

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

FIFTH REPORT OF THE MONITOR  
DATED AUGUST 12, 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. ("**SSC Canada**"), Stone Container Finance Company of Canada 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**") and recognized the Chapter 11 Proceedings (as defined below) as a "foreign proceeding" as defined in section 267 of the *Bankruptcy and Insolvency Act*, R.S.C., c. B-3, as amended (the "**BIA**"). The CCAA proceedings of the CCAA Entities are referred to herein as the "**CCAA Proceedings**".

- 2) Pursuant to the Initial Order, Deloitte & Touche Inc. (“**Deloitte**”) was appointed monitor of the CCAA Entities as part of the CCAA Proceedings (the “**Monitor**”).
- 3) 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, and to September 30, 2009, by a Stay Extension Order dated June 25, 2009.
- 4) On March 12, 2009, this Honourable Court issued an Order approving a cross border insolvency protocol between the U.S. Court (as defined below) and this Honourable Court.
- 5) On June 25, 2009, this Honourable Court issued a Claims Procedure Order approving a claims procedure in respect of the CCAA Entities.
- 6) The Initial Order, together with certain other court documents, including the previous reports of the Monitor (the “**Previous Reports**”), Notice to Creditors dated February 3, 2009, and claims process materials are posted on the Monitor’s website at [www.deloitte.com/ca/smurfitstonecanada](http://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.
- 7) Each of the CCAA Entities also filed for protection in the Chapter 11 Proceedings along with Smurfit-Stone Container Corporation (“**SSCC**”) and certain other Smurfit-Stone entities. SSCC, together with its direct and indirect subsidiaries, are referred to herein as the “**Company**” or “**Smurfit-Stone**”.
- 8) The purpose of this fifth report (“**Fifth Report**”) is to provide this Honourable Court with an overview of the proposed sale by SSC Canada of certain timberland assets (the “**Timberlands**”) in the Province of Québec to Société Générale de Financement du Québec (“**SGF**”), the payment of approximately fifty percent of the net proceeds of such sale to Abitibi Bowater Inc. (“**AbitibiBowater**”), the entering into of a new wood fiber supply agreement with AbitibiBowater entities and the termination of all existing fiber

supply obligations between SSC Canada and AbitibiBowater entities, and to provide the Monitor's recommendation in respect of same.

- 9) Unless otherwise provided, capitalized terms not defined in this Fifth Report are as defined in the Previous Reports, the Initial Order or the Asset Purchase Agreement (as defined below).

#### **TERMS OF REFERENCE**

- 10) In preparing this Fifth 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 Fifth Report.
- 11) Certain of the information referred to in this Fifth Report consists of forecasts and/or projections. An examination or review of financial forecasts and projections, as outlined in the Canadian Institute of Chartered Accountants Handbook, has not been performed. Future oriented financial information referred to in this Fifth Report was prepared by the Company and its advisors based on management's estimates and assumptions. Readers are cautioned that since forecasts are based upon assumptions about future events and conditions that are not ascertainable, actual results will vary from the forecasts and, even if the assumptions materialize, the variations could be significant.
- 12) Unless otherwise noted, all dollar amounts contained in this Fifth Report are expressed in Canadian dollars.

#### **BACKGROUND**

- 13) 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 CCAA Entities currently employs approximately 2,600 people (both non-unionized and unionized) across Canada. Further background on the CCAA Entities and Smurfit-Stone is contained in the Previous Reports which are available on the Monitor's Website.

- 14) On January 26, 2009, SSCC and certain of its direct and indirect subsidiaries, including Smurfit-Stone Container Enterprises Inc. ("SSCE") and the CCAA Entities, filed for bankruptcy protection pursuant to Chapter 11 of the *United States Code* (the "**Bankruptcy 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**"). Information concerning the Chapter 11 Proceedings can be found at <http://chapter11.epiqsystems.com/smurfit>. 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.

