

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE

)

MONDAY, THE 26th

)

JUSTICE PEPALL

)

DAY OF JANUARY, 2009

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

INITIAL ORDER

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Dean Jones sworn January 25, 2009 (the "Jones Affidavit") and the Exhibits thereto, the first report of Deloitte and Touche Inc. ("Deloitte") in its capacity as proposed monitor for the Applicants and on hearing the submissions of counsel for the Applicants, the DIP Agent (as defined below) and on reading the consent of Deloitte to act as the Monitor,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies. Although not Applicants, those partnerships listed on Schedule "B" (the "Partnerships") shall enjoy the benefits of the protections provided by this Order.

PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan") between, *inter alia*, the Applicants and one or more classes of their secured and/or unsecured creditors as they deem appropriate.

POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the Applicants and Partnerships shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Court, the Applicants and Partnerships shall continue to carry on business in a manner consistent with the preservation of their business (the "Business") and Property. The Applicants and Partnerships shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by them, with liberty to retain

such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **THIS COURT ORDERS** that the Applicants and Partnerships shall be entitled to continue to utilize the centralized cash management systems currently in place as described in the Jones Affidavit or replace them with other substantially similar central cash management system(s) (together, the "Cash Management System") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants or Partnerships of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants and Partnerships, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System. The Monitor shall review and monitor the Cash Management System and report to this Court from time to time.

6. **THIS COURT ORDERS** that the Applicants and Partnerships shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits and contributions, vacation pay, bonuses and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;

- (b) the fees and disbursements of any Assistants retained or employed by the Applicants and Partnerships in respect of these proceedings, at their standard rates and charges; and
- (c) amounts owing for goods and services actually supplied to the Applicants and Partnerships, or to obtain the release of goods contracted for, prior to the date of this order:
 - (i) by railways, trucking companies and other carriers and customs brokers, with the consent of the Monitor and the DIP Agent; and
 - (ii) with the consent of the Monitor and the DIP Agent, up to US\$11.6 million by other suppliers if, in the opinion of the Applicants and Partnerships, the supplier is critical to the Business and ongoing operations of the Applicants and/or Partnerships.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants and Partnerships shall be entitled but not required to pay all reasonable expenses incurred by them in carrying on the Business in the ordinary course from and after the date of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicants and Partnerships following the date of this Order.

8. **THIS COURT ORDERS** that the Applicants and Partnerships shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are

required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicants and Partnerships in connection with the sale of goods and services by the Applicants and Partnerships, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants and Partnerships.

9. **THIS COURT ORDERS** that until such time as an Applicant or Partnership delivers a notice in writing to repudiate a real property lease in accordance with paragraph 11(c) of this Order (a "Notice of Repudiation"), the Applicants and Partnerships shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicants and Partnerships and the relevant landlords from time to time ("Rent"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any arrears relating to the period commencing from and including the

date of this Order shall also be paid. Upon delivery of a Notice of Repudiation, the relevant Applicant or Partnership shall pay all Rent due for the notice period stipulated in paragraph 11(c) of this Order, to the extent that Rent for such period has not already been paid.

10. **THIS COURT ORDERS** that, except as specifically permitted herein or in the DIP Documents (as defined below), the Applicants and Partnerships are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants or Partnerships to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of the Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. **THIS COURT ORDERS** that the Applicants and Partnerships shall, subject to such covenants as may be contained in the DIP Documents, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their business or operations and to dispose of redundant or non-material assets not exceeding \$2 million in any one transaction or \$25 million in the aggregate, subject to paragraph 11(c), if applicable;
- (b) terminate the employment of such of their employees or temporarily lay off such of their employees as the relevant Applicant or Partnership deems appropriate on such terms as may be agreed upon between the relevant Applicant or Partnership and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;
- (c) in accordance with paragraphs 12 and 13, vacate, abandon or quit the whole but not part of any leased premises and/or repudiate any real property lease and any ancillary agreements relating to any leased premises, on not less than

fourteen (14) days notice in writing to the relevant landlord on such terms as may be agreed upon between the relevant Applicant or Partnership and such landlord, or failing such agreement, to deal with the consequences thereof in the Plan;

- (d) repudiate such of their arrangements or agreements of any nature whatsoever, whether oral or written, as the Applicants or Partnerships deem appropriate on such terms as may be agreed upon between the relevant Applicant or Partnership and such counter-parties, or failing such agreement, to deal with the consequences thereof in the Plan; and
- (e) pursue all avenues of refinancing and offers for material parts of the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing or any sale (except as permitted by subparagraph (a), above),

all of the foregoing to permit the Applicants and Partnerships to proceed with an orderly restructuring of the Business (the "Restructuring").

