent, as amended (the **“Deposit Account Control Agreement”**); (d) the Blocked Accounts Agreement dated as of October 27, 2005 among ACI, ACSC, the Agent, Royal Bank of Canada and ACI Funding, as amended (the **“Blocked Accounts Agreement”**); (e) the Agreement Re: Pledged Deposit Accounts dated as of October 27, 2005 among ACSC, ACI, ACI Funding, the Agent and LaSalle Bank National Association (predecessor in interest to Bank of America, N.A.), as amended (the **“Pledged Deposit Accounts Agreement”**); (f) the Second Amended and Restated Four Party Agreement for Sold Accounts (General) dated as of January 31, 2008 among Export Development Canada and Compagnie Francaise d’Assurance pour le Commerce Extérieur – Canada Branch, ACI, ACI Funding, the Agent and Citibank, as amended; (g) the Intercompany Agreement dated as of December 20, 2007 between ACI and ACSC, as amended; (h) the Accounts Receivable Policy (Shipments) General Terms and Conditions, plus the Coverage Certificate effective September 1, 2008 (together with all schedules and endorsements thereto) issued by Export Development Canada and Compagnie Francaise d’Assurance pour le Commerce Extérieur - Canada Branch to ACI, as amended; and (i) the fee letters dated April 1, 2009 between ACI Funding and the Agent;

(iv) pursuant to section 364(c)(1) of the Bankruptcy Code, granting ACI Funding, the Agent, Eureka and Citibank priority in payment with respect to the obligations of the Originators under the Financing Agreements over any and all administrative expenses of the kinds specified in sections 503(b) and 507(b) of the Bankruptcy Code, other than in respect of the Carve-Out (as defined below);

(v) scheduling an interim hearing (the “**Interim Hearing**”) on the Motion to consider entry of an Interim Order pursuant to sections 105, 362(d), 363(b)(1), 363(f), 363(m), 364(c)(1), 364(e) and 365 of the Bankruptcy Code (1) Authorizing certain Debtors to Continue Selling Receivables and Related Rights Pursuant to an Amended Securitization Facility, (2) Modifying the Automatic Stay and (3) Granting Other Related Relief (the “**Interim Order**”) pursuant to Rule 4001 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”); and

(vi) requesting that a final hearing (the “**Final Hearing**”) be scheduled, and that notice procedures in respect of the Final Hearing be established, by this Court to consider entry of a final order (this “**Final Order**”) authorizing on a final basis, among other things, the Amendment and continued performance of the Debtors’ respective obligations under the Financing Agreements, and granting other related relief;

and it appearing that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties-in-interest; and the Court having considered the Motion and the documents related thereto, and after due deliberation and sufficient cause appearing therefor; due and appropriate notice of the Interim Hearing, the

Final Hearing and the Motion, and the relief requested therein having been served by the Debtors on the following parties, or, in lieu thereof, their counsel: (i) the Office of the United States Trustee; (ii) the United States Securities and Exchange Commission; (iii) the Internal Revenue Service; (iv) counsel to the agents for the Debtors' prepetition secured bank facilities; (v) counsel to the agent for the Debtors' proposed postpetition lenders; (vi) the indenture trustees for each series of the Debtors' prepetition notes; (vii) the Agent; (viii) the monitor appointed in the Canadian Proceeding; (ix) the parties identified on the Debtors' consolidated list of thirty-five (35) largest unsecured creditors; (x) the Debtors' primary cash management banks; (xi) the Debtors' primary lockbox banks; (xii) the Environmental Protection Agency and (xiii) other than with respect to notice of the Interim Hearing, counsel to the official committee of unsecured creditors in the Chapter 11 Cases (the "**Creditors' Committee**"); the Interim Order having been entered at the Interim Hearing; the Final Hearing having been held on May 27, 2009; and all objections or responses, if any, to the Motion having been withdrawn or overruled either prior to the Final Hearing, or at the Final Hearing; and upon the record made by the Debtors at the Interim Hearing and the Final Hearing and after due deliberation and consideration and sufficient cause appearing therefor;

THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. On April 16, 2009 (the "**Filing Date**"), the Debtors filed voluntary petitions for relief with this Court under Chapter 11 of the Bankruptcy Code (the "**Chapter 11 Cases**"). The Debtors are continuing in possession of their property, and

operating and managing their businesses, as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

2. This Court has jurisdiction over these proceedings and the parties and the property of the Debtors affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334.

Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. Subject to Paragraph 24, the Debtors hereby forever waive and release any and all “claims” (as such term is defined in the Bankruptcy Code), counterclaims, causes of action, defenses or setoff rights, in each case arising from or related to any acts or transactions occurring prior to the Filing Date against ACI Funding, the Agent, Citibank, Eureka and each of their respective affiliates, agents, officers, directors, employees and attorneys (collectively, the “**Released Parties**”), whether arising at law or in equity, including any recharacterization, subordination, avoidance or other claim arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code or under any other similar provisions of applicable state or federal law (collectively, the “**Released Claims**”); provided, however, that nothing in the Interim Order or this Final Order releases any party thereto from their contractual obligations under the Financing Agreements (which shall hereinafter be deemed to include the Waiver Agreement dated as of April 28, 2009) or in any way affects their property interests, as provided in the Financing Agreements, in the Transferred Receivables or the proceeds thereof; provided further, however, that nothing in the Interim Order or this Final Order releases any of the Released Parties from any claims, counterclaims or causes of action assertable by any Debtor in connection with any termination, default or failure to perform under that certain Master Agreement dated

as of July 2, 2003, as amended, supplemented or otherwise modified from time-to-time (including, but not limited to, the confirmations dated June 17, 2004 and June 28, 2004), between Citibank Canada and Abitibi-Consolidated Company of Canada. The Debtors further covenant not to sue the Released Parties on account of any Released Claims.

4. The Debtors admit, stipulate and agree that transfers of the Transferred Receivables by the Originators pursuant to the provisions of the Receivables Agreements whether occurring prior to or subsequent to the Filing Date, constitute true sales or true contributions under applicable non-bankruptcy law and were by the Interim Order and hereby are deemed true sales or true contributions, and were or will be for fair consideration and are not otherwise voidable or avoidable. The Debtors admit, stipulate and agree that upon the transfer of the Receivables to ACI Funding, the Receivables did (with respect to transfers occurring prior to the Filing Date) and will (with respect to the transfers occurring on or after the Filing Date) become the sole property of ACI Funding, and none of the Debtors, nor any creditors of the Debtors, shall retain any ownership rights, claims, liens or interests in or to the Transferred Receivables, or any proceeds thereof pursuant to section 541 of the Bankruptcy Code, pursuant to any theory of substantive consolidation or otherwise. The Debtors admit, stipulate and agree that upon the transfer by each of the Originators pursuant to the provisions of the Financing Agreements, neither the Transferred Receivables, nor the proceeds thereof, shall constitute property of the bankruptcy estates of any of the Debtors, notwithstanding any intentional or inadvertent deposit of any proceeds of the Transferred Receivables in bank accounts owned or controlled by any of the Debtors.

5. The Debtors seek access to the funding proposed to be provided by the Financing Agreements in order to assure sufficient available sources of working capital and financing to carry on the operation of their businesses. Specifically, continued performance of the Financing Agreements will permit the Originators to continue transferring the Receivables to ACI Funding, allowing the Debtors to continue their prepetition practice of converting Receivables to cash as soon as possible to provide cash flow necessary for various business purposes. The Debtors' ability to maintain business relationships with their vendors, suppliers and customers, to pay their employees, to purchase and supply new inventory and otherwise finance their operations, is essential to the Debtors' continued viability. In addition, the Debtors' need for financing is immediate. In the absence of the proposed financing, serious and irreparable harm to the Debtors' business operations and their estates could occur, which may include third parties declining to conduct business dealings with the Debtors. The preservation, maintenance and enhancement of the going concern value of the Debtors are of the utmost significance and importance to a successful reorganization of the Debtors under chapter 11 of the Bankruptcy Code.

6. Given their current financial condition, financing arrangements and capital structure, the Debtors cannot obtain unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. Financing on a postpetition basis is not otherwise available without certain Debtors granting, pursuant to section 364(c)(1) of the Bankruptcy Code, claims having priority over any and all administrative expenses

of the kinds specified in sections 503(b) and 507(b) of the Bankruptcy Code, other than as described below in respect of the Carve-Out.