## **OVERVIEW OF THE TIMBERLANDS**

- 15) The Monitor understands that the Timberlands represent the largest reserve of private harvestable land in Québec with a total surface area of approximately 389,383 hectares (962,204 acres), located between the Saguenay-Lac-St-Jean and Mauricie regions of Québec. The Timberlands are comprised of approximately 75% softwood species (principally spruce and jack pine) and 25% hardwood species (principally white birch).
- 16) SSC Canada acquired the Timberlands in connection with the Company's acquisition of St-Laurent Paperboard Inc. ("**St-Laurent**") in 2000. Since acquiring the Timberlands, SSC Canada has sold the majority of its harvesting volumes to third parties in exchange

for stumpage fees, maintaining a small reserve for use at SSC Canada's La Tuque mill. SSC Canada presently has harvesting contracts in respect of the Timberlands with AbitibiBowater and the Opiticiwan Sawmill, a limited partnership formed between AbitibiBowater and the Atiakamekw Opiticiwan First Nations.

- 17) Eleven people are presently employed by SSC Canada in connection with the Timberlands. Silvicultural operations are performed by third-party contractors.
- 18) Bowater Canadian Forest Products, Inc. ("**BCFPI**"), a subsidiary of AbitibiBowater, presently has a right of first refusal (the "**ROFR**") in respect of a portion of the Timberlands (the "**Optioned Land**") that represents approximately 98% of the total area of the Timberlands. The ROFR derives from BCFPI's purchase of Avenor Inc., the previous owner of the Optioned Land who sold it to St-Laurent. The ROFR, which expires in 2093, provides that if SSC Canada desires to sell a portion of the Optioned Land greater than 250 acres to an arms' length third party, it shall first offer such Optioned Land to BCFPI who shall have the option to purchase it for the lesser of: (i) \$25 per acre; and (ii) the price negotiated with such third party. If BCFPI rejects such offer, upon consummation of a sale of such Optioned Land to a third party, BCFPI is entitled to receive an amount equal to the excess, if any, of the per acre purchase price paid by such third party over the sum of: (i) \$25 per acre; and (ii) all expenses incurred by SSC Canada in connection with the sale.
- 19) AbitibiBowater and certain of its subsidiaries, including BCFPI, filed voluntary petitions under Chapter 11 of the Bankruptcy Code on April 16, 2009, and sought and obtained protection under the CCAA on April 17, 2009.
- 20) SSC Canada is permitted to sell the Timberlands under the terms of the DIP Facility.

#### **SALES PROCESS AND LETTER AGREEMENT WITH ABITIBIBOWATER**

- 21) The Monitor understands that the Company began to consider its strategic options with respect to the Timberlands in early 2008 and engaged Scotia Capital in August 2008 to canvass the market in respect of same.

- 22) Shortly thereafter, the Company engaged in negotiations with AbitibiBowater regarding BCFPI's ROFR in respect of the Optioned Land. These negotiations ultimately culminated in SSCE and BCFPI entering into a Letter Agreement dated September 30, 2008 (the "**Letter Agreement**"), a redacted copy of which is attached as an exhibit to the Affidavit of Dean Jones sworn July 28, 2009 (the "**Jones Affidavit**"). The Letter Agreement provides, amongst other things, that:
- (a) BCFPI would waive its ROFR in respect of the Optioned Land for a period of two years from the date of the Letter Agreement;
  - (b) that SSCE/SSC Canada would promptly commence the process of marketing and selling the Optioned Land in good faith using its best commercial efforts; and
  - (c) in the event a sale of the Optioned Land within the two year period, SSCE/SSC Canada shall pay to BCFPI an amount equal to fifty percent of the net proceeds received from the sale of the Optioned Land after deducting from the purchase price all expenses and costs incurred in connection with the sale of the Optioned Land, provided that in the event that the net proceeds from the sale of the Optioned Land are less than \$50 per acre, SSCE/SSC Canada shall pay to BCFPI only that portion of the net proceeds that exceeds \$25 per acre.
- 23) The recitals to the Letter Agreement expressly contemplate the entering into of a wood fiber supply agreement between SSC Canada and BCFPI for wood fiber supply by BCFPI to SSC Canada's LaTuque mill. A term sheet in respect of same forms an integral part and essential condition of the Letter Agreement. The wood fiber supply agreement is discussed in greater detail below.
- 24) The Affidavit of Eric Michaud (a representative of Scotia Capital) sworn July 28, 2009 (the "**Scotia Affidavit**") contains a detailed description of the marketing and sales efforts undertaken by the Company and Scotia Capital in late 2008 and early 2009. The Monitor was not involved in this process as it occurred prior to the commencement of these CCAA Proceedings; however, the Monitor has reviewed certain of the materials produced by Scotia Capital, including the "teaser" document and the Confidential Information Memorandum (as defined in the Scotia Affidavit), and has had discussions

with representatives of the Company and Scotia Capital regarding the sales process. The Monitor understands that:

- (a) Scotia Capital contacted 57 potential purchasers (34 strategic, 17 financial and 6 local);
  - (b) the Company did not issue a press release or otherwise publically announce the Timberlands opportunity based on a host of factors, including the advice of Scotia Capital which, in turn, was based on Scotia Capital's recent experience with other timberland transactions in Québec and the rest of Canada;
  - (c) the Company entered into non-disclosure agreements ("NDAs") with thirteen potential purchasers;
  - (d) a confidential electronic data room was established by the Company and the thirteen potential purchasers that executed NDAs were given access;
  - (e) three potential purchasers submitted non-binding bids on or about November 4, 2008;
  - (f) based on its review of these bids, the Company and Scotia Capital gave management presentations to two of the bidders and commenced further negotiations with them. The third potential bidder indicated it was no longer interested in the Timberlands when it was asked to increase its bid; and
  - (g) neither remaining bidder submitted a binding bid by the proposed deadline of December 16, 2008, and only SGF submitted a non-binding bid on January 21, 2009.
- 25) Following several months of further negotiations between the Company and SGF, SSC Canada and SGF ultimately entered into the Asset Purchase Agreement in respect of the Timberlands.

## THE ASSET PURCHASE AGREEMENT AND RELATED AGREEMENTS

26) SSC Canada and SGF entered into an asset purchase agreement dated April 30, 2009 (the “**Asset Purchase Agreement**”), in respect of the Timberlands. The rights and obligations of SGF under the Asset Purchase Agreement were assigned to Gestion Forestière du Saint-Maurice Inc. (“**GFSM**”), an affiliate of SGF, pursuant to the terms of the Asset Purchase Agreement on July 27, 2009. Pursuant to the terms of the Asset Purchase Agreement, SGF remains expressly and solidarily liable with GFSM for its obligations under the Asset Purchase Agreement. A summary of the key provisions of the Asset Purchase Agreement is provided in the paragraphs that follow. Reference should be made directly to the Asset Purchase Agreement, a redacted copy of which is attached as an exhibit to the Jones Affidavit, for a complete understanding of the terms governing the Transaction contemplated by the Asset Purchase Agreement. Terms not otherwise defined in this section of this Fifth Report are as defined in the Asset Purchase Agreement.

- (a) Purchased Assets: The Purchased Assets are the undertaking, business and assets relating to the Business (being the ownership and management of private timberlands and related operations as presently conducted by SSC Canada) including the Real Property (i.e. the Timberlands) but excluding, among other things, all Accounts Receivable, insurance policies associated with the Business, Tax refunds and credits receivable, all cash on hand and deposits, and all inter-company accounts receivable.
- (b) Purchase Price: The consideration payable by GFSM in respect of the Transaction is \$60,400,000 (approximately \$62.77 per acre), adjusted for all items normally adjusted between a vendor and purchaser in respect of the sale of real property.
- (c) Assumed Liabilities: GFSM shall assume all liabilities which will accrue after the Time of Closing under the Contracts, Licenses and Real Property Leases.
- (d) Excluded Liabilities: GFSM shall not assume any liabilities of SSC Canada other than the Assumed Liabilities, including all liabilities of SSC Canada in respect of the Wood Chip Contracts, the Supply Contracts (being two agreements for the

supply of wood fiber between SSC Canada and each of Abitibi-Consolidated Inc. and BCFPI) and the Employee Claims.

