

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

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

NOTICE OF MOTION

The plaintiff, will make a motion to the court on Tuesday August 15, 2006 or as soon after as the motion can be heard, before Madam Justice Hoy at the Court House, 361 University Avenue, Toronto, Ontario, M5G 1T3.

PROPOSED METHOD OF HEARING: This Motion is to be heard

- in writing under subrule 37.12(1);
- in writing as an opposed motion under subrule 37.12.1(4);
- orally

THE MOTION IS FOR:

1. An Order and Declaration that for the purposes of the Notice of Motion the following definitions will apply and be incorporated into the Order:
 - (a) **"Administration Expenses"** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the representative plaintiff, Class Counsel or otherwise for the approval, implementation and operation of the Settlement Agreement, including the costs of notices, but excluding Class Counsel Fees.
 - (b) **"BC Action"** means the proceeding in Supreme Court of British Columbia Court File No. S053818, Vancouver Registry.
 - (c) **"BC Class"** means all persons in British Columbia who purchased Corrugated Material Products in Canada during the Purchase Period.
 - (d) **"Class Counsel"** means Siskind, Cromarty, Ivey and Dowler LLP.
 - (e) **"Class Counsel Fees"** means the fees, disbursements, costs, GST, and other applicable taxes or charges of Class Counsel.
 - (f) **"Corrugated Material"** means any grade of paperboard suitable for use as the inner and outer layers of corrugated sheets (also known as linerboard), the fluted inner layer of a corrugated sheet (also known as medium), any combination of medium and linerboard (including corrugated sheets made out of containerboard), and boxes or containers manufactured using corrugated sheets.
 - (g) **"Corrugated Material Products"** means Corrugated Material and any products that directly or indirectly contain, include, are packaged in or are derived from Corrugated Material.
 - (h) **"Defendants"** means the individuals and entities named as defendants in the Ontario Action.
 - (i) **"Non-Settling Defendant"** means a Defendant who is not a Settling Defendant, and includes a Terminating Defendant.
 - (j) **"Ontario Action"** means this proceeding.
 - (k) **"Ontario Releasers"** means, jointly and severally, the Plaintiff and the Settlement Class Members and their respective predecessors, successors, heirs, executors, administrators and assigns.
 - (l) **"Other Actions"** means actions or proceedings, other than the Proceedings, relating to Released Ontario Claims commenced by a Settlement Class Member, and includes Other Class Actions.
 - (m) **"Other Class Actions"** means any class action other than the Proceedings that is commenced in Canada prior to the date on which this Court hears the motion to approve the Settlement Agreement.

- (n) "**Proceedings**" means the Ontario Action, the Quebec Action and the BC Action.
- (o) "**Purchase Period**" means January 1, 1993 to December 31, 1995.
- (p) "**Quebec Action**" means the proceeding in Superior Court of Quebec (District of Quebec) Court File No. 200-06-000054-059.
- (q) "**Quebec Class**" means all persons (within the meaning of Quebec law) in Quebec who purchased Corrugated Material Products in Quebec during the Purchase Period.
- (r) "**Released Ontario Claims**" means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, in law, under statute or in equity, that Ontario Releasers, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to any conduct from the beginning of time to the date hereof in respect of an alleged conspiracy or other unlawful agreement or combination concerning the purchase, sale, pricing, discounting, marketing or distributing of Corrugated Material Products in Canada, or relating to any conduct alleged (or which could have been alleged) in the Proceedings, including, without limitation, any such claims which have been asserted, would have been asserted or could have been asserted, whether in Canada or elsewhere, as a result of an alleged conspiracy or other unlawful agreement or combination concerning the purchase of Corrugated Material Products in Canada.
- (s) "**Releasees**" means, jointly and severally, the Settling Defendants and all of their respective present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives; and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing.
- (t) "**Settling Defendants**" means Stone Container Corp., Jefferson Smurfit Corp., Smurfit-Stone Container Corp., Smurfit-MBI and Roger Stone.
- (u) "**Settlement Class**" has the meaning attributed to it in paragraph 3 of the Order.
- (v) "**Settlement Class Member**" means a member of the Settlement Class who does not validly opt out of that Settlement Class in accordance with the Order.
- (w) "**Terminating Defendant**" means a Settling Defendant who terminates the Settlement Agreement in accordance with its terms.

2. An Order that the Ontario Action be certified as a class proceeding as against the Settling Defendants for the purpose of settlement only;
3. An Order that the Settlement Class be defined as:

All persons (except for members of the BC Class and the Quebec Class) who, in Canada, purchased Corrugated Material Products for delivery in Canada during the Purchase Period.
4. An Order that La Cie McCormick Canada Co. be appointed as the representative plaintiff for the Settlement Class;
5. An Order that the Ontario Action be certified as a class proceeding for settlement purposes only, on the basis of the following common issue:

Did the Settling Defendants agree to fix, raise, maintain, coordinate or stabilize the prices of, or allocate markets, volumes of sales and customers for, Corrugated Material in Canada during the Purchase Period?
6. A Declaration that the Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class;
7. An Order that the Settlement Agreement be approved pursuant to s. 29 of the *Class Proceedings Act, 1992* and be implemented in accordance with its terms;
8. A Declaration that the Settlement Agreement be incorporated by reference into and forms part of the Order and be binding upon the representative plaintiff, upon all Settlement Class Members, and upon the Defendants, including those persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of the Ontario Action;
9. An Order that each potential member of the Settlement Class who elects to opt out of the Ontario Action must do so in the manner provided in the notice to be agreed by the parties and approved by this Honourable Court;

