

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

**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** 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

**SUPPLEMENTARY MOTION RECORD  
OF THE COMMUNICATIONS, ENERGY AND  
PAPERWORKERS UNION OF CANADA**

(Motion Returnable September 25, 2009 or as soon thereafter  
as this Motion may be heard)

September 16, 2009

**CaleyWray**

Labour/Employment Lawyers  
1600 – 65 Queen Street West  
Toronto ON M5H 2M5

Harold F. Caley (LSUC #12734R)

Tel : 416-775-4672

Fax: 416-366-3293

Email: [caleyh@caleywrap.com](mailto:caleyh@caleywrap.com)

Jesse B. Kugler (LSUC #55269V)

Tel : 416-775-4677

Fax: 416-366-3293

Email: [kuglerj@caleywrap.com](mailto:kuglerj@caleywrap.com)

Lawyers for Communications, Energy  
and Paperworkers Union of Canada

**TO: THE ATTACHED SERVICE LIST**

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**AFFIDAVIT OF GERMAIN AUCLAIR**

(Sworn September 14<sup>th</sup>, 2009)

I, **Germain Auclair**, of the City of La Tuque, in the Province of Quebec, **MAKE OATH**

**AND SAY:**

1. I am a former employee of Smurfit-Stone Container Canada Inc. ("SSCC"), and its predecessors, and I am union representative sitting on the pension committee of the defined benefit pension plan registered in Quebec as "Regime de retraite des employes syndiques d'Emballages Smurfit-Stone Canada Inc. Division La Tuque, Matane, Pointe-aux-Trembles et Burlington" ("Mill Plan").
2. This affidavit is sworn in support of a motion by the CEP for an Order, *inter alia*, directing Smurfit-Stone Container Canada Inc. ("SSCC") to comply with the terms of the La Tuque collective agreements with the CEP and its Local Unions which

require SSCC to file an amended Mill Plan with the Régie des Rentes du Québec ("Régie") that reflects the January 1, 2009 negotiated indexation benefit improvements.

3. As a former employee and current retiree of SSCC, and as a current union representative sitting on the pension committee of the Mill Plan, I have knowledge of the matters to which I hereinafter depose except where stated to be based upon information and belief. Where I rely on information or belief, I verily believe it to be true.

#### **Employment with SSCC**

4. I began working with SSCC and its predecessors in 1964 as a paper maker. I became a millwright with SSCC in 1975.
5. I occupied the position of oiler with SSCC until my retirement in 2001. I dedicated my entire professional career to serving SSCC.
6. My position as a oiler fell within the bargaining unit represented by the CEP. Throughout my career, the CEP regularly engaged in collective bargaining with SSCC on behalf of employees employed in the bargaining unit, including myself. One of the principal benefits negotiated by the CEP with SSCC was the provision of a fully indexed Mill Plan. A properly indexed pension plan provided me with a sense of security going into retirement, and was therefore a central and vital component of the compensation package I received in exchange for the services I rendered while I was employed by the Company.

7. I served as President of CEP Local Union 530 from 1986 to 1996.

**January 1, 2009 Indexation Benefit**

8. As a non-active union representative and voting member on the pension committee of the Mill Plan, I, along with my fellow committee members, are responsible for administering the Mill Plan. The pension committee is creature of the *Supplemental Pension Plans Act*, R.S.Q., chapter R-15.1 ("Act") and is required to exercise its administrative obligations as a trustee of the Mill Plan in a prudent, diligent and reasonable manner so as to serve the best interests of the members or beneficiaries.
9. Pursuant to the terms of the La Tuque collective agreements, the pension committee implemented the pension indexation provisions effective January 1, 2009. The effect of the committee's aforesaid action was to increase pension benefits paid out of the pension fund to beneficiaries in accordance with the indexation formula contained in the relevant La Tuque collective agreements. This was done notwithstanding that the fact that SSCC failed to file an amended Mill Plan text with the Regie as it was required to do under the terms of the relevant La Tuque collective agreements.
10. On March 3, 2009 the Regie issued an order which had the effect of limiting pension payments paid out of the Mill Plan pension fund to those which were registered with the Regie as at January 26, 2009. The Regie's order was in large part necessary as a result of SSCC's decision to suspend special solvency

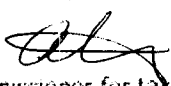
payments to the Mill Plan required to be paid pursuant to the Act during the CCAA proceedings.

