Pièce 52 à 60

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;

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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.

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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].

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[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.

Treatment of Proceeds and Related Matters Pending Further Order

[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.

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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

Par. 6 a) (ii)

Court File No. CV-09-7966-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	MONDAY, THE 26th
	)	
JUSTICE PEPALL	)	DAY OF JANUARY, 2009

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SMURFIT-STONE CONTAINER CANADA INC. AND THE OTHER APPLICANTS LISTED ON SCHEDULE "A"

Applicants

AMENDED AND RESTATED INITIAL ORDER

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Dean Jones sworn January 25, 2009 (the "Jones Affidavit") and the Exhibits thereto, the first report of Deloitte and Touche Inc. ("Deloitte") in its capacity as proposed monitor for the Applicants and on hearing the submissions of counsel for the Applicants, the DIP Agent (as defined below) and on reading the consent of Deloitte to act as the Monitor,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies. Although not Applicants, those partnerships listed on Schedule "B" (the "Partnerships") shall enjoy the benefits of the protections provided by this Order.

PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan") between, *inter alia*, the Applicants and one or more classes of their secured and/or unsecured creditors as they deem appropriate.

POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the Applicants and Partnerships shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Court, the Applicants and Partnerships shall continue to carry on business in a manner consistent with the preservation of their business (the "Business") and Property. The Applicants and Partnerships shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by them, with liberty to retain

such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **THIS COURT ORDERS** that the Applicants and Partnerships shall be entitled to continue to utilize the centralized cash management systems currently in place as described in the Jones Affidavit or replace them with other substantially similar central cash management system(s) (together, the "Cash Management System") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants or Partnerships of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants and Partnerships, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System. The Monitor shall review and monitor the Cash Management System and report to this Court from time to time.

6. **THIS COURT ORDERS** that the Applicants and Partnerships shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

(a) all outstanding and future wages, salaries, employee and pension benefits and contributions, vacation pay, bonuses and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;

(b) the fees and disbursements of any Assistants retained or employed by the Applicants and Partnerships in respect of these proceedings, at their standard rates and charges; and

(c) amounts owing for goods and services actually supplied to the Applicants and Partnerships, or to obtain the release of goods contracted for, prior to the date of this order:

(i) by railways, trucking companies and other carriers and customs brokers, with the consent of the Monitor and the DIP Agent; and

(ii) with the consent of the Monitor and the DIP Agent, up to US$11.6 million by other suppliers if, in the opinion of the Applicants and Partnerships, the supplier is critical to the Business and ongoing operations of the Applicants and/or Partnerships.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants and Partnerships shall be entitled but not required to pay all reasonable expenses incurred by them in carrying on the Business in the ordinary course from and after the date of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and

(b) payment for goods or services actually supplied to the Applicants and Partnerships following the date of this Order.

8. **THIS COURT ORDERS** that the Applicants and Partnerships shall remit, in accordance with legal requirements, or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are

required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicants and Partnerships in connection with the sale of goods and services by the Applicants and Partnerships, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants and Partnerships.

9. **THIS COURT ORDERS** that until such time as an Applicant or Partnership delivers a notice in writing to repudiate a real property lease in accordance with paragraph 11(c) of this Order (a "Notice of Repudiation"), the Applicants and Partnerships shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicants and Partnerships and the relevant landlords from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any arrears relating to the period commencing from and including the

date of this Order shall also be paid. Upon delivery of a Notice of Repudiation, the relevant Applicant or Partnership shall pay all Rent due for the notice period stipulated in paragraph 11(c) of this Order, to the extent that Rent for such period has not already been paid.

10. **THIS COURT ORDERS** that, except as specifically permitted herein or in the DIP Documents (as defined below), the Applicants and Partnerships are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants or Partnerships to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of the Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. **THIS COURT ORDERS** that the Applicants and Partnerships shall, subject to such covenants as may be contained in the DIP Documents, have the right to:

(a) permanently or temporarily cease, downsize or shut down any of their business or operations and to dispose of redundant or non-material assets not exceeding $2 million in any one transaction or $25 million in the aggregate, subject to paragraph 11(c), if applicable;

(b) terminate the employment of such of their employees or temporarily lay off such of their employees as the relevant Applicant or Partnership deems appropriate on such terms as may be agreed upon between the relevant Applicant or Partnership and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;

