

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

LA CIE MCCORMICK CANADA CO.

Plaintiff

- and -

STONE CONTAINER CORP., JEFFERSON SMURFIT CORP., SMURFIT-STONE CONTAINER CORP., SMURFIT-MBI, formerly known as MACMILLAN BATHURST, ROGER STONE, UNION CAMP CORP., INTERNATIONAL PAPER CO., INTERNATIONAL PAPER CANADA, INC., also known as INTERNATIONAL PAPER LTD – CANADA, GEORGIA PACIFIC CORP., GEORGIA-PACIFIC CANADA, INC., WEYERHAEUSER PAPER CO., WEYERHAEUSER COMPANY, WEYERHAEUSER COMPANY LIMITED, formerly known as WEYERHAEUSER CANADA LTD., TEMPLE-INLAND INC., INLAND PAPERBOARD AND PACKAGING, INC, GAYLORD CONTAINER CORP., TENNECO, INC., TENNECO PACKAGING, and PACKAGING CORPORATION OF AMERICA

Defendants

Proceeding under the *Class Proceedings Act, 1992*

AFFIDAVIT OF MICHAEL G. ROBB

I, Michael G. Robb, of the City of London, in the County of Middlesex, **MAKE OATH**

AND SAY AS FOLLOWS:

1. I am an associate with the law firm of Siskind, Cromarty, Ivey & Dowler ^{LLP} ("Siskinds"), plaintiff's counsel herein and as such have knowledge of the matters deposed to. Where I make statements in this affidavit which are not within my personal knowledge, I have identified the source of the information and belief. All of the information I have deposed to I verily believe to be true.
2. This motion is made by Ontario Class Counsel for an order approving the retainer agreement entered into with the representative plaintiff, La Cie McCormick Canada Co. ("McCormick"), pursuant to section 32(2) of the *Class Proceedings Act, 1992*, and for an

order approving Ontario Class Counsel legal fees with respect to three settlement agreements entered into with the defendants, plus disbursements and applicable taxes.

BACKGROUND

3. On February 20, 2004, a Notice of Action was filed on behalf of McCormick. The claim alleges that the Defendants unlawfully conspired to fix, increase, and/or maintain prices for linerboard, corrugated sheets, and corrugated boxes in North America by artificially restricting supply. As a result of this alleged conspiracy, the Plaintiff sought to recover damages.
4. From the outset, Siskinds agreed to pursue this action on a contingency fee basis, accepting responsibility for all disbursements and seeking court approval for a fee if ultimately successful. McCormick executed a retainer agreement on March 4, 2004, which confirmed that understanding and provided that Class Counsel would pay all expenses associated with the litigation, and would only be paid in the event of success. The contract provides for a legal fee of 25% plus disbursements and applicable taxes. A copy of the retainer agreement is annexed to the Affidavit of Keith Gibbons.
5. Class Counsel retained the law firm of Cuneo Waldman & Gilbert^{LLP} to bring a motion to intervene in similar U.S. proceedings for the limited purpose of seeking modification to a protective order issued by the U.S. court which prohibited the disclosure of evidence produced in the course of discovery in the U.S. proceeding. That motion was successful and Class Counsel have accessed and reviewed many of the documents produced and depositions taken in the U.S. proceedings.
6. Class Counsel drafted and filed certification materials in anticipation of a contested certification motion. Class Counsel retained Dr. John Beyer from Nathan & Associates, the same expert economist who testified in the U.S. Linerboard litigation, to prepare an opinion in support of the plaintiff's certification motion. On December 22, 2005, Class

Counsel brought a motion to seal the portions of the certification materials dealing with Dr. Beyer's testimony as those materials relied upon documents in the United States which are subject to the protective order.

7. In order to facilitate the settlements, Siskinds worked with the law firms of Alexander, Holburn, Beaudin & Lang in British Columbia and Siskinds Desmeules s.e.n.c.r.l. in Quebec.

