

**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

**NOTICE OF MOTION
(Returnable August 17, 2009)**

Smurfit-Stone Container Canada Inc. ("SSC Canada") and the other Applicants listed on Schedule "A" hereto (the "Applicants") will make a motion before a judge of the Ontario Superior Court of Justice on August 17, 2009, or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. An Order substantially in the form attached to the Motion Record:
 - (a) approving the asset purchase agreement (the "Asset Purchase Agreement") by and between SSC Canada and Société générale de financement du Québec ("SGF"), which provides for a going concern sale of the private timberlands and related operations (excluding any operations or land relating to SSC Canada's La Tuque, Quebec paperboard mill (the "Mill"), other than the supply of wood and wood products to the Mill from the said timberlands) as presently owned and conducted by SSC Canada in the

City of La Tuque, Domaine-du-Roy Regional County Municipality (“RCM”) and the Municipality of Baie James in the Province of Québec and comprising of (i) a continuous block of timberlands located North/Northeast of the Gouin Reservoir (the “North Block”), (ii) a continuous block of timberlands located East of the Gouin Reservoir (the “South Block” and together with the North Block, the “Optioned Land”) and (iii) several smaller parcels of land located along the St. Maurice River (the “Lower St. Maurice Block”) (collectively, the “Timberland Assets”);

- (b) authorizing the Applicants and the Monitor to complete all requirements, conditions and transactions contemplated by the Asset Purchase Agreement;
- (c) vesting all of the Purchased Assets (as defined in the Asset Purchase Agreement) in GESTION FORESTIÈRE DU SAINT-MAURICE INC. (the “Purchaser”), an affiliate of SGF and assignee of its rights as permitted under the Asset Purchase Agreement, free and clear of any rights, title, claims, security interests or other encumbrances upon delivery of a Certificate by the Monitor confirming payment by SGF of the proceeds of the sale (the “Proceeds”) and the fulfilment of all conditions precedent to the sale;
- (d) directing that 50% of the Proceeds that are received from SGF which relate specifically to the sale of the Optioned Land, after deducting all expenses and costs incurred in connection with the sale of the Timberland Assets, be delivered to AbitibiBowater Inc. (“AbitibiBowater”), in consideration for (i) the entering into of the wood fibre supply agreement (the “Wood Fibre Supply Agreement”) by and between AbitibiBowater and Smurfit-Stone Container Enterprises, Inc. (“SSC Enterprises”) and SSC Canada dated July 22, 2009; and (ii) the termination of all other agreements previously entered into between them and/or their respective subsidiaries in respect of (a) the supply of softwood chips, shavings and

sawdust to the Mill; and (b) the harvesting (supply) contracts for or in respect of the Timberland Assets.

- (e) directing that the remaining proceeds that are received in respect of the sale of the Timberland Assets be applied to the Canadian DIP Term Loan (as defined below);
- (f) approving the Wood Fibre Supply Agreement; and
- (g) sealing certain portions of the Asset Purchase Agreement, the Wood Fibre Supply Agreement and the Letter Agreement between Smurfit-Stone Container Enterprises, Inc. and Bowater Canadian Forest Products, Inc. dated September 30, 2008 (the "Letter Agreement") and treating them as confidential pending further Order of this Honourable Court.

2. Such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

1. Each of the Applicants is either a direct or indirect subsidiary of Smurfit-Stone Container Corporation, a Delaware corporation ("SSCC") that, together with its subsidiaries, is North America's second largest integrated manufacturer of paperboard and paper-based packaging and is one of the world's largest paper recyclers. SSCC and certain of its direct and indirect subsidiaries, including the Applicants and the Partnerships listed on Schedule "B" hereto, filed for protection from their creditors under title 11 of chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532, in the United States Bankruptcy Court for the District of Delaware (the "Delaware Court") on January 26, 2009;

2. On January 26, 2009, SSC Canada and the other Applicants and the Partnerships obtained protection from their creditors pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), pursuant to an initial order of the Ontario Superior Court of Justice (the "Court"), as subsequently amended and restated (the "Initial Order");

3. The Initial Order granted a stay of proceedings until February 25, 2009, or such later date as the Court may order. By order dated February 24, 2009, the stay of proceedings was

extended to April 30, 2009. By order dated April 28, 2009, the stay of proceedings was extended to June 30, 2009. By order dated June 25, 2009, the stay of proceedings was extended to September 30, 2009.

