

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF SMURFIT-STONE
CONTAINER CANADA INC., STONE CONTAINER
FINANCE COMPANY OF CANADA II, 3083527 NOVA
SCOTIA COMPANY, MBI LIMITED, 639647 BRITISH
COLUMBIA LTD., B.C. SHIPPER SUPPLIES LTD.,
SPECIALTY CONTAINERS INC., FRANCOBEC
COMPANY AND 605681 N.B. INC.**

APPLICANTS

**EIGHTH REPORT OF THE MONITOR
DATED NOVEMBER 4, 2009**

INTRODUCTION

- 1) By Order of this Honourable Court dated January 26, 2009, as amended and restated (the "**Initial Order**"), Smurfit-Stone Container Canada Inc., Stone Container Finance Company of Canada II ("**Finance II**"), 3083527 Nova Scotia Company, MBI Limited/Limitée, 639647 British Columbia Ltd., B.C. Shipper Supplies Ltd., Specialty Containers Inc., Francobec Company and 605681 N.B. Inc. (collectively, the "**Applicants**") obtained protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). The Initial Order also granted relief in respect of certain affiliated partnerships of the Applicants, namely Smurfit-MBI and SLP Finance General Partnership (the "**Partnerships**" and, with the Applicants, the "**CCAA Entities**"). The CCAA proceedings of the CCAA Entities are referred to herein as the "**CCAA Proceedings**".

- 2) Pursuant to the Initial Order, Deloitte & Touche Inc. was appointed monitor of the CCAA Entities as part of the CCAA Proceedings (the “**Monitor**”).
- 3) Also on January 26, 2009, Smurfit-Stone Container Corporation (“**SSCC**”) and certain of its direct and indirect subsidiaries, including Smurfit-Stone Container Enterprises Inc. (“**SSCE**”) and the CCAA Entities (collectively, the “**U.S. Debtors**”), filed for bankruptcy protection pursuant to Chapter 11 of Title 11 of the *United States Code* in the United States Bankruptcy Court (the “**U.S. Court**”) for the district of Delaware (the “**Chapter 11 Proceedings**” and, with the CCAA Proceedings, the “**Proceedings**”). The Chapter 11 Proceedings in respect of the CCAA Entities have been recognized by this Honourable Court as a “foreign proceeding” as defined in section 267 of the *Bankruptcy and Insolvency Act*, R.S.C., c. B-3, as amended. Information concerning the Chapter 11 Proceedings can be found at <http://chapter11.epiqsystems.com/smurfit> (the “**Epiq Website**”). Further information regarding Smurfit-Stone’s restructuring activities can be found on the Company’s website at <http://www.smurfit.com/content/company/restructuring/>. Smurfit-Stone has also established a hotline at 1-877-264-9638 for creditors and other interested parties to call with any questions or concerns in regards to the Company.
- 4) On February 24, 2009, this Honourable Court issued a Stay Extension Order which extended the stay in respect of the CCAA Entities until April 30, 2009, which stay was further extended to June 30, 2009, by a Stay Extension Order dated April 28, 2009, to September 30, 2009, by a Stay Extension Order dated June 25, 2009, and to December 24, 2009, by a Stay Extension Order dated September 25, 2009.
- 5) On March 12, 2009, this Honourable Court issued an Order approving a cross border insolvency protocol (the “**Cross-Border Protocol**”) between the U.S. Court and this Honourable Court. Amongst other things, the Cross-Border Protocol recognized the right of the official committee of unsecured creditors appointed in the Chapter 11 Proceedings (the “**UCC**”) to appear and be heard in the CCAA Proceedings.
- 6) On June 25, 2009, this Honourable Court issued a Claims Procedure Order (the “**Claims Procedure Order**”) approving a claims procedure in respect of the CCAA Entities and establishing a claims bar date of August 28, 2009 (the “**Claims Bar Date**”).

- 7) The Initial Order, together with certain other court documents, the previous reports of the Monitor (the “**Previous Reports**”), and the Notice to Creditors dated February 3, 2009, are posted on the Monitor’s website at www.deloitte.com/ca/smurfitstonecanada (the “**Monitor’s Website**”). The Monitor has also established a toll free number at 1-866-859-6954 for creditors and other interested parties to call with any questions or concerns in regards to the CCAA Proceedings.
- 8) The purpose of this report (“**Eighth Report**”) is to comment on the CCAA Entities’ motion seeking approval of a claims determination order (the “**Claims Determination Order**”). The Monitor supports the approval of the proposed Claims Determination Order.
- 9) Unless otherwise provided, capitalized terms not defined in this Eighth Report are as defined in the Previous Reports or, if not defined therein, the Initial Order. SSCC, together with its direct and indirect subsidiaries, are referred to herein as the “**Company**” or “**Smurfit-Stone**”.