7. Under the circumstances, the notice given by the Debtors of the Motion, the relief requested therein, the Interim Hearing and the Final Hearing constitutes appropriate, due and sufficient notice thereof and complies with Bankruptcy Rule 4001(b) and (c) and the Local Bankruptcy Rules, and no further notice of the relief sought at the Interim Hearing and the Final Hearing and the relief granted herein is necessary or required

8. Entry into the Amendment and continued performance of the Debtors' respective obligations under the Financing Agreements is in the best interests of the Debtors and their estates, and the Debtors were by the Interim Order and hereby are expressly authorized and empowered to enter into the Amendment and to perform and do or continue to perform and do, as applicable, all acts that may be required in connection with the Financing Agreements. Each currently effective Financing Agreement constitutes, and upon execution and delivery thereof, each newly executed Financing Agreement shall constitute, a valid and binding obligation of each Debtor party thereto, enforceable against each such Debtor in accordance with its terms. The terms and conditions of the Financing Agreements have been negotiated in good faith and at arm's length and the transfers made or to be made and the obligations incurred or to be incurred shall be deemed to have been made for fair or reasonably equivalent value and in good faith (and without intent to "hinder, delay or defraud any creditor" of the Debtors) as those terms are used in the Bankruptcy Code and the transactions contemplated

thereunder shall be deemed to have been made in "good faith," as that term is used in sections 363(m) and 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by sections 363(m) and 364(e) of the Bankruptcy Code. The Agent shall be entitled, derivatively, to assert any and all of the rights of ACI Funding, including, without limitation, those arising under section 363(m) of the Bankruptcy Code, arising as a result thereof.

Based upon the foregoing findings and conclusions, and upon the record made at the Interim Hearing and the Final Hearing, and good and sufficient cause appearing therefore;

IT IS HEREBY ORDERED that:

9. The Motion is granted on a final basis in accordance with the terms of this Final Order. Any objections to the Motion with respect to the entry of this Final Order that have not been withdrawn, waived or settled, and all reservations of rights included therein, are hereby denied and overruled.

10. ACI, ACSC and the other Debtors, as applicable, were by the Interim Order and hereby are expressly authorized and empowered (i) to execute and deliver, and ACSC was by the Interim Order and hereby is authorized to cause ACI Funding, as a wholly owned subsidiary of ACSC, to execute and deliver the Amendment and all related documents and instruments to be executed and delivered in connection therewith, and the Facility Termination Date (as defined in the RPA and in the PCA) and the Commitment Termination Date (as defined in the RPA) shall be deemed not to have occurred as a consequence of the filing of the Chapter 11 Cases, ACI's Chapter 15 case or the

Canadian Proceeding or the taking of corporate action by AbitibiBowater Inc. ("ABI"), ACI or ACSC to authorize any of the foregoing or the failure of ABI, ACI or ACSC to pay any debts that are otherwise stayed by any of the foregoing or the written admission by ABI, ACI or ACSC of its inability to pay such debts; (ii) to transfer, and shall be deemed to have transferred, free and clear of all liens, claims, encumbrances and other interests pursuant to sections 363(b)(1) and (f) of the Bankruptcy Code, the Receivables to ACI Funding, without recourse (except to the limited extent provided in the Financing Agreements); (iii) to otherwise perform or continue to perform, and ACSC was by the Interim Order and hereby is authorized to cause ACI Funding, as a wholly owned subsidiary of ACSC, to otherwise perform or continue to perform, as applicable, their respective obligations under the Financing Agreements and (iv) to make, execute and deliver, and ACSC was by the Interim Order and hereby is authorized to cause ACI Funding, as a wholly owned subsidiary of ACSC, to make, execute and deliver all instruments and documents and perform all other acts (including, without limitation, the perfection of ACI Funding's ownership interest in the Transferred Receivables) that may be required in connection with the Financing Agreements and the transactions contemplated thereby; it being expressly contemplated that pursuant to the terms of the Financing Agreements, ACI and ACSC were by the Interim Order and hereby shall be expressly authorized and empowered pursuant to section 363(b)(1) of the Bankruptcy Code to service, administer and collect the Transferred Receivables on behalf of ACI Funding pursuant to the Financing Agreements, and with respect to the Originators and ACI Funding, each were by the Interim Order and hereby shall be expressly authorized

