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

ONTARIO
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SMURFIT-STONE CONTAINER CANADA INC. AND THE OTHER APPLICANTS LISTED ON SCHEDULE "A"

FACTUM OF THE APPLICANTS
(returnable October 9, 2009)

October 7, 2009

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TO: SERVICE 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"

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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

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FACTUM OF THE APPLICANTS
(returnable October 9, 2009)

PART I - OVERVIEW

1. The Communications, Energy and Paperworkers Union of Canada ("**CEP**") seeks an order requiring Smurfit-Stone Container Canada Inc. ("**SSC Canada**") to file an amendment to one of its registered defined benefit pension plans (the "**Mill Plan**") to allow for increased payments to be made to retirees to provide inflation indexation.

2. SSC Canada acknowledges that its collective agreements contemplate the registration of an amended Mill Plan effective January 1, 2009 to provide for such post-retirement inflation adjustments. Given the deficiency in the pension fund, SSC Canada would have had to indirectly fund such adjustments through increased special payments. SSC Canada further acknowledges that the contemplated

amendment had not been registered before the Initial Order was granted. However, SSC Canada is now in CCAA protection and the CEP is stayed from attempting to either enforce that pre-filing obligation or pursue a grievance in respect of it. The fact that the obligation arose from a collective agreement does not cloak the CEP's claim in any special "status, priority, privilege or guarantee".

3. Because of the nature of the proposed amendments, active employees are not currently being affected by the failure to amend the Mill Plan and s. 11.3(a) of the CCAA does not apply. No employee has rendered service after the date of the Initial Order without receiving his or her full compensation, including the prescribed benefits under the collective agreement.

4. As it currently affects only persons who retired prior to the commencement of the CCAA proceedings, the CEP's claim is stayed. The stay allows SSC Canada to deal with its pre-filing obligations as part of the broader restructuring and by developing a plan consistent with the purpose of the CCAA. Under the terms of the Initial Order, SSC Canada is entitled to choose to make the contemplated amendments, attempt to renegotiate the collective agreement or do neither and provide for the consequences thereof in a plan. Compelling SSC Canada to make the amendment now would restrict its restructuring options, require an increase in its obligation to make special payments (currently suspended) and, to a lesser extent, current service contributions, alter the relative priorities of various creditors and place further strain on the Mill Plan's pension fund by increasing the deficiency.

PART II - FACTS

Indexation Adjustments

5. CEP and its locals are party to three collective agreements with SSC Canada in regard to the La Tuque mill (the "**La Tuque Agreements**"). The employees employed under the La Tuque Agreements participate in the Mill Plan, which is registered with the Quebec pension regulator, the Régie des rentes du Québec (the "**RRQ**"),

> Affidavit of Yves Rouvès, sworn October 2, 2009 ("**Rouvès Affidavit**"), at paras. 4 to 6, Responding Motion Record, Tab 1, pp. 2 and 3

6. Pensions under the Mill Plan are not paid directly by SSC Canada. Instead, they are paid out of the Mill Plan pension fund (the "**Pension Fund**") by its trustee. The Pension Fund is funded by SSC Canada contributions (as further discussed below), employee contributions and the return on its investments.

> Rouvès Affidavit at para. 7, Responding Motion Record, Tab 1, p. 3

7. Each of the La Tuque Agreements contemplates that certain amendments to the Mill Plan are to be made and registered with the RRQ. Memoranda of understanding were also entered into, prescribing the making of those amendments.

> Rouvès Affidavit at para. 8 and Exhibits E to H, Responding Motion Record, Tabs 1 and 1E to 1H, pp. 3 and 176, 214, 245 and 271

8. In particular, each of the La Tuque Agreements provides for the post-retirement inflation adjustment of pensions already being paid (the "**Indexation**

Provision"). The Indexation Provision provides that such an adjustment will be made effective January 1st of each of 2005, 2007, 2009, 2011 and 2013.