(c) in accordance with paragraphs 12 and 13, vacate, abandon or quit the whole but not part of any leased premises and/or repudiate any real property lease and any ancillary agreements relating to any leased premises, on not less than

fourteen (14) days notice in writing to the relevant landlord on such terms as may be agreed upon between the relevant Applicant or Partnership and such landlord, or failing such agreement, to deal with the consequences thereof in the Plan;

(d) repudiate such of their arrangements or agreements of any nature whatsoever, whether oral or written, as the Applicants or Partnerships deem appropriate on such terms as may be agreed upon between the relevant Applicant or Partnership and such counter-parties, or failing such agreement, to deal with the consequences thereof in the Plan; and

(e) pursue all avenues of refinancing and offers for material parts of the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing or any sale (except as permitted by subparagraph (a), above),

all of the foregoing to permit the Applicants and Partnerships to proceed with an orderly restructuring of the Business (the "Restructuring").

12. **THIS COURT ORDERS** that the Applicants and Partnerships shall provide each of the relevant landlords with notice of the relevant Applicant's or Partnership's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's or Partnership's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the relevant Applicant or Partnership, or by further Order of this Court upon application by the relevant Applicant or Partnership on at least two (2) days notice to such landlord and any such secured creditors. If an Applicant or Partnership repudiates the lease governing such leased premises in accordance with paragraph 11(c) of this

Order, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in paragraph 11(c) of this Order), and the repudiation of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

13. **THIS COURT ORDERS** that if a Notice of Repudiation is delivered, then (a) during the notice period prior to the effective time of the repudiation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the relevant Applicant or Partnership and the Monitor 24 hours' prior written notice, and (b) at the effective time of the repudiation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant or Partnership in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicant or Partnership of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANTS OR PARTNERSHIPS OR THE PROPERTY

14. **THIS COURT ORDERS** that until and including February 25, 2009, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicants, the Partnerships or the Monitor, or affecting the Business or the Property, except with the written consent of the applicable Applicant or Partnership, the DIP Agent and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants, the Partnerships or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicants, the Partnerships or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the applicable Applicant or Partnership, the DIP Agent and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants and Partnerships to carry on any business which the Applicants or Partnerships are not lawfully entitled to carry on, (ii) exempt the Applicants and Partnerships from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

16. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants or Partnerships, except with the written consent of the relevant Applicant or Partnership, the DIP Agent and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with an Applicant or Partnership or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business, an Applicant or Partnership, are hereby restrained until further Order of

this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants or Partnerships, and that the Applicants and Partnerships shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants and Partnerships in accordance with normal payment practices of the Applicants or Partnerships or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants or Partnerships, the DIP Agent and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. **THIS COURT ORDERS** that, notwithstanding anything else contained herein, no creditor of the Applicants and Partnerships shall be under any obligation after the making of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants and Partnerships. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

19. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.5(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants or Partnerships whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants and Partnerships, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or Partnerships or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

20. **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers from all claims, costs, charges and expenses relating to the failure of the Applicants or Partnerships, after the date hereof, to make payments of the nature referred to in subparagraphs 6(a), 8(a), 8(b) and 8(c) of this Order which they sustain or incur by reason of or in relation to their respective capacities as directors and/or officers of the Applicants except to the extent that, with respect to any officer or director, such officer or director has actively participated in the breach of any related fiduciary duties or has been grossly negligent or guilty of wilful misconduct.

21. **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property, which charge shall not exceed an aggregate amount of $8.6 million, as security for the indemnity provided in paragraph 20 of this Order. The Directors' Charge shall have the priority set out in paragraphs 40 and 43 herein.

22. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 20 of this Order.

APPOINTMENT OF MONITOR

23. **THIS COURT ORDERS** that Deloitte is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property and the Applicants' and Partnerships' conduct of the Business with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and Partnerships and

their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants and Partnerships pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations.

24. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicants' and Partnerships' receipts and disbursements;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Applicants, the Partnerships, Property, the Business, and such other matters as may be relevant to the proceedings herein;

(c) assist the Applicants and Partnerships, to the extent required by the Applicants and Partnerships, in their dissemination, to the DIP Agent and its counsel of financial and other information as agreed to between the Applicants and Partnerships and the DIP Agent which may be used in these proceedings including reporting on a basis to be agreed with the DIP Agent and perform such other duties and exercise such powers as may be contemplated to be performed and exercised by the Monitor under the DIP Documents;

(d) advise the Applicants and Partnerships in their preparation of the Applicants' and Partnerships' cash flow statements and reporting required by the DIP Agent, which information shall be reviewed with the Monitor and delivered to the DIP Agent and its counsel in compliance with the DIP Documents, or as otherwise agreed to by the DIP Agent;

(e) advise the Applicants and Partnerships in their development of the Plan and any amendments to the Plan;

(f) assist the Applicants and Partnerships, to the extent required by the Applicants and Partnerships, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;

(g) have full and complete access to the books, records and management, employees and advisors of the Applicants and the Partnerships and to the Business and the Property to the extent required to perform its duties arising under this Order;

(h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

(i) consider, and if deemed advisable by the Monitor, prepare a report and assessment on the Plan; and

(j) perform such other duties as are required by this Order or by this Court from time to time.

25. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

26. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other

contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

27. **THIS COURT ORDERS** that the Monitor shall provide any creditor of an Applicant or Partnership with information provided by the Applicant or Partnership in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by an Applicant or Partnership is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant or Partnership may agree.

28. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

29. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and Canadian counsel to the Applicants and Partnerships shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants and

Partnerships as part of the costs of these proceedings. The Applicants and Partnerships are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and Canadian counsel for the Applicants and Partnerships on a twice-monthly basis and, in addition, the Applicants and Partnerships are hereby authorized to pay to the Monitor, counsel to the Monitor, and Canadian counsel to the Applicants and Partnerships, retainers in the amounts of $400,000 each, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

30. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

31. **THIS COURT ORDERS** that the Monitor, Canadian counsel to the Monitor, if any, and the Applicants' and Partnerships' Canadian counsel shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of $5 million, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 40 and 43 hereof.

DIP FINANCING

32. **THIS COURT ORDERS** that the Applicants and Partnerships are hereby authorized and empowered to enter into, obtain and borrow under a credit facility (the "DIP Credit Agreement") among the Applicants and Partnerships, Smurfit-Stone Container Enterprises, Inc., Smurfit-Stone Container Corporation, the other "Loan Parties" thereto, the "Lenders" party thereto, JPMorgan Chase Bank, N.A. as Administrative Agent and Collateral Agent, and JPMorgan Chase Bank, N.A., Toronto Branch, as Canadian Administrative Agent and Canadian Collateral Agent (the

Canadian Administrative Agent and the Canadian Collateral Agent are, collectively, the "DIP Agent") substantially in the form attached as Exhibit "A" to the Jones Affidavit (subject to such non-material amendments and modifications as the parties may agree with a copy thereof being provided in advance to the Monitor), provided that borrowings under such credit facility shall not exceed the principal amount of US$350 million unless permitted by further Order of this Court.

33. **THIS COURT ORDERS** that the Applicants and Partnerships are hereby authorized and empowered to execute and deliver the DIP Credit Agreement and such commitment letters, fee letters, credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "DIP Documents"), as are contemplated by the DIP Documents or as may be reasonably required by the DIP Agent pursuant to the terms thereof, and the Applicants and Partnerships are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Agent under and pursuant to the DIP Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

34. **THIS COURT ORDERS** that the DIP Agent, for and on behalf of the Secured Parties (as defined in the DIP Credit Agreement) (collectively, the "DIP Lenders") shall be entitled to the benefit of and is hereby granted a charge (the "DIP Lenders Charge") on the Property, including without limitation the real property listed in Schedule "C" attached hereto, which charge shall not exceed the aggregate amount owed to the DIP Lenders under the DIP Documents.

35. **THIS COURT ORDERS** that the DIP Lenders Charge shall have the priority set out in paragraphs 40 and 43 hereof. The DIP Lenders Charge shall attach to all existing and after-acquired Property, as the case may be, including any lease, license, occupation permit, or other contract, notwithstanding any requirement for the consent of the lessor, licensor, or other party to such contract.

36. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

(a) the DIP Agent may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lenders Charge or any of the DIP Documents;

(b) upon the occurrence of an event of default under the DIP Documents or the DIP Lenders Charge, the DIP Agent, upon five days notice to the Applicants and Partnerships and the Monitor, may exercise any and all of its rights and remedies on behalf of the DIP Lenders against the Applicants, the Partnerships or the Property under or pursuant to the DIP Documents and the DIP Lenders Charge, including without limitation, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and Partnerships and for the appointment of a trustee in bankruptcy of the Applicants, and upon the occurrence of an event of default under the terms of the DIP Documents, the DIP Agent shall be immediately entitled to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Agent to the Applicants against the obligations of the Applicants to the DIP Agent under the DIP Documents or the DIP Lenders Charge, seize and retain proceeds from the sale of the Property and the cash flow of the Applicants and Partnerships to repay amounts owing to the DIP Lenders in accordance with the DIP Documents and the DIP Lenders Charge, as the case may be, but subject to the priorities as set out in paragraphs 40 and 43 of this Order; and

(c) the foregoing rights and remedies of the DIP Agent shall be enforceable against the Applicants and Partnerships and against any trustee in

bankruptcy, interim receiver, receiver or receiver and manager of the Applicants, the Partnerships or the Property.

37. **THIS COURT ORDERS AND DECLARES** that, notwithstanding paragraph 14, but subject to paragraph 36, the DIP Agent and the DIP Lenders shall be treated as unaffected by any stay created in these proceedings and the DIP Agent and the DIP Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the DIP Documents.

38. **THIS COURT ORDERS** that nothing in this Order shall be construed as relieving the Applicants and Partnerships from their obligations to comply with the DIP Documents and in particular the Budget (as defined in the DIP Credit Agreement).

39. **THIS COURT ORDERS** that the Applicants and the Partnerships party to the Receivables Agreement are authorized to terminate the Receivables Agreement and enter into and perform their obligations under the Termination and Reassignment Agreement, each as defined in the Jones Affidavit.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

40. **THIS COURT ORDERS** that the priorities of the Directors' Charge, the Administration Charge and the DIP Lenders Charge, as among them, shall be as follows:

First – Administration Charge (to the extent of $1 million);

Second – Directors' Charge (to the extent of $8.6 million);

Third – DIP Lenders Charge; and

Fourth – Administration Charge (for any amount greater than $1 million, to a maximum of $5 million).

41. **THIS COURT ORDERS** that any distribution in respect of the DIP Lenders Charge as amongst the beneficiaries thereto shall be governed by the DIP Documents.

42. **THIS COURT ORDERS** that the filing, registration or perfection of the Directors' Charge, the Administration Charge or the DIP Lenders Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

43. **THIS COURT ORDERS** that each of the Directors' Charge, the Administration Charge and the DIP Lenders Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, "Encumbrances") in favour of any Person. The security granted by the DIP Documents charging the Property shall have the same priority as the DIP Lenders Charge.

44. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants and Partnerships shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants and Partnerships also obtain the prior written consent of the Monitor, the DIP Agent and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

45. **THIS COURT ORDERS** that the Directors' Charge, the Administration Charge, the DIP Documents and the DIP Lenders Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the

Charges (collectively, the "Chargees") and/or the DIP Agent thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicants, the Partnerships, or any of them, and notwithstanding any provision to the contrary in any Agreement:

(a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Documents shall create or be deemed to constitute a breach by any of the Applicants or Partnerships of any Agreement to which it is a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants and Partnerships entering into the DIP Credit Agreement, the creation of the Charges, or the execution, delivery or performance of the DIP Documents; and

(c) the payments made by the Applicants and the Partnerships pursuant to this Order or the DIP Credit Agreement or the other DIP Documents and the granting of the Charges do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law.

46. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the relevant Applicant's or Partnership's interest in such real property leases.

RECOGNITION

47. **THIS COURT ORDERS AND DECLARES** that the Partnerships are entities which are entitled to relief under section 268 of the BIA.

48. **THIS COURT ORDERS AND DECLARES** that the proceedings commenced on January 26, 2009 by the Applicants and Partnerships under chapter 11 of title 11 of the *United States Bankruptcy Code* in the United States Bankruptcy Court for the District of Delaware (the "US Bankruptcy Proceedings") be and hereby are recognized as a "foreign proceeding" as defined by section 267 of the BIA.

