

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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In re:	:	Chapter 11
	:	
	:	Case No. 09-10235 (BLS)
SMURFIT-STONE CONTAINER CORPORATION, <u>et al.</u> , ¹	:	
	:	Jointly Administered
	:	
Debtors.	:	Ref. Docket Nos. 14, 58, 383 and ____
	X	

ORDER AUTHORIZING CONTINUED USE OF PRE-PETITION SECURED PARTIES' CASH COLLATERAL PURSUANT TO THE TERMS OF THE FINAL ORDER (I) AUTHORIZING DEBTORS (A) TO OBTAIN POST-PETITION FINANCING PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) AND 364(e) AND (B) TO UTILIZE CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363 and (II) GRANTING ADEQUATE PROTECTION TO PRE-PETITION SECURED PARTIES PURSUANT TO 11 U.S.C. §§ 361, 362, 363 AND 364, AS AMENDED HEREBY

Upon the motion (the "Motion") of the above-captioned Debtors for entry of an order (this "Order") seeking authority to continue to use the Pre-Petition Secured Parties' Cash Collateral pursuant to the terms of the *Final Order (I) Authorizing Debtors (A) to Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 363(c)(3), 364(d)(1) and 364(e) and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363 and (II) Granting Adequate Protection to Pre-Petition Secured Parties Pursuant to 11 U.S.C. §§ 361,*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Smurfit-Stone Container Corporation (1401), Smurfit-Stone Container Enterprises, Inc. (1256), Calpine Corrugated, LLC (0470), Cameo Container Corporation (5701), Lot 24D Redevelopment Corporation (6747), Atlanta & Saint Andrews Bay Railway Company (0093), Stone International Services Corporation (9630), Stone Global, Inc. (0806), Stone Connecticut Paperboard Properties, Inc. (8038), Smurfit-Stone Puerto Rico, Inc. (5984), Smurfit Newsprint Corporation (1650), SLP Finance I, Inc. (8169), SLP Finance II, Inc. (3935), SMBI Inc. (2567), Smurfit-Stone Container Canada Inc. (3988), Stone Container Finance Company of Canada II (1587), 3083527 Nova Scotia Company (8836), MBI Limited/Limitée (6565), Smurfit-MBI (1869), 639647 British Columbia Ltd. (7733), B.C. Shipper Supplies Ltd. (7418), Specialty Containers Inc. (6564), SLP Finance General Partnership (9525), Francobec Company (7735), and 605681 N.B. Inc. (1898). The Debtors' corporate headquarters are located at, and the mailing address for each Debtor is, 222 North LaSalle Street, Chicago, Illinois 60601.

362, 363 and 364, entered on February 23, 2009 (the "Final DIP Order"²) [Docket No. 383], as amended pursuant to the terms of this Order; and due and proper notice of the Motion having been provided to the applicable parties in interest; and upon all of the pleadings filed with the Court and all of the proceedings held before the Court; and after due deliberation and consideration; and good and sufficient cause appearing therefor; it is hereby

ORDERED that, notwithstanding the termination of the DIP Credit Agreement, the Debtors are authorized to continue to use the Cash Collateral of the Pre-Petition Secured Parties through the earlier of (i) June 30, 2010, (ii) consummation of a plan of reorganization in these Cases, or (iii) the delivery of written notice to the Debtors by the Pre-Petition Agents after the occurrence of any Event of Default (as defined below) and continuance thereof beyond any applicable grace period (the date of the occurrence of the earliest of the events described in clauses (i) – (iii), the "Termination Date"); and it is further

ORDERED that paragraph 12 and the penultimate sentence of paragraph 3 of the Final DIP Order shall be deleted in its entirety; and it is further

ORDERED that the Debtors are authorized to continue to use the Cash Collateral through the Termination Date, on and subject to the terms and conditions of the Final DIP Order (including, without limitation, subject to the grant to the Pre-Petition Secured Parties of the adequate protection described in paragraph 4 of the Final DIP Order), as such terms and conditions are expressly modified by the terms of this Order; and it is further

ORDERED that the occurrence and continuance of any of the following events shall constitute an event of default under this Order (each, an "Event of Default"):

² Capitalized terms used herein and not defined herein shall have the meanings ascribed to such terms in the Final DIP Order.

