

Superior Court of Justice  
Commercial List

**FILE/DIRECTION/ORDER**

le Smuift Canada et al  
Plaintiff(s)

AND

\_\_\_\_\_  
Defendant(s)

Case Management  Yes  No by Judge: Repall

Counsel	Telephone No.:	Facsimile No.:
<u>See attached</u>		

- Order  Direction for Registrar (No formal order need be taken out)  
 Above action transferred to the Commercial List at Toronto (No formal order need be taken out)  
 Adjourned to: \_\_\_\_\_  
 Time Table approved (as follows):

Smuift Canada + the other applicants move for an order accepting the filing of a plan of compromise + arrangement + authorizing the Applicants to convene a meeting of creditors entitled to consider + vote on the Plan. The order requested is supported by the Monitor. Others appearing consisting of the retirees of Smuift - Stone Canada Inc, the USW, the UCC, and the Finance II Retailers' Fund manager's ~~have~~ <sup>were</sup> ~~dropped~~ but all made submissions so as to clarify their positions. No one else appeared although duly served.

Sections 4 + 5 of the CCAA address the ordering of a meeting. A court will refuse to order a meeting if the plan lacks economic reality or is "doomed to fail": Re Francmaster (1999) 11 CBR (4th) 204.

In this case, the Plan contemplates the purchase

Feb 10, 2010  
Date

[Signature]  
Judge's Signature

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Judges Endorsement Continued

of the Applicants' assets by a newly incorporated Canadian company controlled by a managed Smart-Preme Container Corporation. Consideration would include payment of secured creditors + two distribution pools amounting to \$19.5 million each. Notice would also assume all existing + future obligations of the Applicants under the Canadian collective bargaining agreements, the Canadian pension plans and the Canadian employee benefit plans. There are 8 classes of creditors, 3 of which are affected unsecured creditors of Smart Canada, Smart-MBI, + Finance 11 respectively. The Plan also provides for a "convenience claim" option for general unsecured creditors of Smart Canada + Smart MBI who are owed less than \$5000. They will be paid in full. In addition, those who have claims in excess of \$5000 may elect to receive that sum rather than their pro-rata distribution.

Both the Smart Canada + the Smart MBI unsecured creditors must approve the Plan, failing which, the two distribution pools are unavailable + there is a moratorium process. (Section 5.1.6 of the Plan appears to contemplate a moratorium process at the election of the debtors, however, counsel for the applicants submits that the intended application is a material adverse change. <sup>if material, new case or would serve as a form of statutory notice to creditors of the distribution pools.</sup>

There are two outstanding major variables with respect to recovery for Canadian unsecured creditors of Smart Canada + Smart MBI, one relating to CRA + the other with respect to the noteholders + Finance 11. The former is subject to settlement discussions

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+ the latter is subject to a leave to appeal motion brought by the Fund Managers. The noteholders have a guaranteed claim which is recognized in the US the estimated recovery for which is 64 - 71% in the form of new SSC common stock. If the contribution claim is allowed - the US, there would be 100% recovery for the noteholders. Should either of the Canadian variables materialize, there would be a significant impact on the pools available to address unsecured creditors + on the likelihood of the Plan obtaining the requisite levels of support.

~~Assent~~ If these variables do not materialize, the estimated recovery for Smart Canada's unsecureds is in the 35.5 - 37.7% range + for Smart MBI in the 78 - 81.5% range, both after payment of the above described convenience claims.

The primary concern of those appearing was that the Monitor deliver its report on, amongst other things, valuation, the status of claims + its recommendations by March 12, 2010. Mr Chadwick on behalf of the Monitor recognizes the need for this information so that stakeholders may properly assess their positions. He advised that it is the intention of the Monitor to file its report no later than March 12, 2010. The Monitor's preliminary view is that it is appropriate to file the plan. Given the cross border nature of the proceedings, information sometimes has been slow to come from the Applicants but ~~the Monitor~~ ~~advises~~ that there has been cooperation + if

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there had been any material problems, the court would have been alerted to some.

counsel for the USW wished me to note that it is the USW's position that Canadian unions could be responsible for pre + post plan provisions + that the USW planned to enforce those provisions under the Labour Relations Act. Counsel for the kind managers wished to note that they reserve their rights with respect to modifications to the Plan if their appeal is successful.

As to the Claims Procedure order, it reflects provisions designed to synchronize the US + Canadian processes. Mr Rose moved the provisions in some detail having filed a detailed factum on the paragraphs requested.

In all of these circumstances, I am granting the order requested. The sanction hearing is currently booked for April 14, 2010.

SC Pepall, J.