11. Accordingly, on May 21, 2009 Yves Rouves, on behalf of the Mill Plan pension committee, wrote to all beneficiaries indicating that payments out of Mill Plan pension fund would be reduced by the amount of the January 1, 2009 pension indexation improvements. This reduction in benefit levels took effect on June 1st 2009. The pension committee had no choice but to enforce the order of the Regie.
12. But for SSSC's failure to file an amended Mill Plan pension text with the Regie as it was required to do pursuant to its collective agreement with the CEP on January 1, 2009, the Regie's order would not have deprived vulnerable Mill Plan beneficiaries of the value of the indexation benefits payable out of the pension fund.
13. As at the writing of this affidavit, Mill Plan beneficiaries continue to be deprived of the indexation benefit to which they are lawfully entitled and so dearly require.
14. It is my belief that the Order sought by the CEP in the within motion will not interfere with the restructuring process of SSSC as the indexation monies in question are payable by the pension fund, not by SSSC.

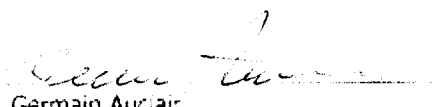
#### **Effect of the Reduced Pension**

15. The indexation claw back has effected approximately 500 600 Mill Plan beneficiaries. The vast majority of the aforesaid beneficiaries rely exclusively on the fixed pension benefits provided by the Mill Plan and possess little to no disposable income.
16. As a union representative of the pension committee of the Mill Plan, I have been in contact with a significant number of beneficiaries that have voiced their concerns over the reduction in the pension benefits. Based on my numerous conversations, it is apparent that the reduction of the pension indexation benefit results in a loss in benefits ranging from \$250-500 per year per beneficiary under the Mill Plan.
17. It is clear that the above-noted loss in benefits has had a significant adverse effect on the financial wellbeing of the Mill Plan beneficiaries and, accordingly, has caused severe hardships that ought to have been averted.
18. This affidavit is given by me in support of the CEP's motion and for no other improper purpose.

**SWORN** before me at the City of  
*La Tuque*, in the Province of  
Quebec, this 14<sup>th</sup> day of September,  
2009.

  
A Commissioner for taking affidavits.

**Annie Lemay, TL 3047**

  
Germain Auclair

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 CONTRAINER  
CANADA INC. AND THE OTHER APPLICANTS LISTED ON SCHEDULE "A"

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**CaleyWray**

Labour/Employment Lawyers  
1600 - 65 Queen Street West  
Toronto, Ontario M5H 2M5

Harold F. Caley (LSUC #12734R)

Tel : 416-775-4672

Fax: 416-366-3293

Email: [caleyh@caleywrap.com](mailto:caleyh@caleywrap.com)

Jesse B. Kugler (LSUC #55269V)

Tel : 416-775-4677

Fax: 416-366-3293

Email: [kuglerj@caleywrap.com](mailto:kuglerj@caleywrap.com)

Lawyers for the Communications, Energy  
and Paperworkers Union of Canada

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**SERVICE LIST  
Last updated on August 4, 2009 – 4:00 p.m.**

<i>Counsel</i>	<i>Telephone</i>	<i>Fax</i>	<i>Counsel For</i>
<p>ANDRIESEN &amp; ASSOCIATES, P.C. 701 Evans Ave, Suite 900, Toronto Ontario, M9C 1A3</p> <p>PAUL H. VOORN E-mail: <a href="mailto:pvoorn@andriessen.ca">pvoorn@andriessen.ca</a></p>	(416) 620-7020 Ext. 23	(416) 620-1398	Master Lift Truck Service
<p>ANDRITZ (USA) INC. 1115 Northmeadow Parkway Roswell, Georgia 30076</p> <p>DEBORAH B. ZINK (Senior Counsel) E-mail: <a href="mailto:Deborah.Zink@andritz.com">Deborah.Zink@andritz.com</a></p>	(770) 640-2591	(770) 640-2598	Andritz Ltd. (Brampton)
<p>AURELIUS CAPITAL MANAGEMENT, LP</p> <p>DAN GROPPER E-mail: <a href="mailto:dgropper@aurelius-capital.com">dgropper@aurelius-capital.com</a></p> <p>GABRIELLA SKIRNICK E-Mail: <a href="mailto:Gskirnick@aurelius-capital.com">Gskirnick@aurelius-capital.com</a></p>			Aurelius Capital Management, LP
<p>BENNETT JONES LLP 3400 One First Canadian Place P.O. Box 130 Toronto, Ontario M5X 1A4</p> <p>KEVIN J. ZYCH E-mail: <a href="mailto:zychk@bennettjones.com">zychk@bennettjones.com</a></p> <p>S. RICHARD ORZY E-mail: <a href="mailto:orzvr@bennettjones.com">orzvr@bennettjones.com</a></p> <p>DEREK FRUEH E-mail: <a href="mailto:fruehd@bennettjones.com">fruehd@bennettjones.com</a></p> <p>RAJ SAHNI E-mail: <a href="mailto:sahnir@bennettjones.com">sahnir@bennettjones.com</a></p>	(416) 777-5738  (416) 777-5737  (416) 777-6237  (416) 777-4804	(416) 863-1716	Canadian Counsel for the Official Committee of Unsecured Creditors of Smurfit-Stone Container Corporation, <i>et al</i>