Rouvès Affidavit at para. 9, Responding Motion Record, Tab 1, p. 4

9. Amendments to the Mill Plan to give effect to the first two adjustments contemplated by the Indexation Provision were made in each of 2005 and 2007 and registered with the RRQ. Pursuant to the memoranda of understanding, the last three adjustments were to be the subject of an amendment to the Mill Plan effective January 1, 2009 that, as described below, has not yet been drafted or filed with the RRQ.

Rouvès Affidavit at para. 11 and Exhibits E to H, Responding Motion Record, Tabs 1 and 1E to 1H, pp. 5 and 179, 218, 248 and274

10. Each of the post-retirement indexation adjustments contemplated by the Indexation Provision is applied only to pensions in payment, to persons who were already retired (or their surviving spouses, as applicable) and receiving benefits on January 1st of the specified year. The post-retirement adjustments implemented in each of 2005 and 2007 were therefore only made to the benefits of persons who were already retired as of January 1st of the respective year (or their surviving spouses).

Rouvès Affidavit at para. 12, Responding Motion Record, Tab 1, pp. 5 and 6

Post-Retirement Indexation Adjustments Were Not Registered

11. Although the memoranda of understanding contemplated an amendment to the Mill Plan effective January 1, 2009 to provide for the 2009, 2011 and 2013 adjustments described in the Indexation Provision, no such amendment had been prepared or filed as of the date of the Initial Order. Such a delay is not unusual. It can take months to authorize, prepare and file such amendments and the Pension Committee was aware that, in accordance with common practice, SSC Canada would not be immediately filing an amendment to or restated text of the Mill Plan with the RRQ in early 2009.

> Rouvès Affidavit at paras. 13 and 14, Responding Motion Record, Tab 1, p. 6

12. While an amended Mill Plan had not yet been filed, the Pension Committee caused persons who had retired prior to January 1, 2009 and were covered by the Mill Plan (or their surviving spouses) to begin to receive indexed pensions as of January 1, 2009 in accordance with the Indexation Provision set forth above. However, pensions of persons who have retired after January 1, 2009 (including those who retired after the date of the Initial Order, as described below) were not indexed in accordance with the Indexation Provision, since they are not eligible for indexation until 2011.

> Rouvès Affidavit at paras. 15 and 19, Responding Motion Record, Tab 1, pp. 6, 7 and 8

Indexation Would Place Further Strain on the Pension Fund Deficiency

13. At the time of the Initial Order, the Mill Plan had a disclosed solvency deficiency of approximately $39.6 million (as at December 31, 2007). Following receipt of the Initial Order, the Applicants and Partnerships suspended the remittance of special payments in respect of past service for all current and former employees during the stay period but advised that they would continue to make current service contributions to the Mill Plan and all other registered pension plans. The Pension Committee informed the RRQ of the suspension of the special payments in respect of past service.

> Rouvès Affidavit at paras. 17 and 18, Responding Motion Record, Tab 1, pp. 7 and 8

14. As an actuarial matter, the Mill Plan's actuary (Mercer) has determined that the indexation of pensions in accordance with the Indexation Provision would cause an increase in the actuarial liability of the Mill Plan of approximately $1.5 million on a solvency basis for each of the adjustments in 2009, 2011 and 2013. An increase in the actuarial liability would ordinarily require an increase in the minimum special payments. Amending the Mill Plan to provide for the 2011 and 2013 adjustments would also, to a lesser degree, cause an increase in the current service costs.

> Rouvès Affidavit at para. 20, Responding Motion Record, Tab 1, pp. 8 and 9

RRQ's Order Limits Pensions to Those Provided for in Registered Texts

15. After having been notified that SSC Canada had suspended its special payments in respect of the Mill Plan, the RRQ issued an order on March 3, 2009 to limit cash outflows from the Pension Fund. In particular, it limited pension payments to those provided for in the pension plan texts already registered with the RRQ as of that date. The effect of the RRQ's order was that the Pension Fund was directed to cease paying an indexation adjustment in accordance with the Indexation Provision to persons who retired before the date of the Initial Order.

