

**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 KEITH GIBBONS**

I, Keith Gibbons, of the City of London, in the County of Middlesex, MAKE OATH AND SAY AS FOLLOWS:

1. I am the President and CEO of La Cie McCormick Canada Co. ("McCormick"), plaintiff in the within action, and as such have knowledge of the matters hereafter deposed to and which I believe are true.
2. Terms which are defined in the Settlement Agreements and capitalized herein have the meaning ascribed to them in the Settlement Agreements.

### **Certification and Settlement Approval**

3. McCormick retained Siskind, Cromarty, Ivey & Dowler <sup>LLP</sup> ("Siskinds") to commence an action with respect to the alleged conspiracy among the defendants to artificially and illegally increase the price of linerboard and/or corrugated sheets and/or corrugated boxes. In the absence of this class proceeding, McCormick would not have commenced litigation against the defendants due to concerns regarding the expense associated with such complex litigation. A copy of the retainer agreement is attached hereto as Exhibit "A".
  
4. McCormick is a manufacturer of consumer food products and industrial food products. Between October 1993 and November 1995 McCormick purchased corrugated boxes for packaging its manufactured food products.
  
5. I understand that two separate settlements have been reached with defendants. The first settlement, 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 Company and Tenneco Packaging ("Main Settlement Agreement") was executed on December 1, 2005. The second settlement agreement, entered into between the Plaintiff and the Defendants Temple-Inland Inc., Inland Paperboard and Packaging, Inc., and Gaylord Container Inc. ("Temple-Inland Settlement Agreement") was executed on March 29, 2006. Class Counsel has explained the terms of the settlement agreements to me and I understand the settlements have to be approved by the courts. I understand that the Settling Defendants will pay a total Settlement Amount of CDN\$935,528.00. I understand that as part of the settlements, the Temple-Inland Defendants have agreed to cooperate with class counsel in prosecuting the action against the remaining defendants.

6. I understand that the mechanism by which the settlement funds will be distributed shall be determined on a subsequent motion to the court.
7. I appreciate that this action raises complex and novel factual and legal matters and that it may be vigorously challenged by the non-settling defendants.
8. I have reviewed the proposed class definition set out in the settlement agreements, and can state that McCormick would be included as a class member within that definition.
9. I believe that McCormick will fairly and adequately represent the interests of the members of the proposed class. I do not believe that McCormick's interests are in conflict with those of other members of the class on the proposed common issue.
10. I have instructed Siskinds to seek approval of the settlement agreements with the Settling Defendants.
11. I understand that pursuant to the terms of the settlement agreements, the settlement monies being held in trust shall remain there pending further order of the court.

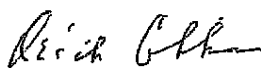
#### **Approval of Class Counsel Fees**

12. This litigation was undertaken on a contingency basis such that Siskinds would not be paid for fees or disbursements unless successful. The retainer agreement McCormick entered into provides that Siskinds will receive 25% of the total value of the settlements plus disbursements and applicable taxes.
13. I understand that Siskinds will seek a fee in accordance with the retainer agreement and I have no difficulty with such an application.

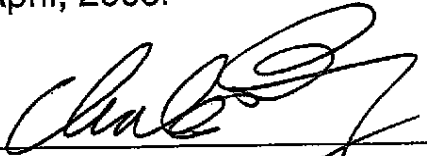
14. I make this affidavit in support of the motions for an order that the within proceedings be certified as against the Settling Defendants and approval of the settlement agreements, and for an order approving the fee request of Class Counsel, and for no other or improper purpose.

**SWORN OR AFFIRMED** before me )  
at the City of London, in the County )  
of Middlesex, this 20<sup>th</sup> day of April, )  
2006. )

  
\_\_\_\_\_  
A Commissioner, etc. )

  
\_\_\_\_\_  
KEITH GIBBONS

This is exhibit "A" mentioned  
and referred to in the  
affidavit of Keith Gibbons,  
sworn before me at the City  
of London in the County of  
Middlesex, this 20<sup>th</sup> day of  
April, 2006.



A Commissioner, etc.