4. SSC Canada is currently the owner of the largest private harvestable land in Québec with a total surface area of 389,383 hectares (962,204 acres) (the “Timberlands”).

5. The Timberlands are located between the Saguenay-Lac-St-Jean and Mauricie regions in the Province of Québec and are split between the Optioned Land and the Lower St. Maurice Block. The Optioned Land represents approximately 98% of the total surface area of the Timberlands.

6. SSC Canada acquired the Timberlands in May 2000, as part of SSCC’s acquisition of St. Laurent Paperboard Inc./Cartons St-Laurent Inc. (“St. Laurent Paperboard”). St. Laurent Paperboard acquired the Timberlands over the period of several years, commencing in June 1994 with the acquisition of the Optioned Land from Avenor Inc. (“Avenor”), pursuant to an Asset Acquisition Agreement (the “AAA”). The various parcels of land which now comprise the Lower St. Maurice Block were acquired by St. Laurent Paperboard in the years following the acquisition of the Optioned Land. Among other things, the AAA granted Avenor (and its successors and assigns) certain rights in the event that St. Laurent Paperboard desired to sell the Optioned Land within 99 years, including a right of first refusal to purchase the Optioned Land on certain terms. AbitibiBowater, through a subsidiary, is the successor to Avenor;

7. In early 2008, SSC Canada began to consider its strategic alternatives with respect to the Timberland Assets. SSC Canada engaged Scotia Capital Inc. (“Scotia Capital”) in August 2008 as its financial advisor to canvass the market with a view to pursuing a potential divestiture transaction for the Timberland Assets;

8. Shortly after engaging Scotia Capital, SSC Canada advised AbitibiBowater that it was interested in selling the Timberland Assets and asked whether AbitibiBowater would consider waiving its rights under the AAA in consideration for a new sharing of proceeds arrangement and the entering into of a new wood fibre supply agreement for the Mill;

9. On September 30, 2008, SSC Enterprises entered into the Letter Agreement with AbitibiBowater. The Letter Agreement includes, among other things, (i) a two year waiver of

AbitibiBowater's rights under the AAA; and (ii) an agreement that, if the Timberland Assets were sold, SSC Canada would pay an amount equal to 50% of the net proceeds received which relate specifically to the sale of the Optioned Land, after deducting all expenses and costs incurred in connection with the sale of the Timberland Assets, to AbitibiBowater. An essential condition of the Letter Agreement was an agreement that the parties would enter into a new wood fibre supply agreement in respect of the Mill on certain terms;

10. Since its initial retainer, Scotia Capital has worked closely with SSC Canada's management team to market the Timberland Assets. After developing a comprehensive list of potential purchasers, Scotia Capital contacted a total of 57 entities concerning a possible transaction involving the Timberland Assets. SSC Canada received 3 first round, non-binding expressions of interest from prospective purchasers, including a non-bidding expression of interest from SGF;

11. Of the 3 potential purchasers who submitted first round non-binding bids, no binding offers were submitted by the requested deadline of December 16, 2008. SGF submitted a second round non-binding bid on January 21, 2009;

12. On April 30, 2009, following extensive, arm's length negotiations, SSC Canada signed the Asset Purchase Agreement with SGF;

13. The Asset Purchase Agreement contemplates a going-concern sale of all of the Timberland Assets. The total consideration payable by the Purchaser pursuant to the Asset Purchase Agreement is \$60,400,000, subject to certain pre and post-closing purchase price adjustments (the "Purchase Price").

14. The proposed sale of the Timberland Assets to SGF represents the best possible transaction in the circumstances for the benefit of the Applicants and Partnerships and their respective stakeholders and has the following benefits:

- (a) it represents the maximum recovery available;
- (b) it preserves the jobs of the Assumed Employees who worked for or in respect of the Timberland Assets; and
- (c) it divests SSC Canada of assets that are non-core to its business;

15. The Asset Purchase Agreement includes certain closing conditions, including a condition that this Honourable Court and the Delaware Court issue an Order approving and authorizing the Timberlands Asset purchase and authorizing SGF to enter into the Asset Purchase Agreement and all related agreements; and (ii) vesting the Timberland Assets in SGF (or its affiliate), free and clear of all encumbrances (other than Permitted Encumbrances);