> Rouvès Affidavit at para. 21, Responding Motion Record, Tab 1, pp. 9 and 10

16. In light of the fact that SSC Canada had suspended the remittance of special payments, the RRQ stated that it was making its order because of the significant solvency deficiency in the Pension Fund, which made it "a matter of urgency to prevent irreparable damage to the interests of members and beneficiaries" ..." that "cash outflows from the pension fund be limited".

> Rouvès Affidavit at para. 21, Responding Motion Record, Tab 1, pp. 9 and 10
>
> March 3, 2009 Decision of the RRQ, Affidavit of Renaud Gagné, sworn July 21, 2009 ("**Gagné Affidavit**"), Exhibit D, Motion Record of the Moving Party, p. 225

17. As the amendments to the Mill Plan contemplated by the Indexation Provision were not yet registered with the RRQ, persons who retired prior to January 1, 2009 ceased to receive the 2009 indexation. Persons who worked after the date of the

Initial Order and retired thereafter would not be eligible for indexation until 2011 in any event and therefore will not be affected by the failure to file an amended Mill Plan unless the Mill Plan continues unamended until January 1, 2011.

PART III - ISSUES AND THE LAW

Issues

18. The principal issue on this motion is whether the stay should be lifted to compel the filing of an amended Mill Plan at this time or to allow the CEP to proceed with a grievance.

Stay Is Instrumental to the CCAA

19. The purpose of the CCAA is well-known to this Honourable Court. The CCAA allows the debtor company to negotiate an acceptable restructuring plan with its creditors. Proposing a restructuring plan gives the debtor a way out of financial difficulties short of bankruptcy, and the CCAA thereby recognizes that the interests of most parties will be best served by the survival of the debtor corporation.

> *Campeau v. Olympia & York Developments Ltd.* (1992), 14 C.B.R. (3d) 303 at 309 (Ont. Gen. Div.)
>
> *Stelco Inc. (Re),* [2005] O.J. No. 1171 at paras. 36 and 44 (C.A.)

20. The stay of proceedings is the primary means used to achieve the CCAA's purpose, holding debtors at bay while giving the debtor company breathing room to develop a restructuring plan. That restraining power extends to conduct that could

seriously impair the debtor's ability to focus and concentrate its efforts on the business purpose of negotiating the compromise or arrangement.

> *Canadian Airlines (Re)* (2000), 19 C.B.R. (4th) 1 at para. 13 (Alta. Q.B.)
>
> *Campeau v. Olympia & York Developments Ltd.* (1992), 14 C.B.R. (3d) 303 at 309 (Ont. Gen. Div.)

21. The stay ordered under the *CCAA* is also designed to ensure that no creditor will have an advantage over other creditors while the company attempts to reorganize its affairs and develop a plan. During the stay period, the CCAA is intended to prevent maneuvers for positioning amongst the creditors of the company.

> *Woodward's Ltd. (Re)* (1993), 79 B.C.L.R. (2d) 257 at para. 12 (S.C.)
>
> *Pacific National Lease Holding Corp. (Re)* (1992), 72 B.C.L.R. (2d) 368 at para. 22 (C.A.)

22. The Initial Order stays the rights and remedies of persons against or in respect of the Applicants or the Partnerships or their Business or Property and precludes them from commencing enforcement proceedings. In particular, paragraphs 14 and 15 provide:

> **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... [Emphasis added]

23. At the same time as pre-filing obligations are stayed, third parties are required to continue in the performance of their obligations to the debtor. The corresponding protection extended to persons doing business with the debtor is that such persons (including employees) are entitled to immediate payment by the debtor company in the course of the CCAA proceedings. Section 11.3(a) of the CCAA provides:

> No order made under section 11 shall have the effect of:
>
> (a) prohibiting a person from requiring immediate payment for goods, services ... [or] valuable consideration provided after the order is made.