## RETAINER AGREEMENT

We, LA CIE McCORMICK CANADA CO., hereby retain and employ the law firm of Siskind, Cromarty, Ivey & Dowler LLP as our solicitors and hereby authorize them to act as our counsel in a class action pursuant to the Class Proceedings Act, naming LA CIE McCORMICK CANADA CO. as representative plaintiff on behalf of a class of persons who have purchased corrugated cardboard including sheets and box products and/or linerboard, produced, manufactured and/or distributed by Stone Container Corp., Jefferson-Smurfit Corp., Smurfit-Stone Container Corp., International Paper Company, Georgia Pacific Corporation, Weyerhaeuser Paper Company, Temple-Inland Inc., Gaylord Container Corporation, Union Camp Corporation, Simpson Tacocoma Kraft Co., Tenneco, Inc., Tenneco Packaging, Packing Corporation of America, and other Canadian entities to be determined prior to the issuance of the Statement of Claim.

I understand that this litigation is to be pursued on a contingency basis such that fees and disbursements with respect to the common issues will be payable only in the event of success in the class proceeding.

I understand that according to the Class Proceedings Act, "success" in a class proceeding includes:

- (a) judgment on the common issues in favour of some or all class members; and
- (b) a settlement that benefits one or more class members.

I understand that legal fees will be charged on a percentage basis. I understand that Siskind, Cromarty, Ivey & Dowler LLP will request a legal fee of 25%, plus disbursements, plus G.S.T. from the Court. I understand that the percentage legal fee will be calculated based on all benefits obtained for the class members, including party and party costs, notice and administration. By way of example, if the defendants pay by way of settlement \$5 million, plus \$500,000 party and party costs, and \$100,000 towards the cost of notice and administration, I understand that the contingency fee will be 25% of \$5.6 million (\$1,400,000), plus disbursements and taxes.

I understand that Siskind Cromarty Ivey & Dowler LLP will pay the cost of all disbursements with respect to this action and that LA CIE McCORMICK CANADA CO. will not be responsible for any fees or costs relative to this litigation other than the contingency fee referenced above.

I understand that Siskind, Cromarty, Ivey & Dowler LLP may associate with other law firms in Canada and the United States, and this agreement shall apply to those firms as well.

I understand that Siskind, Cromarty, Ivey & Dowler LLP's legal fees shall be subject to approval by the Court.

I understand that a reasonable settlement or judgment in this case is could be in the range of \$2,000,000 to \$15,000,000, depending on several factors, including total sales of cardboard products in Canada. I understand that a more precise estimate is not possible at this time.

I understand and agree that, in retaining Siskind, Cromarty, Ivey & Dowler LLP, to provide the legal services described in this retainer, the collection, use, retention, and disclosure of personal and other sensitive information may be required in order to fulfil those services and related obligations. I have read the Siskind, Cromarty, Ivey & Dowler LLP Privacy Policy respecting the management of personal and sensitive information and understand that such information will be used by Siskind, Cromarty, Ivey & Dowler LLP for only the purposes set out in this Retainer and for no other purpose without express written consent pursuant to this Privacy Policy.

Signed, sealed and delivered at London, Ontario, this 4<sup>th</sup> day of March, 2004, under the hand of a duly authorized officer of the Corporation.

LA CIE McCORMICK CANADA CO.

Per: Keith Gibbons

Name: Keith Gibbons

Title: President - CFO

I have the authority to bind the corporation

## SISKINDS THE law FIRM

### PRIVACY POLICY

#### INTRODUCTION

The Board of Directors, lawyers and staff of Siskind, Cromarty, Ivey & Dowler LLP ("Siskinds"), recognize and respect their clients' personal information and endeavour to safeguard that information from unauthorized use, retention, or disclosure to third parties. It is upon this fundamental principle that our firm adheres to the Law Society of Upper Canada's *Rules of Professional Conduct* regarding the security of our clients' personal information, common law principles of solicitor-client privilege and, where applicable, litigation-privilege. In addition, the protection of our clients' personal information is governed by Siskinds privacy policy (the "Privacy Policy"), as follows:

**Siskinds' Privacy Policy assures you as an existing or future client, that in retaining our services to represent you or your business, the entire Siskinds team will handle your file in accordance with this policy pursuant to all applicable Federal and Provincial legislation including, but not limited to, the *Personal Information Protection and Electronic Documents Act* ("PIPEDA").**

#### SCOPE OF THE PRIVACY POLICY

This Privacy Policy governs personal information collected from the client, other lawyers in the course of representing the client or providing legal services to the client, as well as organizations that have information relevant and necessary to fulfilling the purpose for which our firm's services have been retained.

Personal information is defined under PIPEDA as any information that is identifiable or directly attributable to an individual. It does not cover information about an individual that is available from a public source, such as a telephone directory, court record, or land registry office. It also does not cover aggregated data, used for statistical and reporting purposes, from which data the client's identity cannot be determined.