- (i) the failure of the Debtors to make a payment to the Pre-Petition Agents or the Pre-Petition Secured Parties as and when required by the Final DIP Order or this Order, or other failure to comply in any material respect with the terms of the Final DIP Order or this Order, and such failure shall continue unremedied for more than two (2) business days after the Debtors' receipt (with a copy to counsel for any Statutory Committee) of notice thereof; or
- (ii) any of the Cases shall be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code, or any Debtor shall file a motion or other pleading seeking the dismissal of any of the Cases under section 1112 of the Bankruptcy Code or otherwise; a trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code, a responsible officer or an examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in section 1106(a)(3) and (4) of the Bankruptcy Code) under section 1106(b) of the Bankruptcy Code shall be appointed in any of the Cases and the order appointing such trustee, responsible officer or examiner shall not be reversed or vacated within thirty (30) days after the entry thereof; or a trustee in bankruptcy, receiver, interim receiver, receiver and manager or official with similar powers shall be appointed with respect to any Canadian Debtor or its assets; or an application shall be filed by any Debtor for the approval of any other Superpriority Claim (other than the Carve-Out) in any of the Cases which is *pari passu* with or senior to the Pre-Petition Superpriority Claim granted to the Pre-Petition Secured Parties against any Debtor pursuant to the Final DIP Order or this Order, or there shall arise any such *pari passu* or senior Superpriority Claim without the consent of the Pre-Petition Agents in their exclusive discretion (provided that the Pre-Petition Agents' discretion with respect to the foregoing claims shall be limited to claims for less than \$1,000,000); or the Bankruptcy Court shall enter an order terminating the use of Cash Collateral; or a motion shall be filed by any Debtor in any of the Canadian Cases for the approval of any other superpriority charge other than the CCAA Charges against the Debtors, or there shall arise any such *pari passu* or senior charge without the consent of the Pre-Petition Agents in their exclusive discretion (provided that the Pre-Petition Agents' exclusive discretion with respect to the foregoing claims shall be limited to claims for less than \$1,000,000); or
- (iii) the Bankruptcy Court or the Canadian Court shall enter an order or orders granting relief from the automatic stay applicable under section 362 of the Bankruptcy Code to the holder or holders of any security interest to permit foreclosure or enforcement of any kind (or the granting of a deed in lieu of foreclosure or the like) on any assets of the Debtors which have a value in excess of \$5,000,000 in the aggregate; or

- (iv) an order of the Bankruptcy Court (other than this Order) or the Canadian Court shall be entered reversing, amending, supplementing, staying for a period in excess of ten (10) days, vacating or otherwise modifying the Final DIP Order or this Order without the prior written consent of the Pre-Petition Agents; or
- (v) any judgment or order as to a post-petition liability or debt for the payment of money in excess of \$1,000,000 shall be rendered against any of the Debtors or their subsidiaries and such judgment shall remain undischarged and there shall be any period of thirty (30) consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; or
- (vi) the Debtors or any of their subsidiaries shall make any pre-petition payment (whether by way of adequate protection to any party other than the Pre-Petition Secured Parties or otherwise) of principal or interest or otherwise on account of any pre-petition indebtedness or payables (including, without limitation, reclamation claims) other than pre-petition payments authorized by the Bankruptcy Court or the Canadian Court in respect of (a) accrued payroll and related employee benefit expenses as of the Petition Date, (b) reclamation claims in such amounts as determined by the Debtors and agreed to by the Pre-Petition Agents, (c) materialmen's, shippers, warehousemen's and other similar liens and certain other pre-petition claims permitted by the Pre-Petition Agents and authorized by the Bankruptcy Court or the Canadian Court in an aggregate amount not to exceed \$46,000,000, (d) the payment to the Pre-Petition Secured Parties of current interest and letter of credit fees (and payment of all interest and fees that are accrued and unpaid as of the Petition Date), all as set forth in the Final DIP Order, (e) payments in respect of pre-petition claims of taxing authorities in an aggregate amount not to exceed \$23,100,000 as described in the Debtors' *Motion for an Order Authorizing the Payment of Prepetition Sales, Use, Property and Other Taxes and Governmental Charges*, (f) the payment of pre-petition claims to certain critical vendors in an aggregate amount not to exceed \$60,000,000 as described in the Debtors' *Motion for an Order Authorizing the Payment of Prepetition Claims of Certain Critical Vendors*, (g) the payment of certain pre-petition obligations owed to customers and brokers in an aggregate amount not to exceed \$23,000,000 as described in the Debtors' *Motion for an Order Authorizing the Debtors to Honor Certain Prepetition Obligations to Customers and Brokers and to Otherwise Continue Prepetition Customer and Broker Programs and Practices in the Ordinary Course of Business*, (h) payment of pre-petition obligations in respect of insurance programs in an aggregate amount not to exceed \$7,000,000 as described in the Debtors' *Motion for an Order Authorizing the Debtors to (I) Make Installment Payments Under Prepetition Insurance Premium Financing Agreements, (II) Continue Prepetition Insurance Programs in*

the Ordinary Course of Business, and (III) Pay all Prepetition Obligations in Respect Thereof, or (i) such other orders which are satisfactory in form and substance to the Pre-Petition Agents; or