- (e) Employees: GSFM shall employ eight Employees whose employment shall be on substantially similar terms and conditions enjoyed by the Employees immediately prior to the Closing Date, provided that GSFM shall not be required to set up a defined benefit plan for such Employees. The Monitor understands that all Employees are presently members of a defined contribution pension plan. SSC Canada agrees to indemnify GSFM in respect of all salary, wages, bonuses, benefits, vacation pay, severance, indemnity in lieu of notice of termination, retirement and pension benefits and all other amounts which may be payable to Excluded Employees.
- (f) Taxes: GSFM shall pay all land transfer Taxes, Sales Taxes, registration fees, license fees or other charges payable in connection with the Transaction.
- (g) Assignment: In respect of any Contract, Real Property Lease, Third Party Lease, License or other Purchased Assets (collectively, the “**Right(s)**”) requiring a consent for which such consent has not been obtained, then, upon the written request and under the direction and at the expense of GSFM, SSC Canada shall take all such reasonable actions which are necessary such that the obligations of SSC Canada in connection with such Right may be performed by GSFM as agent of SSC Canada. The Purchaser shall be entirely responsible for the timely performance of the obligation associated with any such Rights.
- (h) Representations and Warranties: SSC Canada makes certain representations and warranties in favour of GSFM, including representations and warranties in respect of title to the Purchased Assets, Native Claims and environmental matters. All representations and warranties of SSC Canada shall survive closing of the Transaction and continue for the benefit of GSFM for a period of eighteen months, except for the representations and warranties in respect of environmental matters which shall survive for 36 months, and any representation or warranty which a claim based on fraud is made, which shall be of unlimited duration.

- (i) GSFM Closing Conditions: The obligation of GSFM to complete the Transaction is subject to fulfilment of each of the following conditions:
- i) Orders of each of this Honourable Court and U.S. Bankruptcy Court for the District of Delaware (collectively, the “**Court Order**”) in form and content satisfactory to GSFM, acting reasonably, shall have been granted approving and authorizing the Transaction and vesting the Purchased Assets in GSFM free and clear of all claims, liabilities, obligations, rights of first refusal or other pre-emptive rights in favour of third parties, or Liens, and such Orders shall be a Final Judgment;
  - ii) all representations and warranties of SSC Canada shall be true and accurate in all material respects as if made as of the Time of Closing;
  - iii) a hypothec in favour of National Bank Trust Inc. in respect of the Real Property shall be discharged by registration of the Final Judgement and all other Liens that are not Permitted Encumbrances shall have been fully discharged as against the Purchased Assets, as evidenced by entry of the Final Judgment;
  - iv) all of the terms, covenants and conditions of this Agreement to be complied with or performed by SSC Canada shall have been complied with or performed in all material respects;
  - v) no Material Adverse Effect shall have occurred, which term shall not include any effect arising out of the filing or implementation by AbitibiBowater or any affiliate thereof of an assignment, proposal or arrangement under the *Bankruptcy and Insolvency Act* (Canada), the CCAA or any other applicable bankruptcy law;
  - vi) the Title Insurance Policy shall have been issued to GSFM;
  - vii) the Transitional Services Agreement and the Lease (each discussed in greater detail below) shall have been duly executed by SSC Canada;

- viii) the Supply Contracts shall have been terminated; and
- ix) the Closing Date shall have occurred by no later than 120 days from the date of the Asset Purchase Agreement. This “outside date” was extended to September 15, 2009, by an Amending Agreement amongst SSC Canada, SGF and GSFM dated August 11, 2009.
- (j) Expense Reimbursement: If the Court Order and Final Judgment closing condition shall not have been satisfied, SSC Canada shall pay to GSFM forthwith upon demand the reasonable fees paid by GSFM to external professionals or consultants, to a maximum amount of \$150,000.
- (k) Indemnification by SSC Canada: SSC Canada shall indemnify and hold GSFM harmless from and against any claims relating to any breach of any covenant of SSC Canada under the Asset Purchase Agreement, any breach of a representation or warranty made by SSC Canada pursuant to the Asset Purchase Agreement, or the Excluded Liabilities. Such right of indemnification shall survive for the same period of time as the representations and warranties of SSC Canada. SSC Canada shall not be required to pay any amount in respect of such indemnity until the aggregate amount of all Losses exceeds \$500,000 in which case the obligation of indemnification shall apply to the full amount of the Losses. The indemnity obligations of SSC Canada are capped at \$9,000,000 under the Asset Purchase Agreement and shall be the sole remedy of GSFM against SSC Canada with respect to the matters referred to in the Asset Purchase Agreement, subject to the right of GSFM to seek specific performance or any other extraordinary remedy. Under the terms of an Indemnity Agreement dated July 22, 2009 (the “**Indemnity Agreement**”), amongst SSC Canada, AbitibiBowater, Abitibi-Consolidated Inc. and BCFPI, the parties agreed to apportion the liability for the above indemnity such that the AbitibiBowater parties would be liable for fifty percent of the costs and obligations of SSC Canada incurred in connection with such indemnity. At the request of AbitibiBowater, the Indemnity Agreement is to be amended, restated and replaced by an Amended and Restated Indemnity Agreement expected to be executed on or about August 12, 2009, between SSC Canada and

BCFPI that is substantially the same as the Indemnity Agreement save that it removes each of AbitibiBowater and Abitibi-Consolidated Inc. as parties.