and empowered pursuant to section 363(b)(1) of the Bankruptcy Code to make, execute and deliver all instruments and documents and perform all other acts (including, without limitation, the perfection of ACI Funding's ownership interest in the Transferred Receivables) that may be required in connection with the Financing Agreements and the transactions contemplated thereby. Moreover, ACI Funding shall be entitled to the full benefits of section 363(m) of the Bankruptcy Code in connection with any transfers made pursuant to the provisions of the Financing Agreements, with the Agent being entitled to assert ACI Funding's rights thereunder derivatively. ACI, ACSC and the other Debtors, as applicable, are hereby further expressly authorized and empowered to make, execute and deliver, and ACSC is authorized to cause ACI Funding, as a wholly owned subsidiary of ACSC, to make, execute and deliver one or more non-material amendments to the Financing Agreements in such form as the parties thereto may agree, expressly including any amendment to Section 7.01(ff) of the RPA to extend the term of the RPA, it being understood that no further approval of the Court shall be required for any such non-material amendments to the Financing Agreements, provided that the Debtors shall send any such amendments to counsel for the Creditors' Committee, counsel for the ACCC 364 day Term Facility lenders and counsel for the United States Trustee promptly upon their execution. All indemnification and other obligations of the Originators and any other Debtors owing to the Agent, Eureka and Citibank under the Financing Agreements, the Interim Order and this Final Order are hereinafter referred to as the **"Agent Obligations."** All obligations of the Originators and any other Debtors owing to ACI Funding under the Financing Agreements, the Interim Order and this Final Order are

hereinafter referred to as the “**Receivables Obligations**.” For the avoidance of doubt, the Agent Obligations and the Receivables Obligations do not include any amounts owing to the Agent or Citibank or their respective affiliates under or in connection with (i) any swap claims, (ii) any credit agreement in existence prior to the Filing Date not related to the Financing Agreements or (iii) any other indebtedness not related to the Financing Agreements. Notwithstanding the foregoing, the Agent and Citibank shall be entitled to all of the rights and remedies accorded to them pursuant to the “safe harbor” provisions of the Bankruptcy Code.

11. The Originators and the other Debtors were by the Interim Order and hereby are authorized to use the proceeds of the arrangements contemplated by the Financing Agreements in the operation of the Debtors’ businesses, provided, that the use of the proceeds is consistent with the terms of the Financing Agreements, the Interim Order and this Final Order or as may otherwise be agreed in writing by the Agent.

12. In accordance with section 364(c)(1) of the Bankruptcy Code, the Agent Obligations and the Receivables Obligations shall constitute allowed senior administrative expense claims against each of the Originators (the “**Superpriority Claims**”) with priority over any and all administrative expenses, adequate protection claims, diminution claims and all other claims against the Originators, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 503(b), 507(a), 507(b), 546, 726, 1113 or 1114 of the Bankruptcy Code,

whether or not such expenses or claims may become secured by a judgment lien or other nonconsensual lien, levy or attachment, which allowed claims shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, and which shall be payable from and have recourse to all pre- and post-petition property of the Originators and all proceeds thereof, subject only to the payment of the Carve-Out to the extent specifically provided for herein. Subject only to the Carve-Out, no cost or expense of administration asserted against any Debtor with obligations arising under the Financing Agreements under sections 105, 364(c)(1), 503(b), 507(b) of the Bankruptcy Code, or otherwise, including those resulting from the conversion of any of the Chapter 11 Cases pursuant to section 1112 of the Bankruptcy Code, shall be senior to, or pari passu with, the Superpriority Claims of the Agent, Citibank, Eureka or ACI Funding arising out of the Agent Obligations and the Receivables Obligations, as applicable. The Agent shall be permitted to enforce the Superpriority Claims in respect of the Receivables Obligations on a derivative basis on behalf of ACI Funding. The Superpriority Claims shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Final Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