- (vii) the Debtors shall create, incur or suffer to exist any post-petition liens or security interests other than (a) those in favor of the Pre-Petition Agents or the Pre-Petition Secured Parties and (b) “Permitted Liens” (as defined in the DIP Credit Agreement) that were not primed by or would not have been primed by the DIP Liens or the DIP Protections pursuant to the Final Order and the DIP Credit Agreement; or any other claim (other than claims secured by the liens described in clauses (a) and (b) above) which is *pari passu* with or senior to the adequate protection for the interest of the Pre-Petition Secured Parties in the Pre-Petition Collateral (including Cash Collateral) on account of the granting of the DIP Liens, subordination to the Carve-Out, the Debtors’ use of the Pre-Petition Collateral, including the Cash Collateral, and other decline in value arising out of the automatic stay or the Debtors’ use, sale, or lease of the Pre-Petition Collateral, or otherwise granted pursuant to the Final DIP Order or this Order (collectively, the “Adequate Protection Obligations”), other than the Carve-Out, shall be granted in any of these Cases;

and it is further

ORDERED that on the Termination Date and with respect to clause (iv), upon five (5) business days’ written notice to the Debtors (with a copy to counsel for any Statutory Committee and the United States Trustee), (i) the Debtors’ right to use the Cash Collateral shall terminate, (ii) the Adequate Protection Obligations shall become immediately due and payable, (iii) the Debtors shall immediately direct any banks that are not Pre-Petition Secured Parties that maintain the accounts in which the Debtors keep their cash to turn over such cash to accounts of the Debtors maintained with the Pre-Petition Agents, and (iv) the Pre-Petition Agents and the Pre-Petition Secured Parties may exercise the rights and remedies available under the Pre-Petition Financing Agreements, the Final DIP Order, this Order or applicable law, including without limitation, setting off amounts in any accounts of the Debtors maintained with the Pre-Petition Agent or such Pre-Petition Secured Party, and foreclosing upon and selling all or a portion of the Pre-Petition Collateral or the property of the Debtors subject to the Pre-Petition

Replacement Liens, in order to collect the Adequate Protection Obligations; provided, however, that following the giving of written notice by the Pre-Petition Agents of the occurrence of an Event of Default, the Debtors and the Statutory Committee may request an emergency hearing before this Court; and it is further

ORDERED that the actions described in clauses (iii) and (iv) of the preceding ORDERED paragraph may be taken without further order of or application to the Court as the Pre-Petition Agents, in their discretion, elect, and the automatic stay is hereby deemed modified and vacated to the extent necessary to permit such actions, provided that with respect to the actions described in clause (iv) of the preceding ORDERED paragraph, (a) the Debtors or the Statutory Committee have not contested the right of the Pre-Petition Secured Parties to exercise their remedies based upon whether an Event of Default has occurred within the above-referenced five (5) business day period or (b) if the Debtors or the Statutory Committee have timely contested the occurrence of an Event of Default, the Bankruptcy Court after notice and a hearing has declined to stay the enforcement thereof; and it is further

ORDERED that the Pre-Petition Agents shall be entitled to apply the payment or proceeds of the Pre-Petition Collateral in accordance with the provisions of the Pre-Petition Financing Documents, and in no event shall the Pre-Petition Agents or the Pre-Petition Secured Parties be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the Pre-Petition Collateral, property of the Debtors subject to the Pre-Petition Replacement Liens, or otherwise; and it is further

ORDERED that notwithstanding the occurrence of the Termination Date or anything herein or in the Final DIP Order, all of the rights, remedies, benefits and protections provided to the Pre-Petition Agents and the Pre-Petition Secured Parties under the Final DIP

Order (including without limitation, under paragraph 4 thereof) or this Order shall continue in full force and effect and shall survive the Termination Date; and it is further

ORDERED that the Pre-Petition Agents and the Pre-Petition Secured Parties do not consent, and reserve the right to object, to any proposed use by the Debtors of the Cash Collateral after the Termination Date; and it is further

ORDERED that except as expressly modified by this Order, all of the terms and conditions of the Final DIP Order shall remain in full force and effect, and the Pre-Petition Agents and the Pre-Petition Secured Parties shall be afforded all of the protections thereunder as if fully set forth herein in connection with the extension of the use of Cash Collateral; and it is further

ORDERED that the terms and conditions of this Order shall take effect immediately upon the expiration of the DIP Credit Agreement on the Maturity Date, and there shall be no stay of execution or effectiveness of this Order; and it is further

ORDERED that the Debtors are hereby authorized and directed to take all actions necessary to implement the relief granted in this Order; and it is further

ORDERED that the Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: Wilmington, Delaware
_____, 2010

The Honorable Brendan L. Shannon
United States Bankruptcy Judge