TERMS OF REFERENCE

- 10) In preparing this Eighth Report, the Monitor has relied upon unaudited financial information, the Company’s books and records, the financial information prepared by the Company and its advisors, and discussions with management, legal counsel and financial advisors of the Company. The Monitor has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the information and, accordingly, the Monitor expresses no opinion or other form of assurance on the information contained in this Eighth Report.
- 11) Unless otherwise noted, all dollar amounts contained in this Eighth Report are expressed in U.S. dollars.

BACKGROUND

- 12) Based in St. Louis and Chicago, Smurfit-Stone 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 largest recyclers of paper. The Company currently

holds approximately 18% of the North American containerboard market. SSC Canada and Smurfit-MBI are the principal Canadian operating companies. SSC Canada directly operates mills and plants producing linerboard (a component of corrugated containerboard), corrugating medium (a further component of corrugated containerboard) and foodboard (coated corrugated cardboard). Smurfit-MBI is a converting operation that produces corrugated containers using, amongst other inputs, linerboard and medium from Smurfit-Stone's mills. The Company currently employs approximately 2,600 people (both non-unionized and unionized) across Canada, and a further 17,000 people in the United States. Further background on the CCAA Entities and Smurfit-Stone is contained in the Previous Reports, all of which are available on the Monitor's Website.

OVERVIEW OF CLAIMS DETERMINATION ORDER

- 13) As noted above, this Honourable Court approved the Claims Procedure Order on June 25, 2009. The Claims Procedure Order called for claims to be filed against the CCAA Entities and established the Claims Bar Date but did not provide a mechanism for accepting, disallowing or otherwise resolving claims against the CCAA Entities.
- 14) The CCAA Entities, in consultation with the Monitor, have developed the proposed Claims Determination Order, the principal features of which are as follows¹:
 - (a) if a U.S. Proof of Claim is filed against a U.S. Debtor and the U.S. Debtors and the CCAA Entities and the Monitor determine that such Claim or Subsequent Claim is more properly asserted against one of the CCAA Entities and the Creditor agrees with such determination, the Claim or Subsequent Claim will be deemed to be filed against the appropriate CCAA Entity;
 - (b) if a Proof of Claim is filed against a CCAA Entity and the CCAA Entities and the Monitor determine that such Claim or Subsequent Claim is more properly asserted against a different CCAA Entity and the Creditor agrees with such

¹ Terms not otherwise defined in this section of the Eighth Report are as defined in the proposed Claims Determination Order.

determination, the Claim or Subsequent Claim will be deemed to be filed against such other CCAA Entity;

- (c) the CCAA Entities and the Monitor shall determine whether to accept, revise or disallow each Claim or Subsequent Claim. The CCAA Entities and the Monitor may attempt to consensually resolve the classification and amount of any Claim or Subsequent Claim with the Creditor prior to accepting, revising or disallowing such Claim or Subsequent Claim;
- (d) if the CCAA Entities and the Monitor determine to revise or disallow a Claim or Subsequent Claim, then
 - o the Monitor shall cause a Notice of Revision or Disallowance to be sent to the Creditor; unless
 - o the Claim or Subsequent Claim was originally filed against the CCAA Entities in the U.S. Claims Procedure and was deemed filed in the Claims Procedure in accordance with paragraph 11 of the Claims Procedure Order, and the CCAA Entities are objecting to the Claim or Subsequent Claim in the U.S. Claims Procedure with the approval of the Monitor;
- (e) any Creditor who disputes the classification or amount of its Claim or Subsequent Claim as set forth in a Notice of Revision or Disallowance shall deliver a Notice of Dispute within fourteen days of the date of such Notice of Revision or Disallowance or such other date as agreed to in writing by CCAA Entities and the Monitor or ordered by this Honourable Court. Upon receipt of a Notice of Dispute, the CCAA Entities and the Monitor may attempt to consensually resolve the classification and amount of the Claim or Subsequent Claim with the Creditor, failing which the Monitor will deliver a Dispute Package to the Claims Officer and/or schedule a motion with this Honourable Court to resolve the Claim or Subsequent Claim where, in the view of the CCAA Entities and the Monitor, a motion is preferable for the resolution of the Claim or Subsequent Claim at issue;
- (f) if a U.S. Proof of Claim was originally filed against a CCAA Entity in the U.S. Claims Procedure and was deemed to be a timely delivered Proof of Claim in

accordance with paragraph 11 of the Claims Procedure Order, and either a Notice of Revision or Disallowance has been issued in the Claims Procedure or the Claim or Subsequent Claim has been similarly objected to by the CCAA Entities in the U.S. Claims Procedure, then the Creditor may object to the forum in which the CCAA Entities have disputed it. If the Creditor objects, then the Monitor and the CCAA Entities shall seek to agree with them and stipulate as to the forum (as between the Claims Procedure and the U.S. Claims Procedure) for the determination of such dispute, failing which the Creditor or the CCAA Entities may seek a joint hearing in accordance with the Cross-Border Protocol to determine the appropriate forum for determination of the dispute, or whether a joint hearing on the merits of the objection or proposed resolution thereof is appropriate;