13. Any provision of the Interim Order, this Final Order or the Financing Agreements to the contrary notwithstanding, the Superpriority Claims shall be subject and subordinate to a carve-out (the “**Carve-Out**”) for (a) the payment of allowed professional fees and disbursements incurred by the professionals retained, pursuant to

sections 327, 328 or 1103(a) of the Bankruptcy Code, by the Debtors and the Creditors' Committee and any disbursements of any member of the Creditors' Committee in an aggregate amount not to exceed (i) \$7,500,000 in the aggregate in respect of professional fees and disbursements incurred following the occurrence and during the pendency of an Event of Termination (as such term is defined in the Receivables Agreements) or an event of termination or event of default under any other postpetition credit facility of the Debtors (each a "**Carve-Out Event**") *plus* (ii) professional fees and disbursements incurred prior to the occurrence of a Carve-Out Event to the extent subsequently allowed *plus* (iii) professional fees and disbursements incurred from and after the date on which the Carve-Out Event is no longer continuing to the extent subsequently allowed, and (b) quarterly fees required to be paid pursuant to 28 U.S.C. § 1930(a)(6) and any fees payable to the Clerk of the Bankruptcy Court; provided, however, that no portion of the Carve-Out or proceeds of the Financing Agreements shall be used to pay professional fees and disbursements incurred in connection with (i) asserting any claims or causes of action against the Agent, Citibank, Eureka or ACI Funding or any of their respective successors and assigns and/or challenging or raising any defense to the Agent Obligations or Receivables Obligations or other obligations under the Financing Agreements, (ii) asserting or prosecuting any action for preferences, fraudulent conveyances, or other avoidance power claims against the Agent, Citibank, Eureka or ACI Funding or any of their respective successors and assigns, (iii) objecting to or contesting the true sale nature of the sale and/or contribution of the Transferred Receivables or (iv) objecting to or contesting in any manner, or raising any, defenses to the validity, perfection, priority,

extent or enforceability of the Agent Obligations or the Receivables Obligations under or in connection with the Financing Agreements, provided, further, however, that the Carve-Out may include professional fees and disbursements for investigation of such claims, causes of action or defenses in an aggregate amount not to exceed \$50,000. As long as no Carve-Out Event shall have occurred and be continuing, the Debtors shall be permitted to pay compensation and reimbursement of expenses, to the extent permitted by the Bankruptcy Court payable under sections 330 and 331 of the Bankruptcy Code, as the same may be payable, and the amounts so paid, or accrued but unpaid, shall not reduce the Carve-Out; provided, however, that, upon the occurrence and during the continuance of a Carve-Out Event, the foregoing permission to pay allowed compensation and to reimburse expenses shall be limited to the professional fees and disbursements incurred prior to the occurrence of the Carve-Out Event plus the Carve-Out.

14. If the amount of the Carve-Out or any payment made pursuant to any carve-out under any other postpetition credit facility of the Debtors satisfied with the assets of any Originator exceeds the product of (x) the aggregate amount paid pursuant to the Carve-Out or such other carve-out, which amount shall in no event exceed \$7,500,000 and (y) such Originator's net asset value expressed as a percentage of the net asset value of the Debtors taken as a whole, such Originator shall have a right of contribution against the Debtors that are not Originators in an amount equal to such excess (or in such other amount as the Bankruptcy Court may deem appropriate under the circumstances) and

with the same relative priority as the Carve-Out, and shall be subrogated to the rights of any claimant under the Carve-Out in respect of such right of contribution.

15. Pursuant to the Financing Agreements, ACI Funding may deduct from the purchase price of Transferred Receivables amounts which are payable by the Originators to ACI Funding in respect of violations of certain representations and warranties and dilution items (all of such amounts, collectively, the “**Repayment Amounts**”), and the automatic stay provisions of section 362 of the Bankruptcy Code were by the Interim Order and hereby are modified to the extent necessary so as to permit the deduction of such amounts by ACI Funding. The payment by ACI Funding of the purchase price for Receivables which are subsequently reduced by such Repayment Amounts constitutes an extension of credit to the applicable Originators.