- 27) In connection with the Transaction, SSC Canada and GSFM will also enter into the Transitional Services Agreement pursuant to which SSC Canada will provide certain services to GSFM for a period of 90 days following closing at a price to be determined. SSC Canada will also lease certain office space to GSFM for a term beginning at the Time of Closing and ending on December 31, 2009.
- 28) It is a condition of closing of the Asset Purchase Agreement in favour of SSC Canada that the Supply Contracts be terminated. To that end, each of SSC Canada, AbitibiBowater, Abitibi-Consolidated Inc. and BCFPI entered into a Termination Agreement dated July 22, 2009 (the "**Termination Agreement**"), pursuant to which the parties thereto agreed to terminate the Supply Contracts. At the request of AbitibiBowater, the Termination Agreement is to be amended, restated and replaced by an Amended and Restated Termination Agreement to be executed on or about August 12, 2009 (the "**Amended and Restated Termination Agreement**"). The Amended and Restated Termination Agreement is substantially the same as the Termination Agreement save that it removes AbitibiBowater as a party in light of the fact that AbitibiBowater was not a party to any of the Supply Contracts.
- 29) Although not expressly called for under the Asset Purchase Agreement, AbitibiBowater, for itself and its subsidiaries, agreed to fully, finally and irrevocably waive any rights in the Optioned Land, including the ROFR, and release SSC Canada from any and all claims in connection with the Asset Purchase Agreement, any rights, title and interest in and to the Optioned Land, and under the St-Laurent/Avenor Inc. agreement pursuant to a Waiver and Release between SSC Canada and AbitibiBowater dated July 22, 2009 (the "**Waiver and Release**"). Similar to the Termination Agreement, AbitibiBowater requested that the Waiver and Release be amended, restated and replaced to effectively replace AbitibiBowater with BCFPI in light of the fact that BCFPI is the direct successor to Avenor Inc.'s rights, including the ROFR. Accordingly, it is expected that on or about August 12, 2009, SSC Canada and BCFPI will enter into an Amended and Restated Waiver and Release.

- 30) The Monitor has been advised by counsel to the Applicants that, in addition to the parties on the service list in these CCAA Proceedings, the Applicants' Motion Record has been provided to each of the secured parties with registrations under the personal property security acts in either Québec or Nova Scotia, or registrations against the Real Property in Québec (all as listed on Schedule 3.1(g) of the Asset Purchase Agreement).

#### **WOOD FIBER SUPPLY AGREEMENT**

- 31) As provided for by the Letter Agreement, SSCE, SSC Canada and AbitibiBowater entered into a Wood Fiber Supply Agreement dated July 22, 2009 (the "**WFSA**"). Pursuant to the WFSA, AbitibiBowater has agreed to supply a certain quantity of jack pine wood chips, softwood shavings and softwood sawdust (collectively, "**Fiber**") to SSC Canada at the LaTuque mill. The WFSA provides SSC Canada with a steady supply of Fiber. The WFSA contains pricing terms for Fiber that the Monitor understands are below market rates. These below market rates are effective for the period beginning October 1, 2008 (the "**Effective Date**"), and ending September 30, 2009. Thereafter, the pricing for the Fiber will be adjusted annually to reflect market prices as negotiated between the parties, with resort to an arbitrator if agreement on market prices cannot be reached. Either party may terminate the WFSA upon two years written notice in the event it is not satisfied with the pricing terms imposed by such arbitrator. The term of the WFSA is the seven year period following the Effective Date. The WFSA also provides for the termination of four Fiber supply agreements (the "**Wood Chip Contracts**") presently in place between SSC Canada and AbitibiBowater entities.
- 32) Company management has advised the Monitor that the Fiber pricing concessions in the WFSA are expected to provide (and have provided) significant cost savings relative to the Wood Chip Contracts for the period from the Effective Date to September 30, 2009.
- 33) At the request of AbitibiBowater, the WFSA will be amended, restated and replaced by an Amended and Restated Wood Fibre Supply Agreement amongst BCFPI, Abitibi-Consolidated Inc., SSCE and SSC Canada expected to be executed on or about August 12, 2009 (the "**Amended and Restated WFSA**"). The Amended and Restated WFSA is substantially the same as the WFSA save that it changes the AbitibiBowater entities that

are parties to the agreement, provides for Fiber payments by SSC Canada to be made on a weekly basis while these Proceedings continue, and provides that the Amended and Restated WFSA is subject to the entry of Court orders in AbitibiBowater's insolvency proceedings (in both Canada and the U.S.) and by both this Honourable Court and the U.S. Court in these Proceedings.