<i>Counsel</i>	<i>Telephone</i>	<i>Fax</i>	<i>Counsel For</i>
<b>BLAKE, CASSELS &amp; GRAYDON LLP</b> Box 25, Commerce Court West 199 Bay Street, Suite 2800, Toronto ON M5L 1A9 Canada  SUSAN M. GRUNDY E-mail: <a href="mailto:susan_grundy@blakes.com">susan_grundy@blakes.com</a>  LINC ROGERS E-mail: <a href="mailto:linc.rogers@blakes.com">linc.rogers@blakes.com</a>	(416) 863-2400   (416) 863-2572   (416) 863-4168	(416) 863-2653	JPMorgan Chase Bank, N.A., Toronto Branch
<b>BLAKE, CASSELS &amp; GRAYDON LLP</b> Box 25, Commerce Court West 199 Bay Street, Suite 2800, Toronto ON M5L 1A9 Canada  SUSAN M. GRUNDY E-mail: <a href="mailto:susan_grundy@blakes.com">susan_grundy@blakes.com</a>  LINC ROGERS E-mail: <a href="mailto:linc.rogers@blakes.com">linc.rogers@blakes.com</a>	(416) 863-2400   (416) 863-2572   (416) 863-4168	(416) 863-2653	DIP Facility Lender (Canada)
<b>BRYAN CAVE LLP</b> 211 N. Broadway, Suite 3600 St. Louis, MO 63102  GREG WILLARD E-mail: <a href="mailto:gdwillard@bryancave.com">gdwillard@bryancave.com</a>  HAL BURROUGHS E-mail: <a href="mailto:hburroughs@bryancave.com">hburroughs@bryancave.com</a>  BART WALL E-mail: <a href="mailto:bdwall@bryancave.com">bdwall@bryancave.com</a>  KAREN FRIES E-mail: <a href="mailto:kwfries@bryancave.com">kwfries@bryancave.com</a>  JAMES BUELL E-mail: <a href="mailto:jbuell@bryancave.com">jbuell@bryancave.com</a>	(314) 259-2000   (314) 259-2370   (314) 259-2706   (314) 259-2765   (314) 259-2635   (314) 259-2373	(314) 259-2020	DIP Facility Lender (US)
<b>CALEYWRAY LABOUR/EMPLOYMENT LAWYERS</b> 1600-65 Queen Street West Toronto, ON, M5H 2M5  Harold F. Caley E-mail: <a href="mailto:caleyh@caleywrav.com">caleyh@caleywrav.com</a>  Jesse B. Kugler Email: <a href="mailto:kuglerj@caleywrav.com">kuglerj@caleywrav.com</a>	(416) 775 4672   (416)-775-4677	(416) 366 3293	Communications, Energy and Paperworkers Union of Canada (CEP)