49. **THIS COURT ORDERS AND DECLARES** that with respect to the Partnerships, the Interim Order (I) Authorizing Debtors (A) to Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. §363, (II) Granting Adequate Protection to Pre-Petition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364 and (III) Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001(B) and (C) (the "US Order") made by the United States Bankruptcy Court for the District of Delaware on Tuesday January 27, 2009, a copy of which is attached to the affidavit of Alexander D. Rose, sworn January 27, 2009 as Exhibit "A", *inter alia*, authorizing and approving the DIP Facility provided for under the DIP Credit Agreement (both as defined in the US Order) is hereby recognized and given full effect in all provinces and territories of Canada, pursuant to section 268 of the BIA.

50. **THIS COURT ORDERS** that, in aid of the recognition of the US Order contained at paragraph 49 above, the provisions of this Order as they relate to the DIP Documents and the grant of the DIP Lenders Charge shall apply to the Partnerships and

their Property as if they were Applicants herein, and the Partnerships are subject to all obligations and provisions in favour of the DIP Lenders contained in paragraphs 32 to 45 of this Order.

SERVICE AND NOTICE

51. **THIS COURT ORDERS** that (i) the Applicants and the Partnerships shall give notice to the Monitor concurrently with any request that any of them may submit to the DIP Lenders for release of any of the Collateral from the DIP Liens (each as defined in the DIP Documents) or for the release of proceeds of such Collateral; and (ii) in addition, the DIP Agent shall give notice to the Monitor promptly following any request from the Applicants or the Partnerships pursuant to the DIP Documents for the consent of the Lenders to release all or substantially all of the Collateral from the Liens (each as defined in the DIP Documents), or for the consent of the Supermajority Lenders to release any material part of the Collateral from the Liens or for the release of proceeds of such collateral.

52. **THIS COURT ORDERS** that the Applicants and Partnerships shall, within ten (10) business days of the date of entry of this Order, cause a notice to be sent to their known creditors, other than employees and creditors to which the Applicants and Partnerships owe less than $1,000, whether separately or as part of a notice to all such creditors pursuant to the US Bankruptcy Proceedings, at their addresses as they appear on the Applicants' and Partnerships' records notifying them of this filing and the address of the Monitor's website where a copy of this Order is posted, and shall promptly send a copy of this Order to any interested Person who requests a copy. The Monitor is relieved of its obligation under Section 11(5) of the CCAA to provide a copy of this Order, but may assist the Applicants and Partnerships in sending the notice referred to above.

53. **THIS COURT ORDERS** that the Applicants and Partnerships and the Monitor be at liberty to serve any materials and orders in these proceedings, any notices or other

correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicants' and Partnerships' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and Partnerships and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

54. **THIS COURT ORDERS** that the Applicants and Partnerships, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, in accordance with the E-filing protocol of the Commercial List to the extent practicable, and the Monitor may post a copy of any or all such materials on its website at www.deloitte.com/ca/smurfitstonecanada.

GENERAL

55. **THIS COURT ORDERS** that the Applicants or Partnerships or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

56. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Partnerships, the Business or the Property.

57. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants and Partnerships, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully

requested to make such orders and to provide such assistance to the Applicants and Partnerships and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and Partnerships and the Monitor and their respective agents in carrying out the terms of this Order.

58. **THIS COURT ORDERS** that each of the Applicants and Partnerships and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

59. **THIS COURT ORDERS** that any interested party (including the Applicants and Partnerships and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

60. **THIS COURT ORDERS** that, (a) notwithstanding paragraph 59, no order shall be made varying, rescinding or otherwise affecting the provisions of this Order with respect to the DIP Documents or the DIP Lenders Charge unless notice of a motion for such order is served on the Applicants and Partnerships, the Monitor and the DIP Agent returnable no later than February 18, 2009; and (b) subject to court order, prior to February 18, 2009, the amounts that can be borrowed by the Canadian Borrower under the Canadian Revolving Commitment and the US Revolving Commitment (each as defined in the DIP Credit Agreement) shall be limited to the amounts set out in sections 2.2(a) and 2.3(a) of the DIP Credit Agreement.

61. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard Time on the date of this Order.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JAN 2 8 2009

PER / PAR: TV

Pepall J.

SCHEDULE "A"

Smurfit-Stone Container Canada Inc.

3083527 Nova Scotia Company

MBI Limited/Limitée

639647 British Columbia Ltd.

B.C. Shipper Supplies Ltd.

Specialty Containers Inc.