Section 17 of the Initial Order of Mme. Justice Pepall, dated January 26, 2009, as amended and restated

Section 11.3 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended

24. Protection under section 11.3(a) of the CCAA extends only to services provided after the date of the Initial Order and post-filing payments are only for the purpose of ensuring the continued supply of goods and services. Obligations in connection with past services may therefore be stayed.

> *Nortel Networks Corp. (Re)*, [2009] O.J. No. 2558 at para. 67 (S.C.J. [Comm. List]); appeal heard October 1, 2009 (under reserve)
>
> *Fraser Papers Inc. (Re)*, [2009] O.J. No. 3188 at para. 18 (S.C.J. [Comm. List])
>
> *AbitibiBowater (Re)*, (2009) No: 500-11-036133-094 at para. 45 (S.C) (an unofficial translation), per Gascon J.

25. Section 11.3(a) of the CCAA is an exception to the general stay power and must be narrowly interpreted.

> *Smith Brothers Contracting Ltd. (Re)*, [1998] B.C.J. No. 728 at para. 41 (S.C.)
>
> *Nortel Networks Corp. (Re)*, [2009] O.J. No. 2558 at para. 66 (S.C.J. [Comm. List]); appeal heard October 1, 2009 (under reserve)

26. In *AbitibiBowater*, the Court underlined a distinction between the rights of employees and the execution or enforceability of claims that could result from the exercise of those rights. Accordingly, although a debtor company may stay pre-filing claims under collective bargaining agreements in the context of CCAA proceedings, it cannot unilaterally modify the rights of current employees without prior negotiation.

> *AbitibiBowater (Re)*, (2009) No: 500-11-036133-094 at paras. 61 and 70 (S.C) (an unofficial translation), per Gascon J.

27. Employees who provide services after the date of the Initial Order are therefore entitled under section 11.3 to receive immediate payment for such services consistent with those rights. However, obligations to retirees are stayed and are subject to compromise in the plan. In *Jeffrey Mines*, which was referenced by the Court in *AbitibiBowater*, Dalphond J. held for the Court of Appeal:

> The collective agreements continue to apply like any contract of successive performance not modified by mutual agreement after the initial order or not disclaimed (assuming that to be possible in the case of collective agreements). Neither the monitor nor the court can amend them unilaterally. ...
>
> Thus, unionized employees kept on or recalled are entitled to be paid immediately ... for any service provided after the date of the order (s. 11.3), in accordance with the terms of the original version of the applicable collective agreement or with the terms of an amended agreement approved by the union concerned. However, the obligations not honoured by Jeffrey Mine Inc. with regard to services provided prior to the order constitute debts of Jeffrey Mine Inc. for which the monitor cannot be held liable (s. 11.8 CCAA) and which the employees cannot demand be paid immediately (s. 11.3 CCAA).
>
> Obligations that have not been met with regard to employees who were laid off permanently ... or with regard to persons who were former employees of Jeffrey Mine Inc. on that date, and that stem from the collective agreements or other commitments constitute debts of the debtor to be disposed of in the restructuring plan or, failing that, upon the bankruptcy of Jeffrey Mine Inc. [emphasis added]
>
> *Syndicat national de l'amiante d'Asbestos inc. v. Jeffrey Mines Inc.*, [2003] Q.J. No. 264 at paras. 60 to 62 (C.A.)

28. The fact that a retiree's right to payment stems from a collective agreement does not grant that right any special priority or status. The only germane question is

whether the employees performed services after the date of the Initial Order, as contemplated by section 11.3(a) of the CCAA. As Gascon J. held in *AbitibiBowater*:

> On one part, Abitibi as debtor, cannot, with regards to its active employees, terminate or suspend unilaterally the clauses of the collective agreements binding it, including the clauses of the Memorandum of Agreement which are an integral part of the collective agreements. ... However, on the other hand, with respect to Abitibi's liability for the services rendered before the initial order, the resulting claims, even if they are based on collective agreements, do not benefit from a particular status, priority, privilege or guarantee.