10. An Order that the opt-out period run for a period of 60 days from the date of the first publication of the notice to be agreed by the parties and approved by this Honourable Court;
11. An Order that any potential member of the Settlement Class who has opted out of the Ontario Action by submitting a properly completed opt-out form to be agreed by the parties and approved by this Honourable Court, to the Claims Administrator within the opt-out period described in section 10, is not bound by the Settlement Agreement and may no longer participate in any continuation or settlement of the Ontario Action;
12. An Order and Declaration that each Settlement Class Member shall consent and shall be deemed to have consented to the dismissal of any Other Actions he, she or it has commenced against the Releasees, without costs and with prejudice;
13. An Order and Declaration that each Other Action commenced in Ontario shall be and is hereby dismissed against the Releasees, without costs and with prejudice;
14. An Order and Declaration that each Ontario Releasor has released and shall be conclusively deemed to have fully, finally and forever released the Releasees from the Released Ontario Claims;
15. An Order that each Ontario Releasor shall not commence or continue any action or take any proceeding relating in any way to the Released Ontario Claims against any person or persons who will or could, in connection with any such action or proceeding, bring or commence or continue any claim, crossclaim, claim over or any claim for contribution, indemnity or any other relief against any one of the Releasees, provided that nothing in the Order affects the rights of a Settlement Class Member to claim or continue to claim against any Non-Settling Defendant in any of the Proceedings;

16. An Order and Declaration that the Releasees have released and shall be conclusively deemed to have fully, finally and forever released each other from any and all claims for contribution and indemnity that said Releasees, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to the Released Ontario Claims;
17. An Order and Declaration that the use of the terms "Ontario Releasers" and "Released Ontario Claims" in the Order does not constitute a release of claims by those Settlement Class Members who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors;
18. An Order and Declaration that each Settlement Class Member who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors shall be deemed to have covenanted and undertaken not to make any claim in any way nor to threaten, commence, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Ontario Claims;
19. An Order that all claims for contribution, indemnity or other claims over, whether asserted or unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Ontario Claims, which were or could have been brought by any Non-Settling Defendant or any other person or party, against a Releasee, are barred, prohibited and enjoined in accordance with the terms of this Order (unless such claim is made in respect of a claim by a person who has validly opted out of a Settlement Class);
20. An Order that the Settlement Class Members shall restrict their joint and several claims against the Non-Settling Defendants such that the Settlement Class Members shall be entitled to claim and recover from the Non-Settling Defendants on a joint and several

basis as between the Non-Settling Defendants only, those damages (including punitive damages) arising from and allocable to the conduct of the Non-Settling Defendants;

21. An Order that a Non-Settling Defendant may seek an order from a Court providing for discovery from some or all of the Settling Defendants as deemed appropriate by the Court;
22. An Order that a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 21 on a Settling Defendant by service on counsel of record for the Settling Defendants in this action;
23. An Order that the Settlement Class Members shall not claim from any Non-Settling Defendant that portion of any damages arising from the sales of or allocable to the conduct of an insolvent Non-Settling Defendant which any solvent Non-Settling Defendant would but for the order be able to claim contribution for from one or more of the Settling Defendants;
24. An Order that, except as provided, the Order does not affect any claims or causes of action that any Settlement Class Member has or may have against the Non-Settling Defendants in the Proceedings;
25. An Order and Adjudication that the Ontario Action be dismissed against the Settling Defendants with prejudice and without costs;
26. An Order that Neal, Pallett & Townsend be appointed as Claims Administrator;
27. An Order and Declaration that the Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement;

28. An Order that the Settlement Amount, the Main Agreement Settlement Amount and the Temple-Inland Settlement Amount shall be distributed by the Claims Administrator in accordance with the Distribution Protocol;
29. An Order that Settlement Class Members shall submit a claim form to the claims Administrator on or before the date which is ninety days from the date of first publication of the Notice of approval of the Distribution Protocol and any Settlement Class Member who fails to do so shall not share in any distribution made in accordance with the Distribution Protocol with respect to settlements already approved unless the court orders otherwise;
30. An Order approving the Notice of Certification and Settlement Approval and its method of dissemination;
31. An Order that the Notice of Certification and Settlement Approval shall be published within ninety (90) days of the Distribution Protocol being approved in each of this Court, the Supreme Court of British Columbia and the Quebec Superior Court; and
32. Such further and other relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

1. The pleadings herein disclose a cause of action against the Settling Defendants;
2. There is an identifiable class which will be represented by La Cie McCormick Canada Co.;
3. The claims of the class members raise common issues respecting the within litigation;
4. A class proceeding is the preferable procedure for the resolution of the common issues;

5. The representative plaintiff, La Cie McCormick Canada Co.:
 - (a) Will fairly and adequately represent the interests of the class;
 - (b) Has a Plan which sets out a workable method for the advancement of the proceeding on behalf of the class, including notification of the class members; and
 - (c) Does not have an interest in conflict with the interests of the other class members;
6. The proposed settlements are fair, reasonable and in the best interests of the class;
7. The *Class Proceedings Act*, 1992, S.O. 1992, c.6;
8. A Distribution Protocol has been agreed to between the Plaintiff and the Settled Defendants which is subject to Court Approval; and
9. Such further and other grounds as counsel may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

1. The Affidavit of Michael G. Robb, sworn August 4, 2006;
2. The Affidavit of Keith Gibbons, sworn August 4, 2006;
3. The Affidavit of James Brander, sworn July 31, 2006; and
4. Such further and other material as counsel may advise and the Honourable Court may permit.

Date: August 8, 2006

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