605681 N. B. Inc.

Francobec Company

Stone Container Finance Company of Canada II

SCHEDULE "B"

Smurfit-MBI

SLP Finance General Partnership

SCHEDULE "C"

Québec Timberlands (approximately 960,000 acres) in Québec

1000 Chemin de l'Usine, La Tuque, Québec

90 Parc Industriel, Matane, Québec

15400 Sherbrooke Street East, Montreal, Québec

211 Route 301 Portage-du-Fort, Québec

150 chemin St-Edgar, New Richmond, Québec

819 Main Street, Bathurst, New Brunswick

747 Appleby Line, Burlington, Ontario

200 Chemin de la Rivière-au-Lait, Canton de Vallières, Haut Saint-Maurice, Québec

1115 34th Ave South East, Calgary, Alberta

8705 24th Street, Edmonton, Alberta

Foot of Gifford Street, New Westminster, British Columbia

1360 Inkster Boulevard, Winnipeg, Manitoba

730 Islington Ave., Toronto, Ontario

200 Water Street, Whitby, Ontario

390 Woodlawn Road, West, Guelph, Ontario

8150 Parkhill Drive, Milton, Ontario

1035 Hodge Street, Saint-Laurent, Québec

5550 Royalmount Ave, Town of Mount-Royal, Québec

1400, 1st Ave East, Regina, Saskatchewan

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36
AND IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SMURFIT-STONE CONTAINER CANADA INC. AND THE OTHER APPLICANTS LISTED ON SCHEDULE "A"

Court File No: CV-09-7966-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

AMENDED AND RESTATED INITIAL ORDER

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
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Lawyers for the Applicant

jan 21

COURT FILE NO.: CV-09-7966-00CL
DATE: 2009-01-27

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

RE: In the Matter of a Plan of Compromise or Arrangement of Smurfit-Stone Container Canada Inc. and others

BEFORE: Pepall, J.

COUNSEL: Sean F. Dunphy and Alexander D. Rose for the Applicants
Robert J. Chadwick and Christopher G. Armstrong for the Proposed Monitor
Susan Grundy for the DIP Lenders

ENDORSEMENT

[1] Smurfit-Stone Container Canada Inc. ("SSC Canada"), Stone Container Finance Company of Canada II, MBI Limited, 3083527 Nova Scotia Company, BC Shipper Supplies Ltd., Specialty Containers Inc., 639647 British Columbia Limited, 605681 N.B. Inc. Canada, and Francobec Company (the "Applicants") seek relief under the CCAA. They also request that the terms of the Initial CCAA order apply to two Canadian partnerships affiliated with the Applicants, namely Smurfit-MBI and SLP Finance General Partnership (the "CCAA Entities"). Each of these CCAA Entities has filed for Chapter 11 protection in the U.S. Deloitte and Touche Inc. has consented to act as Monitor in the CCAA proceedings.

[2] On January 26, 2009, Smurfit-Stone Container Corporation ("Smurfit-Stone") and certain of its affiliates including SSC Canada commenced Chapter 11 proceedings in the U.S. Smurfit-Stone is based in St. Louis, Missouri and in Chicago, Illinois. It is a leading North American producer of paperboard products, market pulp, corrugated containers and other specialty packaging products. It is also one of the world's biggest recyclers of paper. It

currently holds approximately 18% of the North American container board market. Its operations have been negatively affected by the global economic downturn, the decrease in consumer spending, the manufacturing exodus from North America, a rise in costs, and a general market shift away from paper-based packaging. It has numerous direct and indirect subsidiaries.

[3] SSC Canada and Smurfit-MBI, an Ontario limited partnership, are its principal Canadian operating entities. SSC Canada operates mills and plants producing liner board, corrugating medium and food board. Smurfit-MBI is a converting operation that produces corrugated containers using liner board from the mills. Its general partner is MBI Limited which carries on no business other than acting as Smurfit-MBI's general partner and has no assets other than its interest in Smurfit-MBI.

[4] 3083527 Nova Scotia Company is wholly-owned by SSC Canada. It does not carry on business except that it is one of the two Smurfit-MBI limited partners (the other being SSC Canada). BC Shipper Supplies Ltd. is no longer active. Specialty Containers Inc.'s assets were all sold in 2008. 639647 British Columbia Limited has no operations and holds the shares of BC Shippers Supplies Ltd. and Specialty Containers Inc.