16. The performance by the Originators and ACI Funding of their respective obligations under the Financing Agreements, and the consummation of the transactions contemplated by the Financing Agreements, and the conduct by the Originators and ACI Funding of their respective businesses, whether occurring prior to or subsequent to the Filing Date, do not, and shall not, provide a basis for a substantive consolidation of the assets and liabilities of the Originators, or any of them, with the assets and liabilities of ACI Funding or a finding that the separate corporate identities of the Originators and ACI Funding may be ignored. Notwithstanding any other provision of the Interim Order or this Final Order, the Agent, Citibank, Eureka and the other parties thereto have agreed to enter into the Financing Agreements in express reliance on ACI Funding being a separate

and distinct legal entity, with assets and liabilities separate and distinct from those of any of the Debtors.

17. Pursuant to the Financing Agreements and as described in the Motion, ACI Funding has agreed to pay, and ACSC was by the Interim Order and hereby is authorized and directed (without the necessity of any further application being made to, or order being obtained from, this Court) to cause ACI Funding, as a wholly owned subsidiary of ACSC, to pay certain fees in consideration of the Agent's and Citibank's services in structuring and negotiating Amendment No. 4 to Amended and Restated Receivables Purchase Agreement and Waiver Agreement dated as of April 1, 2009, Amendment No. 2 to Amended and Restated Purchase and Contribution Agreement and Waiver Agreement dated as of April 1, 2009, and the Financing Agreements.

18. Collections of Transferred Receivables and other funds that are subject to the Deposit Account Control Agreement, the Blocked Accounts Agreement or the Pledged Deposit Accounts Agreement shall be processed and transferred pursuant to such agreements, and such agreements were by the Interim Order and hereby are approved in all respects and each deposit bank party thereto was by the Interim Order and hereby is authorized and directed to comply therewith.

19. The Financing Agreements and the provisions of the Interim Order and this Final Order shall be binding upon all parties in interest in these Cases, including, without limitation, the Debtors, ACI Funding, Eureka, Citibank, the Agent, ACSC and ACI and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Originators, an

examiner appointed pursuant to section 1104 of the Bankruptcy Code or any other fiduciary appointed as a legal representative of any of the Originators or with respect to the property of the estate of any of the Originators) and shall inure to the benefit of the Debtors, ACI Funding, Eureka, Citibank, the Agent, ACSC and ACI.

20. ACI Funding, Citibank and the Agent shall not (i) be deemed to be in control of the operations of the Debtors, (ii) owe any fiduciary duty to the Debtors, their respective creditors, shareholders or estates or (iii) be deemed to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601, *et seq.*, as amended, or any similar federal or state statute).

21. No rights of any entity in connection with a contract or transaction of the kind listed in sections 555, 556, 559, 560 or 561 of the Bankruptcy Code, whatever they might or might not be, are affected by the provisions of the Interim Order or this Final Order.

22. If any or all of the provisions of the Interim Order or this Final Order are hereafter reversed, modified, vacated or stayed, such reversal, stay, modification or vacation shall not affect (x) the validity of any transfer of the Receivables made pursuant to the provisions of the Financing Agreements prior to written notice to the Agent and ACI Funding of the effective date of such reversal, stay, modification or vacation, (y) the validity of any obligation or liability incurred by each of the Originators prior to written notice to the Agent and ACI Funding of the effective date of such reversal, stay,

modification or vacation or (z) the validity and enforceability of any priority authorized or created by the Interim Order, hereby or pursuant to the Financing Agreements. Notwithstanding any such reversal, stay, modification or vacation, any indebtedness, obligations or liabilities incurred, or payment made, by any of the Originators, prior to written notice to the Agent and ACI Funding of the effective date of such reversal, stay, modification or vacation, shall be governed in all respects by the original provisions of the Interim Order and this Final Order, and the Agent, Citibank, Eureka and ACI Funding shall be entitled to all the rights, remedies, privileges and benefits, granted herein and pursuant to the Financing Agreements with respect to all such indebtedness, obligations or liabilities (including, without limitation, with respect to the manner in which the proceeds of the Transferred Receivables are applied) and to the full benefits of sections 363(m) and 364(e) of the Bankruptcy Code in connection therewith.