12. **THIS COURT ORDERS** that the Applicants and Partnerships shall provide each of the relevant landlords with notice of the relevant Applicant's or Partnership's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's or Partnership's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the relevant Applicant or Partnership, or by further Order of this Court upon application by the relevant Applicant or Partnership on at least two (2) days notice to such landlord and any such secured creditors. If an Applicant or Partnership repudiates the lease governing such leased premises in accordance with paragraph 11(c) of this

Order, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in paragraph 11(c) of this Order), and the repudiation of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.

13. **THIS COURT ORDERS** that if a Notice of Repudiation is delivered, then (a) during the notice period prior to the effective time of the repudiation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the relevant Applicant or Partnership and the Monitor 24 hours' prior written notice, and (b) at the effective time of the repudiation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant or Partnership in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicant or Partnership of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANTS OR PARTNERSHIPS OR THE PROPERTY

14. **THIS COURT ORDERS** that until and including February 25, 2009, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicants, the Partnerships or the Monitor, or affecting the Business or the Property, except with the written consent of the applicable Applicant or Partnership, the DIP Agent and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants, the Partnerships or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicants, the Partnerships or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the applicable Applicant or Partnership, the DIP Agent and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants and Partnerships to carry on any business which the Applicants or Partnerships are not lawfully entitled to carry on, (ii) exempt the Applicants and Partnerships from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

16. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants or Partnerships, except with the written consent of the relevant Applicant or Partnership, the DIP Agent and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with an Applicant or Partnership or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business, an Applicant or Partnership, are hereby restrained until further Order of

this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants or Partnerships, and that the Applicants and Partnerships shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants and Partnerships in accordance with normal payment practices of the Applicants or Partnerships or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants or Partnerships, the DIP Agent and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. **THIS COURT ORDERS** that, notwithstanding anything else contained herein, no creditor of the Applicants and Partnerships shall be under any obligation after the making of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants and Partnerships. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

19. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.5(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants or Partnerships whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants and Partnerships, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or Partnerships or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

20. **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers from all claims, costs, charges and expenses relating to the failure of the Applicants or Partnerships, after the date hereof, to make payments of the nature referred to in subparagraphs 6(a), 8(a), 8(b) and 8(c) of this Order which they sustain or incur by reason of or in relation to their respective capacities as directors and/or officers of the Applicants except to the extent that, with respect to any officer or director, such officer or director has actively participated in the breach of any related fiduciary duties or has been grossly negligent or guilty of wilful misconduct.

21. **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property, which charge shall not exceed an aggregate amount of \$8.6 million, as security for the indemnity provided in paragraph 20 of this Order. The Directors' Charge shall have the priority set out in paragraphs 40 and 43 herein.

22. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 20 of this Order.

APPOINTMENT OF MONITOR

23. **THIS COURT ORDERS** that Deloitte is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property and the Applicants' and Partnerships' conduct of the Business with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and Partnerships and

their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants and Partnerships pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations.

24. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' and Partnerships' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Applicants, the Partnerships, Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicants and Partnerships, to the extent required by the Applicants and Partnerships, in their dissemination, to the DIP Agent and its counsel of financial and other information as agreed to between the Applicants and Partnerships and the DIP Agent which may be used in these proceedings including reporting on a basis to be agreed with the DIP Agent and perform such other duties and exercise such powers as may be contemplated to be performed and exercised by the Monitor under the DIP Documents;
- (d) advise the Applicants and Partnerships in their preparation of the Applicants' and Partnerships' cash flow statements and reporting required by the DIP Agent, which information shall be reviewed with the Monitor and delivered to the DIP Agent and its counsel in compliance with the DIP Documents, or as otherwise agreed to by the DIP Agent;
- (e) advise the Applicants and Partnerships in their development of the Plan and any amendments to the Plan;

- (f) assist the Applicants and Partnerships, to the extent required by the Applicants and Partnerships, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the books, records and management, employees and advisors of the Applicants and the Partnerships and to the Business and the Property to the extent required to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (i) consider, and if deemed advisable by the Monitor, prepare a report and assessment on the Plan; and
- (j) perform such other duties as are required by this Order or by this Court from time to time.

25. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

26. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other

contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

27. **THIS COURT ORDERS** that the Monitor shall provide any creditor of an Applicant or Partnership with information provided by the Applicant or Partnership in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by an Applicant or Partnership is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant or Partnership may agree.

28. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

29. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and Canadian counsel to the Applicants and Partnerships shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants and

Partnerships as part of the costs of these proceedings. The Applicants and Partnerships are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and Canadian counsel for the Applicants and Partnerships on a twice-monthly basis and, in addition, the Applicants and Partnerships are hereby authorized to pay to the Monitor, counsel to the Monitor, and Canadian counsel to the Applicants and Partnerships, retainers in the amounts of \$400,000 each, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

30. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

31. **THIS COURT ORDERS** that the Monitor, Canadian counsel to the Monitor, if any, and the Applicants' and Partnerships' Canadian counsel shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$5 million, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 40 and 43 hereof.

DIP FINANCING

32. **THIS COURT ORDERS** that the Applicants and Partnerships are hereby authorized and empowered to enter into, obtain and borrow under a credit facility (the "DIP Credit Agreement") among the Applicants and Partnerships, Smurfit-Stone Container Enterprises, Inc., Smurfit-Stone Container Corporation, the other "Loan Parties" thereto, the "Lenders" party thereto, JPMorgan Chase Bank, N.A. as Administrative Agent and Collateral Agent, and JPMorgan Chase Bank, N.A., Toronto Branch, as Canadian Administrative Agent and Canadian Collateral Agent (the

Canadian Administrative Agent and the Canadian Collateral Agent are, collectively, the "DIP Agent") substantially in the form attached as Exhibit "A" to the Jones Affidavit (subject to such non-material amendments and modifications as the parties may agree with a copy thereof being provided in advance to the Monitor), provided that borrowings under such credit facility shall not exceed the principal amount of US\$350 million unless permitted by further Order of this Court.

33. **THIS COURT ORDERS** that the Applicants and Partnerships are hereby authorized and empowered to execute and deliver the DIP Credit Agreement and such commitment letters, fee letters, credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "DIP Documents"), as are contemplated by the DIP Documents or as may be reasonably required by the DIP Agent pursuant to the terms thereof, and the Applicants and Partnerships are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Agent under and pursuant to the DIP Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

34. **THIS COURT ORDERS** that the DIP Agent, for and on behalf of the Secured Parties (as defined in the DIP Credit Agreement) (collectively, the "DIP Lenders") shall be entitled to the benefit of and is hereby granted a charge (the "DIP Lenders Charge") on the Property, including without limitation the real property listed in Schedule "C" attached hereto, which charge shall not exceed the aggregate amount owed to the DIP Lenders under the DIP Documents.

35. **THIS COURT ORDERS** that the DIP Lenders Charge shall have the priority set out in paragraphs 40 and 43 hereof. The DIP Lenders Charge shall attach to all existing and after-acquired Property, as the case may be, including any lease, license, occupation permit, or other contract, notwithstanding any requirement for the consent of the lessor, licensor, or other party to such contract.

36. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Agent may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lenders Charge or any of the DIP Documents;
- (b) upon the occurrence of an event of default under the DIP Documents or the DIP Lenders Charge, the DIP Agent, upon five days notice to the Applicants and Partnerships and the Monitor, may exercise any and all of its rights and remedies on behalf of the DIP Lenders against the Applicants, the Partnerships or the Property under or pursuant to the DIP Documents and the DIP Lenders Charge, including without limitation, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and Partnerships and for the appointment of a trustee in bankruptcy of the Applicants, and upon the occurrence of an event of default under the terms of the DIP Documents, the DIP Agent shall be immediately entitled to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Agent to the Applicants against the obligations of the Applicants to the DIP Agent under the DIP Documents or the DIP Lenders Charge, seize and retain proceeds from the sale of the Property and the cash flow of the Applicants and Partnerships to repay amounts owing to the DIP Lenders in accordance with the DIP Documents and the DIP Lenders Charge, as the case may be, but subject to the priorities as set out in paragraphs 40 and 43 of this Order; and
- (c) the foregoing rights and remedies of the DIP Agent shall be enforceable against the Applicants and Partnerships and against any trustee in

bankruptcy, interim receiver, receiver or receiver and manager of the Applicants, the Partnerships or the Property.