[5] SLP Finance General Partnership is owned by two Delaware companies. It does not carry on operations but owns the shares of 605681 N. B. Inc. which was liquidated in 2005 and of Francobec Company, a Nova Scotia company which previously operated a hardwood chipping facility which is now inactive. It has US$574 million in investment assets.

[6] Stone Container Finance Company of Canada II does not carry on business except that it issued notes, the proceeds of which were remitted to SSC Canada. It has assets of US$62 million and liabilities of US$207 million. Collectively all of these companies and partnerships are referred to as the CCAA Entities.

[7] The CCAA Entities employ approximately 2,600 people across Canada many of whom are unionized.

[8] Smurfit-Stone operates as a North American company rather than as a collection of individual business units. The U.S. and Canadian operations are fully integrated. In this regard, they have a centralized cash management system. All high level management decisions are made by a U.S. management team and it will have responsibility for the restructuring plan for the CCAA entities.

[9] A secured credit facility covers both the Canadian and American operations. The amount outstanding on this pre-filing secured credit facility as of January 23, 2009 was approximately US$1 billion of which approximately US$367 million is attributable to SSC Canada. Security over all material Canadian assets had been provided as part of this facility.

[10] The debt of the CCAA Entities also includes Canadian notes of US$200 million and trade creditor payables of US$53.4 million. In addition, there is a Canadian accounts receivable securitization programme, the outstanding balance of which is US$38 million as of January 23, 2009. There are six defined benefit registered pension plans in Canada for which there is an aggregate solvency deficiency of approximately $132 million as at December 31, 2007.

[11] The Applicants are insolvent, have indebtedness in excess of $5 million and qualify pursuant to the CCAA. The proposed outline for a plan includes continuing the process of selling and realizing value in respect of closed and discontinued operations and coordinating with the US entities to achieve a balance sheet restructuring.

[12] As a result of the Chapter 11 filing, the pre-filing secured credit facility is no longer available. In addition, the Chapter 11 filing constitutes an event of termination under the receivables agreement that governs the accounts receivable securitization programme. As such, absent some additional facility, the CCAA Entities would be required to repay amounts owing under the pre-filing credit agreement. In addition, they would no longer be able to benefit from the accounts receivable securitization programme, would have no access to operating credits, would be unable to operate in the ordinary course, and would be unable to satisfy ongoing obligations.

[13] Under the DIP facility that is proposed, both SSC Canada and the U.S. company, Smurfit-Stone Container Enterprises, Inc. ("SSCUS") are borrowers; the total commitment is US$750 million comprised of US$315 million in revolving facilities available to both SSCUS and SSC Canada, a US$400 million term loan available to SSCUS; and a US$35 million term loan available to SSC Canada. The term loan facilities are being used to take out the accounts receivable securitization programme. The loans to SSCUS are guaranteed by SSCC and most of the U.S. debtors and by SSC Canada and the latter provides a charge over its assets for all advances made to SSCUS. There would be rights of subrogation. The loans to SSC Canada are guaranteed by SSCUS and most of its U.S. subsidiaries and secured by a charge over substantially all of the assets of Smurfit-Stone's U.S. entities. The borrowings of SSC Canada are guaranteed by the other CCAA entities.

[14] While some of the DIP lenders also participated in the pre-filing secured credit facility, the DIP financing involves new money and is not a refinancing. New lenders are also participating in the DIP facility. The lenders of the pre-filing secured credit facility are unopposed to the order sought.

[15] The DIP lenders are unwilling to extend the DIP facility to SSC Canada absent its guarantee of the obligations of SSCUS under the DIP facility. In addition, the business is fully integrated making it impracticable particularly in the current credit environment to secure alternate financing on a stand-alone basis. To continue operations, the DIP facility is required. Estimated cash on hand for the Canadian operating entities at January 23, 2009 was $704,517 and the accounts payable balance is estimated to be in excess of US$53 million.

[16] The amount borrowed is to be secured by a charge on the Applicants' property following an Administration charge of $1 million and a Directors' charge of $8.6 million. Until a final order has been granted by the U.S. court approving continued lending under the DIP facility and until approved by this court, and prior to February 18, 2009, no more than $100,000 million of the U.S. revolving commitment and $15 million of the SSC Canada revolving commitment will be available for borrowing. During the initial 30-day stay period, the CCAA Entities anticipate they will require US$50 million of which US$31 million of the

term loan is to be used to refinance the account receivables securitization programme. This will result in an increase in cash receipts.