23. Upon transfer to ACI Funding, the Transferred Receivables are and shall be the property of ACI Funding and not property of the estates of any of the Debtors and accordingly no expenses of administration of the Chapter 11 Cases or any future proceeding or case which may result from the Chapter 11 Cases, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against the Transferred Receivables, or the proceeds thereof pursuant to section 506(c) of the Bankruptcy Code or otherwise, without the prior written consent of the Agent and no such consent shall be implied from any other action, inaction, or acquiescence by the Agent. To the extent the Agent seeks to exercise, upon an Event of Termination (as such term is defined in the Receivables Agreements), any rights and remedies to the extent

provided for in the Receivables Agreements against any Debtor, prior to seeking to lift the automatic stay to exercise such enforcement rights or remedies against such Debtor, the Agent shall provide five (5) business days' written notice (by facsimile, telecopy, electronic mail or otherwise) to (a) counsel for the Debtors: (i) Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019-6064, Attention: Kelley A. Cornish; (ii) Stikeman Elliott LLP, 1155 René-Lévesque Blvd. West, Suite 4000, Montréal, QC H3B 3V2, Canada, Attention: Guy Martel; and (iii) Young Conaway Stargatt & Taylor, LLP, The Brandywine Building, 1000 West Street, 17th Floor, Wilmington, Delaware 19801, Attention: Pauline K. Morgan; (b) counsel for the Creditors' Committee; and (c) counsel for the United States Trustee. For the avoidance of doubt, the foregoing notice requirement shall in no event apply to any exercise by the Agent of any rights and remedies to the extent provided for in the Receivables Agreements against ACI Funding or the assets of ACI Funding.

24. The stipulations, admissions and releases contained in Paragraph 3 and Paragraph 4 of this Final Order, shall be binding on the Debtors and any successor thereto under all circumstances and for all purposes and the Debtors are deemed to have irrevocably waived and relinquished all rights to contest any such stipulation, admission or release as of the date of entry of the Interim Order. The stipulations, admissions and releases contained in Paragraph 3 and Paragraph 4 of this Final Order and the other findings and conclusions of law with respect to the prepetition effect of the Financing Agreements contained in this Final Order shall be binding on all other parties in interest under all circumstances and for all purposes unless, and solely to the extent that, (a) any

party in interest (other than the Creditors' Committee) commences a contested matter or adversary proceeding challenging such stipulation, admission or release or asserting any claims or causes of action on behalf of the Debtors' estates against the Released Parties no later than July 1, 2009 or (b) the Creditors' Committee commences a contested matter or adversary proceeding challenging such stipulation, admission or release or asserting any claims or causes of action on behalf of the Debtors' estates against the Released Parties no later than July 17, 2009. If no such contested matter or adversary proceeding is timely commenced then, without further order of the Court, all of the stipulations, admissions and releases contained in Paragraph 3 and Paragraph 4 of this Final Order, shall be binding on all parties in interest in these chapter 11 cases and shall not be subject to challenge or modification in any respect. If any such contested matter or adversary proceeding is timely commenced, the stipulations, admissions, releases findings and conclusions shall nonetheless remain binding on all parties in interest and shall be preclusive except to the extent that such stipulation, admission, release, finding or conclusion is expressly challenged pursuant to such timely commenced contested matter or adversary proceeding.

25. Nothing in the Interim Order or this Final Order vests or confers on any person (as defined in the Bankruptcy Code), including the Creditors' Committee, standing or authority to pursue any cause of action belonging to the Debtors or their estates.

26. This Final Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable nunc pro tunc to the Filing Date

immediately upon entry hereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062 or 9024 or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Final Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Final Order.

Specifically, pursuant to this Final Order, the ten day automatic stay periods of Bankruptcy Rules 6004(g) and 6006(d) are expressly inapplicable to this Final Order and the transactions including, without limitation, transfers contemplated hereby and this Final Order shall become operative immediately upon entry on the docket.

27. To the extent that any of the provisions of this Final Order may be inconsistent with the terms and conditions of the Financing Agreements, the provisions of this Final Order shall govern.

28. This order is supplemented by the record made at the Interim Hearing and at the Final Hearing to incorporate the adequate protection provided to the ACCC 364 day Term Facility lenders.

Dated: Wilmington, Delaware
May 21, 2009



Kevin J. Carey
Chief United States Bankruptcy Judge