RESULTS ACHIEVED

Total Quantum of Settlement Benefits

8. Class Counsel reached three separate settlements with the defendants. The first settlement agreement was entered into between the plaintiff and the defendants Union Camp Corp., International Paper Co., International Paper Canada, Inc., also known as International Paper Ltd – Canada, Georgia Pacific Corp., Georgia Pacific Canada, Inc., Weyerhaeuser Paper Co., Weyerhaeuser Company, Weyerhaeuser Company Limited, formerly known as Weyerhaeuser Canada Ltd., Tenneco, Inc., Tenneco Packaging and Packaging Corporation of America (the "Main Settlement Agreement"). The second settlement agreement was entered into between the plaintiff and the defendants Temple-Inland Inc., Inland Paperboard and Packaging, Inc., and Gaylord Container Inc. (the "Temple-Inland Settlement Agreement"). The third settlement agreement was entered into between the plaintiff and the remaining defendants, Stone Container Corp., Jefferson Smurfit Corp., Smurfit-Stone Container Corp., Smurfit-MBI, formerly known as Macmillan Bathurst, and Roger Stone (the "Stone Settlement Agreement"). The total Settlement Amounts are CDN\$935,528.00, US\$20,000.00, and US\$830,000.00 respectively, plus accrued interest, inclusive of all costs, expenses, notice and administration. As of August 1, 2006, at an exchange rate of 1.1315, US\$20,000.00 converts to CDN\$22,630.00 and US\$830,000.00 converts to CDN\$939,145.00.

9. Paragraph 4.3(2) of the Main Settlement Agreement provides for a clause often referred to as a "Most Favoured Nations" clause. The result of this clause is that by virtue of the Temple-Inland Settlement Agreement, the plaintiff will be required to refund one half of the Temple Inland Settlement Amount, or US\$10,000.00 (CDN\$11,315.00) to the Defendants in the Main Settlement Agreement. The Stone Settlement Agreement triggered the Most Favoured Nations clause, and could have resulted in a payment of approximately CDN\$200,000.00. However, agreements were obtained whereby the defendants' rights pursuant to the Most Favoured Nations clause were waived except to the extent of a CDN\$40,000.00 payment to Georgia Pacific Corp. The payment to Georgia Pacific Corp. will be made if the Stone Settlement Agreement is approved.

10. The total value of the settlements, less payments to be made in respect of Most Favoured Nations clauses is therefore approximately CDN\$1,845,988.00 plus interest which continues to accumulate.

Risks undertaken by Class Counsel

11. In undertaking this litigation, Class Counsel were cognizant of the following specific litigation risks:
 - (a) The risk that the court would not certify the action;
 - (b) The risk that the court would not certify a national class;
 - (c) Procedural risks associated with multi party litigation;

- (d) The risk that the court would not agree that an aggregate damage assessment was possible, thus making the proof for individual class members onerous;
- (e) The risk that individual class members would encounter difficulties proving that damages were not passed on by them, or were passed on to them;
- (f) The risk that the court would find that there was no conspiracy, that the conspiracy entered into was ineffective, or that any illegal activity had little or no effect on prices in Canada;
- (g) The risk that the court would find that the defendants could only be held responsible for their sales;
- (h) The risk that the applicable limitation period had expired. Specifically, Class Counsel were contacted by a Class Member shortly before the six year anniversary of Stone announcing that it would cease and desist from requesting, suggesting, urging, or advocating that any manufacturer or seller of linerboard raise, fix, or stabilize prices or price levels. Limitation periods therefore may have expired for all Class Members outside of Ontario, Saskatchewan, Manitoba, Prince Edward Island, New Brunswick, Nova Scotia, Yukon and Northwest Territories, the only provinces with the six year limitation periods for tort claims (at that time). Significantly, the Defendants' only Canadian linerboard production facility was a Stone Container Corp. plant in Quebec where the limitation period was 3 years. Quite aside from the substantive defence, the differing limitation periods could have been a procedural issue in certifying a national class, and a barrier to quantifying damages in the aggregate; and

- (i) Even in the event that the plaintiff was successful in all phases of the litigation, the plaintiff was aware that the defendants would likely file appeals in respect of multiple issues, thus resulting in a considerable delay in compensation for class members.
12. In undertaking a class action, counsel automatically assume the risk of the time and expense which would be required to litigate the matter to conclusion, including appeals. When negotiations are entered into, Class Counsel assume the risk that negotiations will not be concluded, and the time spent and expense incurred in that process will be wasted and will be in addition to the time and expense required to prosecute the action. The risk is exacerbated where it is necessary to negotiate separately with each defendant.