37. **THIS COURT ORDERS AND DECLARES** that, notwithstanding paragraph 14, but subject to paragraph 36, the DIP Agent and the DIP Lenders shall be treated as unaffected by any stay created in these proceedings and the DIP Agent and the DIP Lenders shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the DIP Documents.

38. **THIS COURT ORDERS** that nothing in this Order shall be construed as relieving the Applicants and Partnerships from their obligations to comply with the DIP Documents and in particular the Budget (as defined in the DIP Credit Agreement).

39. **THIS COURT ORDERS** that the Applicants and the Partnerships party to the Receivables Agreement are authorized to terminate the Receivables Agreement and enter into and perform their obligations under the Termination and Reassignment Agreement, each as defined in the Jones Affidavit.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

40. **THIS COURT ORDERS** that the priorities of the Directors' Charge, the Administration Charge and the DIP Lenders Charge, as among them, shall be as follows:

First - Administration Charge (to the extent of \$1 million);

Second - Directors' Charge (to the extent of \$8.6 million);

Third - DIP Lenders Charge; and

Fourth – Administration Charge (for any amount greater than \$1 million, to a maximum of \$5 million).

41. **THIS COURT ORDERS** that any distribution in respect of the DIP Lenders Charge as amongst the beneficiaries thereto shall be governed by the DIP Documents.

42. **THIS COURT ORDERS** that the filing, registration or perfection of the Directors' Charge, the Administration Charge or the DIP Lenders Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

43. **THIS COURT ORDERS** that each of the Directors' Charge, the Administration Charge and the DIP Lenders Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, "Encumbrances") in favour of any Person. The security granted by the DIP Documents charging the Property shall have the same priority as the DIP Lenders Charge.

44. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants and Partnerships shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants and Partnerships also obtain the prior written consent of the Monitor, the DIP Agent and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

45. **THIS COURT ORDERS** that the Directors' Charge, the Administration Charge, the DIP Documents and the DIP Lenders Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the

Charges (collectively, the "Chargees") and/or the DIP Agent thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicants, the Partnerships, or any of them, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Documents shall create or be deemed to constitute a breach by any of the Applicants or Partnerships of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants and Partnerships entering into the DIP Credit Agreement, the creation of the Charges, or the execution, delivery or performance of the DIP Documents; and
- (c) the payments made by the Applicants and the Partnerships pursuant to this Order or the DIP Credit Agreement or the other DIP Documents and the granting of the Charges do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law.

46. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the relevant Applicant's or Partnership's interest in such real property leases.

RECOGNITION

47. **THIS COURT ORDERS AND DECLARES** that the Partnerships are entities which are entitled to relief under section 268 of the BIA.

48. **THIS COURT ORDERS AND DECLARES** that the proceedings commenced on January 26, 2009 by the Applicants and Partnerships under chapter 11 of title 11 of the *United States Bankruptcy Code* in the United States Bankruptcy Court for the District of Delaware (the "US Bankruptcy Proceedings") be and hereby are recognized as a "foreign proceeding" as defined by section 267 of the BIA.

SERVICE AND NOTICE

49. **THIS COURT ORDERS** that (i) the Applicants and the Partnerships shall give notice to the Monitor concurrently with any request that any of them may submit to the DIP Lenders for release of any of the Collateral from the DIP Liens (each as defined in the DIP Documents) or for the release of proceeds of such Collateral; and (ii) in addition, the DIP Agent shall give notice to the Monitor promptly following any request from the Applicants or the Partnerships pursuant to the DIP Documents for the consent of the Lenders to release all or substantially all of the Collateral from the Liens (each as defined in the DIP Documents), or for the consent of the Supermajority Lenders to release any material part of the Collateral from the Liens or for the release of proceeds of such collateral.

50. **THIS COURT ORDERS** that the Applicants and Partnerships shall, within ten (10) business days of the date of entry of this Order, cause a notice to be sent to their known creditors, other than employees and creditors to which the Applicants and Partnerships owe less than \$1,000, whether separately or as part of a notice to all such

creditors pursuant to the US Bankruptcy Proceedings, at their addresses as they appear on the Applicants' and Partnerships' records notifying them of this filing and the address of the Monitor's website where a copy of this Order is posted, and shall promptly send a copy of this Order to any interested Person who requests a copy. The Monitor is relieved of its obligation under Section 11(5) of the CCAA to provide a copy of this Order, but may assist the Applicants and Partnerships in sending the notice referred to above.