<i>Counsel</i>	<i>Telephone</i>	<i>Fax</i>	<i>Counsel For</i>
<b>CASSELS BROCK &amp; BLACKWELL LLP</b> 2100 Scotia Plaza, 40 King Street West Toronto, Ontario, M5H 3C2  JOHN N. BIRCH E-mail: <a href="mailto:jbirch@casselsbrock.com">jbirch@casselsbrock.com</a>	(416) 860 5225	(416) 640 3057	Chemtrade Logistics Inc.
<b>COLUMBUS HILL CAPITAL MANAGEMENT, L.P.</b> 830 Morris Turnpike 2nd FL Short Hills, NJ 07078  DAVID W. AMBROSIA E-mail: <a href="mailto:david.ambrosia@columbushill.com">david.ambrosia@columbushill.com</a>	(973) 921-3425	(973) 921-3455	Noteholders of Stone Container Finance Company of Canada II
<b>DELOITTE &amp; TOUCHE INC.</b> 181 Bay Street Brookfield Place, Suite 1400 Toronto, Ontario M5J 2V1  PAUL CASEY E-mail: <a href="mailto:paucasey@deloitte.ca">paucasey@deloitte.ca</a>  CATHERINE HRISTOW E-mail: <a href="mailto:christow@deloitte.ca">christow@deloitte.ca</a>	(416) 601-5999 1-866-859-6954  (416) 775-7172  (416) 775-8831	(416) 601-6690	Monitor
<b>FLUXGOLD IZSAK JAEGER LLP</b> 100 York Blvd., Suite 220 Richmond Hill, ON L4B 1J8  BRUCE R. JAEGER E-mail: <a href="mailto:bjaege@fijlaw.com">bjaege@fijlaw.com</a>	(905) 763-3770  Ext. 212	(905) 763-3772	Torbram Electric Supply Corporation
<b>FTI CONSULTING</b> Suite 2733, TD Canada Trust Tower 161 Bay Street Toronto, ON, M5J 2S1  NIGEL D. MEAKIN E-mail: <a href="mailto:nigel.meakin@fticonsulting.com">nigel.meakin@fticonsulting.com</a>	(416) 572-2285	(416) 572-2201	Financial advisor to the unsecured creditors' committee
<b>GOODMANS LLP</b> 250 Yonge Street Suite 2400 Toronto, Ontario M5B 2M6  ROB CHADWICK E-mail: <a href="mailto:rchadwick@goodmans.ca">rchadwick@goodmans.ca</a>  CHRIS ARMSTRONG E-mail: <a href="mailto:carmstrong@goodmans.ca">carmstrong@goodmans.ca</a>	(416) 979-2211  (416) 597-4285  (416) 849-6013	(416) 979-1234	Deloitte & Touche Inc.

<i>Counsel</i>	<i>Telephone</i>	<i>Fax</i>	<i>Counsel For</i>
<p><b>GOWLING LAFLEUR HENDERSON LLP</b>                      1 Place Ville Marie 37th floor                      Montréal, QC                      H3B 3P4</p> <p>LOUISE LALONDE                      E-mail: <a href="mailto:louise.lalonde@gowlings.com">louise.lalonde@gowlings.com</a></p>	<p>(514) 878-9641</p> <p>(514) 392-9557</p>	<p>(514) 878-1450</p>	<p>Industries Wajax</p>
<p><b>HARRISON PENZA LLP</b>                      450 Talbot Street                      P.O. Box 3237                      London, ON N6A 4K3</p> <p>MICHAEL CASSONE                      E-mail: <a href="mailto:mcassone@harrisonpenza.com">mcassone@harrisonpenza.com</a></p>	<p>(519) 679-9660</p> <p>(519) 661-6765</p>	<p>(519) 667-3362</p>	
<p><b>KOSKIE MINSKY LLP</b>                      20 Queen Street West, Suite 900                      Toronto, Ontario M5H 3R3</p> <p>ANDREW J. HATNAY                      E-mail: <a href="mailto:ahatnay@kmlaw.ca">ahatnay@kmlaw.ca</a></p> <p>ANDREA MCKINNON                      E-mail: <a href="mailto:amckinnon@kmlaw.ca">amckinnon@kmlaw.ca</a></p>	<p>(416) 977-8353</p> <p>(416) 595-2083</p>	<p>(416) 977-3316</p> <p>(416) 204-2872</p>	<p>Smurfit-Stone SERP Retirees                      Protection Committee</p>
<p><b>KRAMER LEVIN NAFTALIS &amp; FRANKEL LLP</b>                      1177 Avenue of the Americas                      New York, NY 10036                      U.S.A.</p> <p>ROBERT T. SCHMIDT                      E-mail: <a href="mailto:rschmidt@kramerlevin.com">rschmidt@kramerlevin.com</a></p> <p>DOUGLAS MANNAL                      E-mail: <a href="mailto:dmannal@kramerlevin.com">dmannal@kramerlevin.com</a></p> <p>JENNIFER SHARRET                      E-mail: <a href="mailto:jsharret@kramerlevin.com">jsharret@kramerlevin.com</a></p> <p>JASON RAPPAPORT                      E-mail: <a href="mailto:jrapaport@kramerlevin.com">jrapaport@kramerlevin.com</a></p>	<p>(212) 715-9527</p> <p>(212) 715-9313</p> <p>(212) 715-9516</p> <p>(212) 715-9364</p>	<p>(212) 715-8000</p>	<p>U.S. Counsel for the Official                      Committee of Unsecured                      Creditors of Smurfit-Stone                      Container Corporation, <i>et al</i></p>
<p><b>LOOPSTRA NIXON LLP</b>                      Woodbine place, 135 Queens Plate Drive, Suite 600                      Toronto, ON M9W 6V7</p> <p>MICHAEL B. MCWILLIAMS                      E-mail: <a href="mailto:mmcwilliams@loonix.com">mmcwilliams@loonix.com</a></p>	<p>(416) 748-4766</p>	<p>(416) 746-8319</p>	<p>Preferred Polymer Coatings                      Ltd.</p>