Costs Incurred by Class Counsel

13. Significant time and money have been expended by Class Counsel in pursuing this litigation. Our firm has docketed time of \$287,616.00 plus G.S.T. up to August 1, 2006. Disbursements of approximately \$167,786.75 plus G.S.T. have been incurred to that date. The hours expended thus far by the primary lawyers/clerks, and current hourly rates are as follows:

Lawyer/Clerk	Hours worked on File	Current Hourly Rate
Charles Wright	215.40	\$450
Andrea DeKay	350.90	\$275
Michael Robb	223.20	\$250
Jennifer Bald	178.50	\$150

14. Cuneo Waldman & Gilbert ^{LLP} was retained to bring the motion to intervene in the U.S. class litigation. They have docketed time of US\$31,093.75 plus disbursements of approximately US\$5,509.00. As of August 1, 2006, at an exchange rate of 1.1315, US\$31,093.75 converts to CDN\$35,182.58 and US\$5,509.00 converts to CDN\$6,233.43. The hours expended by the primary lawyers/clerks, and current hourly rates are as follows:

Lawyer/Clerk	Hours worked on File	Current Hourly Rate (US\$)
David Stanley	55.00	\$400
Tim Matthews	18.00	\$280
Katy Lewis	14.00	\$150

15. Alexander, Holburn, Beaudin & Lang were retained by Siskinds as local counsel in British Columbia. They assisted in ensuring that proceedings were commenced, and notices and settlements were approved in British Columbia and have docketed time of \$17,871.00 plus disbursements of approximately \$1,197.98. The hours rates expended by the primary lawyers/clerks are as follows:

Lawyer/Clerk	Hours worked on File	Current Hourly Rate
Todd Davies	53.90	\$270
Bruno De Vita	2.90	\$365
Deanna Menard	25.2	\$90

16. The following chart sets out the disbursements incurred by the above three firms up to August 1, 2006, in pursuing this action:

Disbursement	Cost
Travel/Meals/Parking	\$18,601.74
Service of Documents	\$2,421.86
Agent's and Expert's Fees & Disbursements	\$116,992.93
Transcripts	\$22,140.00
Copies/Binding Supplies	\$8,251.70
Courier/Postage	\$2,676.42
Fax/Long Distance	\$1,066.84
Court Filing Fees	\$1,502.00
Other	\$1,564.67
TOTAL	\$175,218.16


17. Class Counsel funded all of the disbursements associated with advancing this file and did not apply to the Class Proceedings Fund for assistance. If the class had received disbursement funding from the Class Proceedings Fund, it would now be obligated to reimburse the Fund from the proceeds of the settlement. This obligation would require not only full repayment of any financial support provided by the Fund but also payment of an additional 10% of the settlement funds received by the Class.
18. Considerable work remains to be done by Class Counsel. It is anticipated that our firm will have significantly in excess of \$300,000.00 in time invested in this matter upon conclusion. The future involvement of Class Counsel includes:
- (a) The approval of the Stone Settlement Agreement, Distribution Protocol, and Class Counsel fees;