51. **THIS COURT ORDERS** that the Applicants and Partnerships and the Monitor be at liberty to serve any materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicants' and Partnerships' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and Partnerships and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

52. **THIS COURT ORDERS** that the Applicants and Partnerships, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, in accordance with the E-filing protocol of the Commercial List to the extent practicable, and the Monitor may post a copy of any or all such materials on its website at www.deloitte.com/ca/smurfitstonecanada.

GENERAL

53. **THIS COURT ORDERS** that the Applicants or Partnerships or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

54. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Partnerships, the Business or the Property.

55. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants and Partnerships, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and Partnerships and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and Partnerships and the Monitor and their respective agents in carrying out the terms of this Order.

56. **THIS COURT ORDERS** that each of the Applicants and Partnerships and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

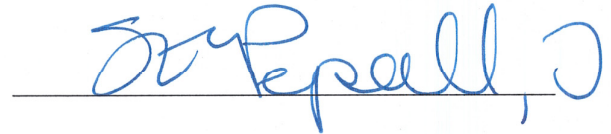
57. **THIS COURT ORDERS** that any interested party (including the Applicants and Partnerships and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

58. **THIS COURT ORDERS** that, (a) notwithstanding paragraph 57, no order shall be made varying, rescinding or otherwise affecting the provisions of this Order with respect to the DIP Documents or the DIP Lenders Charge unless notice of a motion for such order is served on the Applicants and Partnerships, the Monitor and the DIP Agent returnable no later than February 18, 2009; and (b) subject to court order, prior to February 18, 2009, the amounts that can be borrowed by the Canadian Borrower under

the Canadian Revolving Commitment and the US Revolving Commitment (each as defined in the DIP Credit Agreement) shall be limited to the amounts set out in sections 2.2(a) and 2.3(a) of the DIP Credit Agreement.

59. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard Time on the date of this Order.

60. **THIS COURT ORDERS** that leave is reserved to the Applicants and Partnerships to apply for an Amended and Restated Initial Order on January 28, 2009 to seek, *inter alia*, recognition of any DIP Orders made in the US Bankruptcy Proceedings.



ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JAN 26 2009

PER / PAR:  Joanne Nicoara
Registrar, Superior Court of Justice

SCHEDULE "A"

Smurfit-Stone Container Canada Inc.

3083527 Nova Scotia Company

MBI Limited/Limitée

639647 British Columbia Ltd.

B.C. Shipper Supplies Ltd.

Specialty Containers Inc.

605681 N. B. Inc.

Francobec Company

Stone Container Finance Company of Canada II

SCHEDULE "B"

Smurfit-MBI

SLP Finance General Partnership

SCHEDULE "C"

Québec Timberlands (approximately 960,000 acres) in Québec

1000 Chemin de l'Usine, La Tuque, Québec

90 Parc Industriel, Matane, Québec

15400 Sherbrooke Street East, Montreal, Québec

211 Route 301 Portage-du-Fort, Québec

150 chemin St-Edgar, New Richmond, Québec

819 Main Street, Bathurst, New Brunswick

747 Appleby Line, Burlington, Ontario

200 Chemin de la Rivière-au-Lait, Canton de Vallières, Haut Saint-Maurice, Québec

1115 34th Ave South East, Calgary, Alberta

8705 24th Street, Edmonton, Alberta

Foot of Gifford Street, New Westminster, British Columbia

1360 Inkster Boulevard, Winnipeg, Manitoba

730 Islington Ave., Toronto, Ontario

200 Water Street, Whitby, Ontario

390 Woodlawn Road, West, Guelph, Ontario

8150 Parkhill Drive, Milton, Ontario

1035 Hodge Street, Saint-Laurent, Québec

5550 Royalmount Ave, Town of Mount-Royal, Québec

1400, 1st Ave East, Regina, Saskatchewan

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36
AND IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3
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"

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

INITIAL ORDER

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Canada M5L 1B9
Sean F. Dunphy LSUC#: 24941J
Tel: (416) 869-5662
Alexander D. Rose LSUC#: 49415P
Tel: (416) 869-5261
Fax: (416) 947-0866

Lawyers for the Applicant