<i>Counsel</i>	<i>Telephone</i>	<i>Fax</i>	<i>Counsel For</i>
<b>MACLEOD DIXON LLP</b> Canadian Pacific Tower The Toronto-Dominion Centre 100 Wellington Street West, Suite 500 Toronto, ON M5K 1H1  ROBERT FRANK E-mail: <a href="mailto:robert.frank@macleoddixon.com">robert.frank@macleoddixon.com</a>	(416) 202-6741	(416) 360-8277	Shell Energy North America (Canada), Inc.
<b>MARTIN SHEPPARD FRASER LLP</b> Downtown Professional Building 4701 St. Clair Avenue, 2nd Floor P.O. Box 900, Niagara Falls ON L2E 6v7  GARY H. ENSKAT E-mail: <a href="mailto:enskat@martinshep.com">enskat@martinshep.com</a>	(905) 354-1611	(905) 354-5540	Pacific Northern Rail Contractors Inc.
<b>MCCARTHY TÉTRAULT LLP</b> Suite 5300, Toronto Dominion Bank Tower Toronto ON M5K 1E6  KEVIN MCELCHERAN E-mail: <a href="mailto:kmcelcheran@mccarthy.ca">kmcelcheran@mccarthy.ca</a>  MALCOLM M. MERCER E-mail: <a href="mailto:mmercera@mccarthy.ca">mmercera@mccarthy.ca</a>  HEATHER L. MEREDITH E-mail: <a href="mailto:hmeredith@mccarthy.ca">hmeredith@mccarthy.ca</a>	(416) 601-7539  (416) 763-0832  (416) 601-7856	(416) 868-0673	Aurelius Capital Management, LP and Columbus Hill Capital Management, L.P.
<b>MINISTRY OF THE ATTORNEY GENERAL                      LEGAL SERVICES BRANCH                      FINANCIAL SERVICES COMMISSION OF                      ONTARIO</b> 17th Floor - Box 85 5160 Yonge Street Toronto ON M2N 6L9  MARK BAILEY E-mail: <a href="mailto:mbailey@fscsco.gov.on.ca">mbailey@fscsco.gov.on.ca</a>	(416) 590-7555	(416) 590-7070	Superintendent of Financial Services
<b>ONTARIO MINISTRY OF REVENUE</b> 6-33 King St W Oshawa, ON L1H 8H5  CHANTALE BOURRE E-mail: <a href="mailto:chantale.bourre@ontario.ca">chantale.bourre@ontario.ca</a>	1 866 668-8297  Ext. 18515	(905) 436-4524	Province of Ontario
<b>PRICEWATERHOUSECOOPERS INC.</b> 77 King Street West, Toronto, ON, M5K 1G8  JOHN MCKENNA E-mail: <a href="mailto:john.p.mckenna@ca.pwc.com">john.p.mckenna@ca.pwc.com</a>	(416) 941-8314	(416) 814-3210	Advisor to the Applicants and Partnerships





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Labour/Employment Lawyers  
1600 - 65 Queen Street West  
Toronto, Ontario M5H 2M5

Harold F. Caley (LSUC #12734R)

Tel : 416-775-4672

Fax: 416-366-3293

Email: [caleyh@caleywrap.com](mailto:caleyh@caleywrap.com)

Jesse B. Kugler (LSUC #55269V)

Tel : 416-775-4677

Fax: 416-366-3293

Email: [kuglerj@caleywrap.com](mailto:kuglerj@caleywrap.com)

Lawyers for the Communications, Energy  
and Paperworkers Union of Canada