- (b) Responding to questions from class members and their lawyers regarding the Settlement Agreements;
 - (c) Interacting with the Claims Administrator to ensure the fair and efficient administration of the Settlement Agreements; and
 - (d) Involvement in any appeals or other matters which may arise as the Settlement Agreements are implemented.
19. The total value of the settlements, less payments to be made in respect of Most Favoured Nations clauses is approximately \$1,845,988.00. By agreement amongst counsel, the portion of the Settlement Amounts which is allocated to the Ontario Class for the purpose of this fee application is \$1,713,076.86 (92.8%) plus accrued interest.
20. Quebec Class Counsel requested and received a legal fee of \$32,783.25, based on the portion of the Settlement Amounts allocated to the Quebec Class, \$132,911.14 (7.2%), plus disbursements of \$3,264.59 and applicable taxes. The legal fee paid to Quebec Class Counsel is equivalent to just less than 25% of the portion of the Settlement Amounts allocated to them. Counsel each agreed not to request legal fees in excess of 25% of the portion of the Settlement Benefits allocated to them. Attached hereto as Exhibit "A" is a copy of the fee order obtained in the Quebec proceeding.
21. Siskinds is counsel of record along with Alexander, Holburn, Beaudin & Lang in the British Columbia proceeding. Siskinds has agreed to compensate Alexander, Holburn, Beaudin & Lang for their efforts, and to do so from the legal fee awarded to Ontario Class Counsel. No additional fee request will be made before the British Columbia Court. I am advised by Todd Davies of Alexander, Holburn, Beaudin & Lang and do verily believe that the British Columbia court was advised of the intended process and raised no objection.

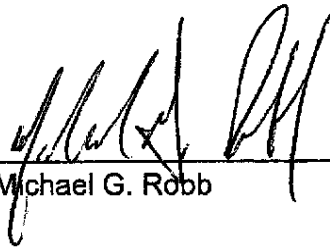
22. Siskinds has also agreed to compensate Cuneo Waldman & Gilbert ^{LLP} for their time and efforts, and as with the payment to Alexander, Holburn, Beaudin & Lang, that payment will come from the legal fee awarded to Ontario Class Counsel.
23. A legal fee of \$425,000.00 would represent just less than 25% of the portion of the Settlement Amount allocated to the Ontario Class, not including interest which is being earned on the Settlement Amount. A legal fee of \$425,000.00 is therefore consistent with the retainer agreement entered into with McCormick.
24. Class Counsel are not seeking:
 - (a) fees on interest accrued on the Settlement Amount;
 - (b) recovery of the payments which will be made to British Columbia or U.S. counsel as a disbursement; or
 - (c) interest calculated on disbursements incurred, pursuant to section 33(7)(c) of the *Class Proceedings Act, 1992*, S.O. 1992, c.6
25. Class Counsel is not seeking payment or right to future reimbursement for expenses incurred from the swearing of this affidavit to the conclusion of the proceeding.
26. Given the risks involved in pursuing this matter, the time expended in pursuing the matter thus far, and the benefit obtained for the class, I believe a legal fee of \$425,000.00 plus disbursements and applicable taxes for Ontario Class Counsel is both appropriate and consistent with the retainer agreement.

27. I make this affidavit in support of a motion with respect to the determination of Ontario Class Counsel fees and disbursements, and for no other or improper purpose.

SWORN OR AFFIRMED before me)
at the City of London, in the County)
of Middlesex, this 4th day of August,)
2006.)



A Commissioner, etc.



Michael G. Robb

This is Exhibit "A" mentioned and referred to in the Affidavit of Michael G. Robb, sworn before me at the City of London, in the County of Middlesex, this 4th day of August, 2006.



A Commissioner, etc.

COUR SUPÉRIEURE

CANADA
PROVINCE DE QUÉBEC
DISTRICT DE QUÉBEC

N° : 200-06-000054-059

DATE : 4 juillet 2006

EN PRÉSENCE DE : L'HONORABLE SUZANNE HARDY-LEMIEUX, J.C.S.

MARC LEFRANÇOIS

Requérant;

c.

STONE CONTAINER CORP. & ALS.

Intimées;

**JUGEMENT SUR REQUÊTE POUR FAIRE APPROUVER LES
HONORAIRES DES PROCUREURS DU REQUÉRANT**

[1] **ATTENDU QUE** le Tribunal a autorisé, ce jour, le requérant Marc Lefrançois à exercer un recours collectif contre les intimées Union Camp Corp., International Paper Co., International Paper Canada, Inc., (également désignée sous la dénomination sociale «International Paper Ltd. – Canada»), Georgia Pacific Corp., Georgia-Pacific Canada, inc., Weyerhaeuser Company, Weyerhaeuser Company Limited (anciennement désignée sous la dénomination sociale «Weyerhaeuser Canada Ltd»)