16. Pursuant to the terms of the Letter Agreement and in consideration for (i) entering into the Wood Fibre Supply Agreement and (ii) terminating of all other agreements previously entered into between by SSC Canada, SSC Enterprises and AbitibiBowater and/or their respective subsidiaries in respect of (a) the supply of softwood chips, shavings and sawdust to the Mill; and (b) the harvesting (supply) contracts for or in respect of the Timberland Assets, SSC Canada intends to pay 50% of the Proceeds that are received from SGF which relate specifically to the sale of the Optioned Land, after deducting from the Purchase Price all expenses and costs incurred in connection with the sale of the Timberland Assets, to AbitibiBowater. SSC Canada anticipates that the total amount payable to AbitibiBowater will be approximately \$28 million;

17. SSC Canada intends to apply the remaining proceeds that are received in respect of the sale of the Timberland Assets (totalling approximately \$29 million) to the Canadian DIP Term Loan.

18. In furtherance of the terms of the Letter Agreement, SSC Enterprises, SSC Canada and AbitibiBowater entered into the Wood Fibre Supply Agreement on or about July 22, 2009;

19. The initial term of the Wood Fibre Supply Agreement is seven years with an option to extend the term for an additional minimum period of three years;

20. The Wood Fibre Supply Agreement sets out certain minimum annual amounts of wood fibre (sawdust, shavings and woodchips) that AbitibiBowater will sell and SSC Canada will buy for or in respect of the Mill and specifies the prices for the wood fibre during the first Annual Period (as described therein);

21. In the event that the Wood Fibre Supply Agreement is not consummated, the Mill will be required to substitute sawdust with some other higher cost fibre (*i.e.*, shavings or wood

chips). SSC Canada estimates that substituting sawdust for some other higher cost fibre will significantly increase the Mill's wood fibre cost and will significantly reduce the Mill's pulping capacity;

22. The Wood Fibre Supply Agreement terminates and replaces all existing fibre supply obligations that have been entered into between the parties and their respective subsidiaries for the Mill;

23. The Wood Fibre Supply Agreement is a necessary and reasonable adjunct to the Asset Purchase Agreement and is an essential element of the Letter Agreement;

24. It is just and convenient and in the interests of the Applicants and Partnerships and their respective stakeholders that the Order be granted;

25. SSC Canada has had extensive discussions with the UCC in respect of the Timberland Assets sale and the entering into of the Wood Fibre Supply Agreement and the UCC has indicated that it will not oppose the relief sought by the Applicants in the present motion;

26. The Monitor is reviewing the Wood Fibre Supply Agreement and will be providing its recommendation with respect to same in a report to follow;

27. Certain parts of the Asset Purchase Agreement, the Wood Fibre Supply Agreement and the Letter Agreement contain information that is confidential to SSC Canada and/or its employees, including confidential personal information and commercially sensitive wood fibre pricing information. There is no legitimate rationale for anyone to require disclosure of the personal employee information and revealing sensitive pricing information may give SSC Canada's competitors unfair advantages that would not otherwise be available to them and could disadvantage the Applicants and Partnerships in their ongoing restructuring initiatives;

28. Section 11 of the *CCAA*;

29. Rules 1.04, 1.05, 2.03, 3.02 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended;

30. Sections 100 and 137(2) of the *Courts of Justice Act*, R.S.O. 1990, C. c.43; and

31. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of this motion:

1. The Affidavit of Dean R. Jones, sworn July 28, 2009 and the Exhibits thereto;
2. The Affidavit of Eric Michaud sworn July 28, 2009;
3. The Report of the Monitor (to be filed); and
4. Such further and other materials as counsel may advise and this Honourable Court may permit.

July 30, 2009

OSLER, HOSKIN & HARCOURT LLP
P.O. Box 50
1 First Canadian Place
Toronto, ON M5X 1B8

John A. Macdonald (LSUC #25884R)
Tel: (416) 862-5672

Shawn T. Irving (LSUC #50035U)
Tel: (416) 862-4733
Fax: (416) 862-6666

Lawyers for the Applicants

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

Ontario
SUPERIOR COURT OF JUSTICE

Proceeding commenced at TORONTO

NOTICE OF MOTION
(Returnable August 17, 2009)

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

John A. MacDonald (LSUC#: 25884R)
Tel: (416) 862-5672

Shawn T. Irving (LSUC#: 50035U)
Tel: (416) 862-4733
Fax: (416) 862-6666

Lawyers for the Applicants

F. 1116658