[17] The proposed Monitor filed a report. It described the extensive process undertaken to obtain new debt financing. It further understands that Smurfit-Stone, having thoroughly canvassed the market, does not have any satisfactory alternative financing arrangements available. The proposed Monitor is of the view that the restructuring and continuation of Smurfit-Stone and the CCAA Entities as a going concern is the best option available given that a going concern restructuring would preserve the value of Smurfit-Stone and the CCAA Entities whereas a liquidation and wind-down would likely result in a substantial diminution in value that could ultimately reduce creditors' recoveries. Significantly, the liquidation and wind-down of the CCAA Entities could eliminate a significant number of jobs, many of which would be preserved if the CCAA Entities are able to continue as a going concern. The proposed Monitor has also been advised that the CCAA Entities have recently been "net debtors", relying on advances from SSCUS to fund working capital requirements. Based on the information available to it, it is supportive of the DIP facility including SSC Canada's guarantee. In this regard, however, it is unable to provide views of the value of the guarantee or the probability that it will be called upon. Smurfit-Stone has advised the Monitor that SSC Canada's guarantee of SSCUS' obligations is contingent and that the DIP facility was negotiated with a third-party lender on the basis that there would be full recovery of all loans advanced to SSCUS under the DIP facility from the U.S. assets of Smurfit-Stone.

[18] The successful restructuring of the CCAA Entities appears to be inextricably intertwined with the successful restructuring of the Smurfit-Stone enterprise in the Chapter 11 proceeding. In order to continue day-to-day operations and to facilitate the company's restructuring, the U.S. debtors and the CCAA Entities require access to significant funding. Given all of these facts, I am prepared to grant the relief requested.

[19] As mentioned, the requested order extends the benefits of the protections provided by the order to Smurfit-MBI and SLP Finance General Partnership, both of which are partnerships but not Applicants. The operations of the partnerships are integral and closely interrelated with

that of the Applicants and in my view the request is appropriate in the circumstances outlined. See also *Re: Lehndorff General Partner Ltd.* (1993), 17 C.B.R. (3rd) 24.

[20] As to the centralized cash management system, the proposed Monitor has reviewed it and will be able to adequately monitor the transfers of cash, including transfers within the system so that transactions applicable to SSC Canada and Smurfit-MBI can be ascertained, traced and properly recorded. The Monitor will review and monitor the system and report to the court from time to time. As of January 23, 2009, SSC Canada was estimated to have US$121,000 and CDN$185,000 in cash and Smurfit-MBI was estimated to have US$97,000 and CDN$414,000 in cash.

[21] The CCAA Entities seek to pay certain pre-filing amounts owed to critical suppliers. The proposed Monitor has been advised that SSC Canada's operations depend on a ready supply of key materials such as wood, chemicals, fuel and energy from third party suppliers and, in addition, SSC Canada's and Smurfit-MBI's operations are reliant on rail and trucking services, custom brokers and third party warehouses. I am satisfied that the request to pay these pre-filing amounts is appropriate.

[22] According to Smurfit-Stone, it is very difficult to separate the creditors of the U.S. debtors from the creditors of the CCAA Entities. Smurfit-Stone intends to engage Epiq Bankruptcy Solutions LLC to send notice of the Chapter 11 proceedings to all creditors owed more than $1,000. The proposed Monitor has suggested that such notice include notice of the CCAA proceedings to the creditors of the CCAA Entities. I am in agreement with this proposed course of action but request that the Monitor report to the court when service has been effected.

[23] I also note and rely upon the comeback provision found in paragraph 57 of the order which allows any interested party to apply to the court to vary or amend this order on not less than seven days' notice.

[24] There are obviously numerous other provisions in the order that I have not addressed specifically as I believe they are all self-evident. In all of the circumstances I am prepared to

grant the order requested. Counsel will re-attend on Wednesday at 10:00 a.m. to address a further recognition order.

Pepall, J.

DATE: January 27, 2009

COURT FILE NO.: CV-09-7966-00CL
DATE: 2009-01-27

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SMURFIT-STONE CONTAINER CANADA INC. AND OTHERS

ENDORSEMENT

PEPALL J.

Released: January 27, 2009