Weyerhaeuser Paper Co. (une division de Weyerhaeuser Company) Packaging Corporation of America, Pactiv (anciennement désignée sous la dénomination sociale «Tenneco Packaging, Inc.» (incorrectement désignée sous la dénomination sociale «Tenneco Packaging»)), et Tenneco Automotive (anciennement désignée sous la dénomination sociale «Tenneco, Inc.»), Temple-Inland inc., Inland Paperboard and Packaging inc. et Gaylord Container Corp, et Stone Container Corp., Jefferson Smurfit Corp., Smurfit-Stone Container Corp., Smurfit-MBI (anciennement désignée sous la dénomination sociale Macmillan Bathurst), aux fins seulement d'approuver les trois transactions déjà intervenues entre les parties décrites dans les Transactions;

[2] **ATTENDU QUE** les procureurs du requérant demandent au Tribunal, par leur requête, d'approuver les honoraires convenus avec le requérant au moyen d'un document intitulé Convention d'un mandat professionnel;

[3] **VU** la requête sous étude;

[4] **VU** que la requête a été signifiée au Fonds d'aide aux recours collectifs;

[5] **VU** que les intimées ne s'opposent pas à la requête;

[6] **VU** les pièces versées au dossier;

[7] **VU** les déclarations des procureurs des parties et les représentations faites de part et d'autre;

[8] **APRÈS EXAMEN**, et considérant que le Tribunal estime que les honoraires et débours réclamés par les procureurs du requérant sont justes, raisonnables et qu'ils doivent être approuvés;

POUR CES MOTIFS, LE TRIBUNAL:

[9] **ACCUEILLE** la requête;

[10] **APPROUVE** le paiement aux procureurs du requérant des sommes qui suivent à même les Fonds de la Transaction:

- 32,783 25\$ plus les débours divers soit
- 3,264.59\$ plus les taxes;

le tout pour un total de 36,047.84\$, plus les taxes applicables.

[11] LE TOUT sans frais.


SUZANNE HARDY-LÉMIEUX, J.C.S.

✓ *Me Simon Hébert (Casier 15)*
Me Charles M. Wright
SISKINDS, DESMEULES, AVOCATS
Procureurs du requérant;

Me François Fontaine
OGILVY, RENAULT
1981, Avenue McGill College, #1100
Montréal, QC H3A 3C1
Procureurs des intimées Stone Container Corp
Jefferson Smurfit Corp., Smurfit Stone Container Corp.
Smurfit MBI

Me Emmanuelle Saucier
McMILLAN BINCH, MENDELSON
1000, Sherbrooke O., #2700
Montréal, QC H3A 3G4
Procureurs des intimées Weyerhaeuser Company Limited (anciennement désignée
sous la dénomination sociale « Weyerhaeuser Canada Ltd ») et Weyerhaeuser Paper
Co. (une division de Weyerhaeuser Company)

Me Nick Rodrigo
DAVIES WARD PHILLIPS & VINEBERG
1501, Avenue McGill College, 26^e étage
Montréal, QC H3A 3N9
Procureurs de Packaging Corporation of America
Pactiv anciennement désignée sous la dénomination sociale "Tenneco Packaging, Inc."
(incorrectement désignée sous la dénomination sociale « Tenneco Packaging »), et
Tenneco Automotive (anciennement désignée sous la dénomination sociale « Tenneco,
Inc »).

Me Jeremy Wisniewski

McMILLAN BINCH MENDELSON

1000, Sherbrooke O., #2700

Montréal, QC H3A 3G4

Procureurs des intimées Union Camp Corp., International Paper Co., International Paper Canada inc. f/k/a, International Paper Ltd Canada

Me Alexandre Sami

GOWLING LAFLEUR HENDERSON, s.r.l.

1, Place Ville Marie, 37^e étage

Montréal, QC H3B 3P4

Procureurs des intimées Georgia Pacific Corp., Georgia Pacific Canada, inc.

Me Yves Martineau

STIKEMAN ELLIOT, LLP

1155, Boul. René-Lévesque O., 40^e étage

Montréal, QC H3B 3V2

Procureurs de Temple-Inland inc., Inland Paperboard and Packaging, inc.