This Privacy Policy applies to Siskinds' Board of Directors, partners, associates, staff and contracted employees. As well, Siskinds ensures that all third party service providers sign confidentiality agreements prior to any transfer of a client's personal information in the course of providing the services for which Siskinds was retained.

#### PURPOSES FOR COLLECTING PERSONAL INFORMATION

Siskinds collects personal information for the following limited purposes:

1. to represent the client as set out in the retainer agreement;
2. to establish and maintain client lists for collection of legal fees, record keeping and statistical purposes; and
3. to establish and maintain mailing lists for newsletters, notification of workshops and seminars, or legal updates that Siskinds believes might be informative or of benefit to the client.

## **CONSENT TO THE COLLECTION, USE, AND DISCLOSURE OF PERSONAL INFORMATION**

When a client retains the services of Siskinds, he or she will be asked to sign a retainer agreement that sets out the purpose for which Siskinds has been retained. Upon signing this retainer, the client consents to Siskinds collecting, using and disclosing personal information obtained for the limited purpose for which Siskinds was retained, as well as those purposes listed above in this Privacy Policy.

Siskinds will not use client personal information for any purposes other than that consented to by the client, either by express or implied consent. Siskinds does not sell, barter, or lease personal information it obtains from its client to third parties (i.e. Siskinds would not provide our client mailing list to another law firm or business).

If the client requests additional services of Siskinds beyond that of the original retainer, the client is giving implied consent to Siskinds using the personal information already held for the original purpose, as well as any new personal information collected for the new purpose and no signature will be required on a new or amending retainer agreement.

Under PIPEDA and other Federal and Provincial Legislation, Siskinds may disclose personal information without client consent to:

- government or legal enforcement agencies if Siskinds determines that the client has provided incorrect information for fraudulent or illegal purposes;
- government or legal enforcement agencies if the information is collected in the midst of a criminal investigation;
- legal enforcement agency if Siskinds determines that there is imminent risk of death or serious bodily harm, including psychological harm, to an identifiable person or group of persons;
- disclosure to a third party individual or organization if so ordered by a Court or Tribunal of competent jurisdiction; and
- defend against allegations of criminal or civil liability, or professional malpractice or misconduct, by the client or former client.

## **ACCURACY OF A CLIENT'S PERSONAL INFORMATION**

Siskinds endeavours to ensure that all personal information provided by the client and in its possession, is accurate, current and as complete as is necessary for the purposes for which the personal information was collected, used and maintained in an active file. Upon notification by a client that the personal information requires correction or updating, Siskinds will make the necessary amendments to the client's active file where applicable.

Personal information contained in files that have been closed, or pertaining to matters of the client that have been resolved, will not be actively updated or maintained.

## **RETENTION OF THE CLIENT'S PERSONAL INFORMATION**

Siskinds will retain personal information until the matter is closed or the retainer is terminated by either the client or Siskinds. All personal information will be returned to the client and only information pertaining to the services or litigation for which Siskinds was retained will be maintained in the file once it is closed.

- Closed files are retained for the period prescribed by relevant Federal and Provincial legislation to a maximum of 15 years.

## **SAFEGUARDS**

Siskinds has implemented a number of physical, organizational and technological safeguards appropriate to the sensitivity of the client's personal information, including but not limited to:

### Physical

All client meetings are held in the Siskinds Conference Centre and access to the Conference Centre and upper floors of Siskinds is restricted by electronic key access.

Client files are maintained in filing cabinets, located in areas where access is restricted to authorized personnel. Clients only have walk-through access to these areas if they are escorted by their lawyer or a Siskinds authorized employee.

Highly sensitive information such as financial account information, estate information, and physical evidence, are stored in a locked vault or cabinet with no available access to anyone but those individuals in Siskinds with the highest security clearance.

### Organizational

Only Siskinds lawyers and employees working on the client's file will have access to the personal information contained in the file.

Any third party individual or organization is required to sign a non-disclosure agreement prior to the client's personal information being transferred to a third party as required to fulfill the purposes for which Siskinds was retained.

### Technological

Siskinds utilizes the most current firewall, virus protection and other technological safeguards to protect personal information that is retained on the computer network. Siskinds has developed and implemented safe Internet and email use protocols for its lawyers and employees to reduce the risk of inadvertent disclosure as a result of Internet-sourced viruses or cookies.