AbitibiBowater (Re), (2009) No: 500-11-036133-094 at paras. 42 and 44 (S.C) (an unofficial translation), per Gascon J

Fraser Papers Inc. (Re), [2009] O.J. No. 3188 at para. 20 (S.C.J. [Comm. List])

Nortel Networks Corp., Re, [2009] O.J. No. 2558 at paras. 75 and 86 (S.C.J. [Comm. List]); appeal heard October 1, 2009 (under reserve)

Syndicat national de l'amiante *d'Asbestos inc. v. Jeffrey Mines Inc.*, [2003] Q.J. No. 264 at para. 62 (C.A.)

29. In *Re Nortel Networks*, Justice Morawetz faced a situation directly analogous to the one now before this Honourable Court. The union sought continued payment of retirement allowance payments (RAPs) and other contractual entitlements to retirees that were contemplated under the collective agreement, notwithstanding that those amounts were only payable after an employee's employment ceased and did not apply to active employees. The union attempted to argue that section 11.3 of the CCAA precludes the Applicants from making selective determinations as to which parts of the collective agreement it will abide by, i.e., by paying active employees but not retirees.

Nortel Networks Corp., Re, [2009] O.J. No. 2558 at paras. 6 and 18 (S.C.J. [Comm. List]); appeal heard October 1, 2009 (under reserve)

30. Morawetz J. rejected the union's argument and dismissed the union's motion, holding that the stay provisions in the CCAA and the Initial Order must be given "meaningful interpretation." By reference to the *Jeffrey Mines* case, the Court held that obligations with regard to former employees that stem from collective agreements may be stayed and constitute debts of the debtor to be disposed of in the restructuring plan or, failing that, upon bankruptcy.

Nortel Networks Corp., Re, [2009] O.J. No. 2558 at paras. 73 and 75 (S.C.J. [Comm. List]); appeal heard October 1, 2009 (under reserve)

31. Morawetz J.'s decision in *Re Nortel Networks* was appealed and the appeal was heard on October 1, 2009. The decision is currently under reserve.

Smurfit-Stone's Obligations to Retirees Are Properly Stayed

32. The only obligations at issue on this motion are the pre-filing obligations owed to persons retired as at the date of the Initial Order.

33. Because the proposed post-retirement pension indexation applies only to persons already retired on January 1st of each of 2009, 2011 and 2013, it can have no current impact on active employees. A person who worked for SSC Canada after January 26, 2009 and then retired is not currently subject to the 2009 indexation. Instead, that person's pension will not be subject to indexation until 2011. The parties have therefore agreed to a stipulation that the statement in the Gagné Affidavit that the failure to register an amended Mill Plan will "deprive current

service employees of a benefit" relates only to the fact that the 2011 and 2013 adjustments have not yet been provided for in a registered amended plan.

34. SSC Canada concedes that if the collective agreement remains in place and is unamended on January 1, 2011, SSC Canada will have to amend the Mill Plan (if it is still in place) to provide indexation to any employee who retired after the date of the Initial Order to ensure that such person is compensated for services provided post-filing. There is no reason to compel the 2011 and 2013 amendments to be implemented at this time.

No Basis to Lift the Stay

35. There is no express statutory test under the CCAA to guide the court in lifting a stay to allow a creditor to proceed; but there are recognized situations in which a court will lift a stay. The court will lift the stay when the moving party would be significantly prejudiced by a refusal to lift the stay and there would be no resulting prejudice to the debtor company or the positions of creditors, and where it is in the interests of justice to do so.

> R.H. McLaren *Canadian Commercial Reorganization: Preventing Bankruptcy* looseleaf (Aurora: Canada Law Book, 2009) at 3.3400 to 3.3570
>
> *Canadian Airlines Corp. (Re)* (2000), 19 C.B.R. (4th) 1 at 7-8 (Alta. Q.B.)

36. In determining whether a stay should be lifted, a court will balance a number of interests, taking into account not only the relative prejudice to the moving party,

the debtor company and the creditors, but the interests of the other stakeholders or constituents involved in the process.