- (g) any Claim or Subsequent Claim against a CCAA Entity finally determined by the U.S. Court in accordance with the U.S. Claims Procedure shall be deemed to have been accepted as a Proven Claim on those terms, provided that it shall have been previously agreed or determined, pursuant to (d) or (f), above, that the appropriate forum for determining such Claim or Subsequent Claim is the U.S. Court; and
 - (h) the CCAA Entities and the Monitor may, in their sole discretion, accept Proofs of Claim delivered to the Monitor after the Claims Bar Date but actually received prior to the date of this Order, and such accepted Proofs of Claim shall be deemed to have been delivered prior to the Claims Bar Date. For greater certainty, such Proofs of Claim (and the Claims underlying them) shall be subject to the provisions of this Order that apply to Proofs of Claim (and the Claims underlying them) actually received by the Claims Bar Date.
- 15) The Monitor is of the view that the proposed Claims Determination Order provides an appropriate level of flexibility to deal with claims filed against the CCAA Entities in light of the coordinated cross-border nature of the Proceedings and the fact that the CCAA Entities are also U.S. Debtors in that: (i) it provides a mechanism for claims incorrectly filed against the U.S. Debtors or the wrong CCAA Entity to be switched, with the consent of the creditor, to the appropriate CCAA Entity; and (ii) it allows the CCAA Entities and

the Monitor, with the consent of the creditor, to determine the appropriate forum for resolving a particular dispute where the claim has been filed in both the CCAA Proceedings and the Chapter 11 Proceedings and for resort to a joint hearing to determine the appropriate forum if a consensual resolution is not possible.

CLAIMS RECONCILIATION

- 16) The Monitor continues to work with Epiq, the U.S. claims agent, to reconcile the claims filed in the CCAA Proceedings with the claims filed in the Chapter 11 Proceedings with a view to, amongst other things, account for duplicative claims. The Monitor will report back to this Honourable Court once this process is complete and the Monitor is in a position to provide a fully reconciled overview of the claims filed against the CCAA Entities.

UCC CONSULTATION RIGHTS

- 17) In light of the fact that the CCAA Entities are also U.S. Debtors, the proposed Claims Determination Order will also include a provision mandating consultation with the UCC where the CCAA Entities and the Monitor intend to accept a claim in the CCAA Proceedings in excess of \$1 million. The Monitor notes that such a provision has been approved in another recent cross-border restructuring and that the provision has been the subject of ongoing negotiations amongst the CCAA Entities, the Monitor and Canadian counsel to the UCC. As at the writing of this Eighth Report, the precise language of this provision had not been fully settled. The Monitor will advise this Honourable Court of further developments in this regard at the hearing of the motion.
- 18) Claims against the CCAA Entities in excess of \$1 million are primarily tax claims, pension claims and claims in respect of the notes issued by each of SSCE and Finance II. Certain of these claims are claims in which the creditor has filed claims against a number of the U.S. Debtors and the CCAA Entities in both the Chapter 11 Proceedings and the CCAA Proceedings; as such, it is likely that some of these claims will be more appropriately dealt with in the Chapter 11 Proceedings.

LATE FILED CLAIMS

- 19) As at November 2, 2009, the Monitor had received 46 proofs of claim after the Claims Bar Date (the “**Late Filed Claims**”). The aggregate value of the Late Filed Claims totals approximately \$1.2 million and the Late Filed Claims range from \$110 up to \$205,000.
- 20) As noted above, the proposed Claims Determination Order gives the CCAA Entities and the Monitor the discretion to accept or otherwise deal with the Late Filed Claims. Assuming approval of the Claims Determination Order, the Monitor intends to communicate decisions in respect of the Late Filed Claims to the individual claimants over the course of the next several weeks.


MONITOR’S RECOMMENDATIONS

- 21) For the reasons described herein, the Monitor supports the approval of the proposed Claims Determination Order.

All of which is respectfully submitted at Toronto, Ontario this 4th day of November, 2009.

DELOITTE & TOUCHE INC.

in its capacity as the Monitor
of Smurfit-Stone Container Canada Inc., *et al.*

Per: 

Paul M. Casey, CA-CIRP
Senior Vice-President

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

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(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**EIGHTH REPORT OF THE MONITOR
DATED NOVEMBER 4, 2009**

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