Regarding electronic transmission of personal information (i.e. email), there is no method of transmitting or storing data that is completely secure. Siskinds uses all available technological security in the transmission of the client's personal information, either in the course of communicating with the client, or in the course of communication with opposing or allied legal counsel and third party service providers. Notwithstanding these technological safeguards, all Internet transmissions are susceptible to possible loss, misrouting, interception and misuse. For this reason, as part of the retainer that the client signs with Siskinds, consent will be obtained from the client to transmit information via the Internet.

## **OPENNESS**

Siskinds makes available its privacy policies and procedures regarding the handling of personal information that it collects for the duration of the retainer on the Internet website at [www.siskinds.com](http://www.siskinds.com). As well, any inquiries regarding personal information management practises may be directed to the Chief Privacy Officer.

## INDIVIDUAL ACCESS

Under PIPEDA, an individual is entitled to access to the personal information held about them with the following exceptions as permitted under the Federal Privacy Legislation:

- No access will be granted if the information is protected by solicitor-client privilege or litigation privilege;
- Siskinds will deny access if the individual seeking access fails to produce sufficient identification to verify that they are the individual about whose personal information access is being sought;
- No access will be granted to personal information that is not about the individual seeking access;
- No access will be granted to information that is part of a criminal investigation;
- No access will be granted where such access would harm or interfere with law enforcement activities and other investigative functions of a body authorized by statute to perform such functions;
- No access will be granted to information where such access might threaten the life, safety and security, including psychological safety, of the individual seeking access;
- No access will be granted to the individual who is a minor or mentally incompetent;
- Siskinds reserves the right to refuse access that it believes is repetitious, frivolous, or vexatious.

Upon receiving a request for access in writing, Siskinds will endeavour to have the information available to the individual seeking access within 60 days of verification of the individual's identity.

Where possible, Siskinds will provide the requested information at nominal cost to the individual. Where the information requested is stored off-site, Siskinds reserves the right to charge the individual seeking access, the cost to have such information retrieved from the off-site storage facility.

The individual entitled to access may challenge the completeness of their personal information under Siskinds' care and control. Upon successful demonstration that there is an error in the personal information held by Siskinds, Siskinds will amend the information where appropriate.

## INVESTIGATING COMPLAINTS

The Chief Privacy Officer will investigate all concerns or complaints respecting the handling of personal information under the control of Siskinds that are received in writing. As promptly as possible, the Chief Privacy Officer will report to the individual the results of the investigation and, where the complaint is found to be justified, steps will be taken to resolve the matter.

If the individual is dissatisfied with the report provided by the Chief Privacy Officer, or feels that the corrective action taken by Siskinds is insufficient, the individual may direct a complaint to the Federal Privacy Commissioner in writing. The address of the Federal Privacy Commissioner is provided below under "Helpful Privacy Links".

## AMENDMENT TO THE SISKINDS PRIVACY POLICY

This Privacy Policy is in effect as of January 1, 2004. Further, this Privacy Policy is subject to amendment in response to developments in the privacy legislation and, in particular, the anticipated introduction of Provincial privacy legislation later in 2004. The Chief Privacy Officer will review and revise this Privacy Policy from time to time and notification of any changes in this policy will be posted on Siskinds Internet website, as well as in Siskinds Privacy Policy brochure that will be available at all Siskinds locations. Any changes in the Privacy Policy will apply to personal information collected from the date of the posting of the revised Privacy Policy on Siskinds Internet website.

## CONTACT INFORMATION

If a question arises regarding access to your personal information held by Siskinds, or there is a concern about the manner in which Siskinds collects, uses, retains and discloses your personal information as a client of Siskinds, please contact:

Chief Privacy Officer  
Siskind, Cromarty, Ivey & Dowler LLP  
680 Waterloo Street  
London, Ontario N6A 3V8

CPO@siskinds.com  
Telephone: (519) 672-2121  
Facsimile: (519) 672-6065

## HELPFUL PRIVACY LINKS

Federal Privacy Commissioner: Jennifer Stoddart  
112 Kent Street  
Ottawa, ON K1A 1H3

[www.privcom.gc.ca](http://www.privcom.gc.ca)

Provincial Privacy Commissioner: Anne Cavoukian

[www.privcom.on.ca](http://www.privcom.on.ca)

Siskinds Privacy Policy Web Site:

[www.siskinds.com](http://www.siskinds.com)

Siskinds Privacy Law Group:

[www.siskindsprivacylaw.com](http://www.siskindsprivacylaw.com)