> *Canadian Airlines Corp. (Re)* (2000), 19 C.B.R. (4th) 1 at 6 and 8-9 (Alta. Q.B.)

37. In this case, there is no reason to lift the stay to ensure full payment to one set of pre-filing creditors, whether by compelling an amendment to the Mill Plan or allowing the CEP to proceed with a grievance outside of the CCAA process.

38. It is simply inaccurate for the CEP to state that "the order and direction sought will not produce a cost payable by SSCC" and an oversimplification to suggest that, because retirees' pensions are paid by the Pension Fund, there is no impact on the restructuring from compelling an amendment to the Mill Plan. Because the Pension Fund currently has a substantial deficiency, any increase in pensions will ultimately be funded by means of increased employer special payments into the Pension Fund. Contrary to the suggestion of the CEP, the impact is not speculative, but is known and quantifiable. As described above, Mercer has determined that the indexation of pensions in accordance with the Indexation Provision would cause an increase in the actuarial liability of the Mill Plan of approximately $1.5 million on a solvency basis for each of the 2009, 2011 and 2013 adjustments.

39. Such increased payments will potentially decrease the amount of cash available to other creditors in a restructuring plan. At the same time, increasing payments out of the Pension Fund would also change the nature of the priorities in

the estate, decreasing the pre-filing obligation owed in respect of retirees, but increasing the special payment claim. Furthermore, because the special payments are currently stayed, any increase in pension benefits further jeopardizes the viability of the Mill Plan and strains its solvency deficiency, which was the basis for the RRQ's order in the first place.

40. At this point, it is simply premature to require an amendment to the Mill Plan, as it is unclear what SSC Canada's restructuring plan will look like, whether the collective agreement will be renegotiated, and whether SSC Canada will elect to voluntarily amend the Mill Plan pursuant to the Initial Order as part of its negotiations with CEP or deal with the consequences of its failure to do so in a plan of arrangement.

PART IV - ORDER REQUESTED

That the CEP's motion be dismissed with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

October 7, 2009

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TAB A

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

TAB B

SCHEDULE "B"
LIST OF AUTHORITIES

1. *Campeau v. Olympia & York Developments Ltd.* (1992), 14 C.B.R. (3d) (Ont. Gen. Div.)

2. *Stelco Inc. (Re),* [2005] O.J. No. 1171 (C.A.)

3. *Canadian Airlines Corp. (Re)* (2000), 19 C.B.R. (4th) 1 (Alta. Q.B.)

4. *Woodward's Ltd. (Re)* (1993), 79 B.C.L.R. (2d) 257 (S.C.)

5. *Pacific National Lease Holding Cop. (Re)* (1992) 72 B.C.L.R. (2d) 368 (C.A.)

6. *Nortel Networks Corp. (Re),* [2009] O.J. No. 2558 (S.C.J. [Comm. List])

7. *Fraser Papers Inc. (Re),* [2009] O.J. No. 3188 (S.C.J. [Comm. List])

8. *AbitibiBowater, in the matter of the plan of compromise or arrangement of,* (2009) No: 500-11-036133-094 (S.C) (unofficial translation)

9. *Smith Brothers Contracting Ltd (Re)* [1998] B.C.J. No. 728 (S.C.)

10. *Syndicat national de l'amiante d'Asbestos inc. v. Jeffrey Mines Inc.,* [2003] Q.J. No. 264 (C.A.)

11. R.H. McLaren *Canadian Commercial Reorganization: Preventing Bankruptcy* looseleaf (Aurora: Canada Law Book, 2009)

TAB C

SCHEDULE "C"
RELEVANT STATUTES

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

Section 11.1(3)

(3) Initial application court orders - A court may, on an initial application in respect of a company, make an order on such terms as it may impose, effective for such period as the court deems necessary not exceeding thirty days,

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under an Act referred to in subsection (1);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of or proceeding with any other action, suit or proceeding against the company.

Section 11.3

Effect of order - No order made under section 11 shall have the effect of

(a) prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided after the order is made; or

(b) requiring the further advance of money or credit.

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

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