- 34) The Monitor has been advised that BCFPI and Abitibi-Consolidated Inc. will seek a declaration from the U.S. Court in their Chapter 11 proceedings confirming their capacity to enter into the Amended and Restated WFSA on or about September 2, 2009. The Monitor has also been advised that BCFPI and Abitibi-Consolidated Inc. will seek approval of the Amended and Restated WFSA in their CCAA proceedings on or about August 26, 2009.

#### **PROCEEDS OF THE TRANSACTION**

- 35) In light of the approximate per acre price of \$62.77, SSC Canada is obligated to pay BCFPI an amount equal to fifty percent of the net proceeds received from the sale of the Optioned Land after deducting from the purchase price all expenses and costs incurred in connection with the sale of the Optioned Land pursuant to the Letter Agreement. The Monitor understands that this will result in a payment of approximately \$28 million by SSC Canada to BCFPI upon closing of the Transaction.
- 36) The balance of the net Purchase Price (being approximately \$29 million) will be applied to SSC Canada's outstanding obligations under the DIP Facility (presently approximately USD \$35 million).

#### **SEALING**

- 37) The Monitor understands that the Applicants are requesting that unredacted copies of the Asset Purchase Agreement, the Letter Agreement, the WFSA and the Amended and Restated WFSA be sealed. The Monitor has reviewed the redacted portions of the above-noted agreements and notes that they detail either: (i) sensitive competitive economic terms; or (ii) personal information about employees of SSC Canada. In light of this, the

Monitor supports the Applicants' request that the unredacted copies of these agreements be sealed.

### **MONITOR'S RECOMMENDATIONS**

- 38) As previously reported to this Honourable Court, since the commencement of these CCAA Proceedings SSC Canada has been working towards divesting itself of certain of its non-core assets. The sale of the Timberlands represents the first material divestiture.
- 39) The Monitor has also conducted an independent review of the Asset Purchase Agreement and related documentation. The Monitor is advised that the terms of the Asset Purchase Agreement were heavily negotiated between the Company and SGF and, in the view of Company management, are reasonable in the circumstances.
- 40) The Monitor is also advised by Scotia Capital that a further marketing process in respect of the Timberlands would not likely result in any other offers being received and that the SGF transaction, in light of deteriorating market conditions, represents the best transaction available to SSC Canada in the near to medium term.
- 41) The Monitor has also reviewed the Letter Agreement and the other documentation in place between the Company and the AbitibiBowater entities, including the Amended and Restated WFSAs which, as noted above, forms an integral part of the Letter Agreement.
- 42) The Monitor is of the view that the payment by SSC Canada to BCFPI contemplated by the Letter Agreement is reasonable in the circumstances in light of the ROFR. The Monitor is also of the view that using the net balance of the Purchase Price to pay down the DIP Facility is a prudent use of such funds by SSC Canada.
- 43) In light of the foregoing, the Monitor supports SSC Canada's motion seeking an Order approving the Asset Purchase Agreement and vesting the Purchased Assets in GSFM, approving the Amended and Restated WFSAs, and directing that SSC Canada pay fifty percent of the net proceeds of the Transaction to BCFPI.

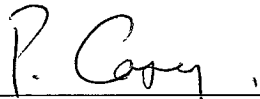
- 44) For the reasons described above at paragraph 37, the Monitor supports the Applicants' request that unredacted copies of the Asset Purchase Agreement, the Letter Agreement, the WFSAs and the Amended and Restated WFSAs be sealed by this Honourable Court.

All of which is respectfully submitted at Toronto, Ontario this 12<sup>th</sup> day of August, 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

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

Proceeding commenced at Toronto

**FIFTH REPORT OF THE MONITOR**  
**DATED AUGUST 12, 2009**

**GOODMANS LLP**

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