UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: SMURFIT-STONE CONTAINER CORPORATION, et al.,[1] Debtors.	Chapter 11 Case No. 09-10235 (BLS) Jointly Administered **Hearing Date: April 15, 2010**

DEBTORS' (A) MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION AND (B) OMNIBUS REPLY TO OBJECTIONS TO CONFIRMATION OF JOINT PLAN OF REORGANIZATION FOR SMURFIT-STONE CONTAINER CORPORATION AND ITS DEBTOR SUBSIDIARIES AND PLAN OF COMPROMISE AND ARRANGEMENT FOR SMURFIT-STONE CONTAINER CANADA INC. AND AFFILIATED CANADIAN DEBTORS

SIDLEY AUSTIN LLP
James F. Conlan
Matthew A. Clemente
Dennis M. Twomey
Brian J. Lohan
Andrew F. O'Neill
One South Dearborn Street
Chicago, Illinois 60603
Telephone: (312) 853-7000
Facsimile: (312) 853-7036

STIKEMAN ELLIOTT LLP
Sean F. Dunphy
Alexander D. Rose
5300 Commerce Court West
199 Bay Street
Toronto, Ontario M5L 1B9
Telephone: (416) 869-5261
Facsimile: (416) 947-0866

YOUNG CONAWAY STARGATT & TAYLOR, LLP
Robert S. Brady (No. 2847)
Edmon L. Morton (No. 3856)
Robert F. Poppiti, Jr. (No. 5052)
The Brandywine Building
1000 West Street, 17th Floor
Wilmington, Delaware 19899-0391
Telephone: (302) 571-6600
Facsimile: (302) 571-1253

[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, LLC (8169), SLP Finance II, LLC (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.

TABLE OF CONTENTS

I. INTRODUCTION 1

II. PRELIMINARY STATEMENT 1

III. BACKGROUND AND OVERVIEW OF THE PLAN 4

A. Business of the Debtors 4

B. Certain Events Preceding the Chapter 11 Filings 5

C. Events During the Chapter 11 Cases 6

1. First Day Motions, DIP Facility and Appointment of the Official Committee 6

2. CCAA Proceedings 8

3. Business Operations During Chapter 11 Cases 8

4. Unfunded Pension Liabilities 9

5. Ontonagon, MI and Missoula, MT Mill Closures 10

6. Development of Plan and Filing of Plan and Disclosure Statement 13

7. Exit Financing 17

8. Management Incentive and Equity Plans 18

D. Plan Summary 19

E. Disclosure Statement and Plan Solicitation 22

IV. OBJECTIONS TO THE PLAN 24

V. MODIFICATIONS TO THE PLAN 26

A. Request for Authorization to Make Plan Modifications 26

B. Authority for Requested Relief 27

VI. THE PLAN SHOULD BE CONFIRMED BECAUSE IT COMPLIES WITH THE REQUIREMENTS OF SECTION 1129 OF THE BANKRUPTCY CODE 28

A. The Plan Meets Each Requirement for Confirmation Under Section 1129(a) of the Bankruptcy Code 28

1. The Plan Complies with All Applicable Provisions of the Bankruptcy Code – 11 U.S.C. § 1129(a)(1) 29

2. The Debtors Have Complied with the Applicable Provisions of the Bankruptcy Code – 11 U.S.C. § 1129(a)(2) 40

3. The Plan Has Been Proposed in Good Faith and Not by Any Means Forbidden by Law – 11 U.S.C. § 1129(a)(3) 41

4. The Plan Provides that Payments Made by the Debtors for Services or Costs and Expenses are Subject to Approval – 11 U.S.C. § 1129(a)(4) 43

5. The Debtors Have Disclosed All Necessary Information Regarding the Debtors' Direction and Officers and Insiders – 11 U.S.C. § 1129(a)(5) 45

6. The Plan Does Not Contain Any Rate Changes Subject to the Jurisdiction of Any Governmental Regulatory Commission – 11 U.S.C. § 1129(a)(6) 46

7. The Plan Is in the Best Interests of Creditors – 11 U.S.C. § 1129(a)(7) 47

8. The Plan Has Been Accepted by Each Impaired, Voting Class – 11 U.S.C. § 1129(a)(8) 48

9. The Plan Provides for Payment in Full of All Allowed Priority Claims – 11 U.S.C. § 1129(a)(9) 49

10. At Least One Impaired Class Has Accepted the Plan – 11 U.S.C. § 1129(a)(10) 52

11. The Plan Is Feasible – 11 U.S.C. § 1129(a)(11) 53

12. All Statutory Fees Have or Will Be Paid – 11 U.S.C. § 1129(a)(12) 56

13. The Plan Provides for the Continuation of the Retiree Benefit Obligations – 11 U.S.C. § 1129(a)(13) 56

14. Section 1129(a)(14)-(a)(16) of the Bankruptcy Code are Inapplicable 57

15. The Plan Is Not an Attempt to Avoid Tax Obligations – 11 U.S.C. § 1129(d) 57

B. The Plan Satisfies the "Cram Down" Requirement for Confirmation Under Section 1129(b) of the Bankruptcy Code 58

1. The Plan Does Note Discriminate Unfairly with Respect to Holders of Claims or Interests in the Rejecting Classes 60

2. The Plan is Fair and Equitable with Respect to Holders of Claims or Interests in the Rejecting Classes 62

VII. THE ASSUMPTION, ASSUMPTION AND ASSIGNMENT OR REJECTION OF EXECUTORY AND POST-PETITION CONTRACTS AND UNEXPIRED LEASES UNDER THE PLAN SHOULD BE APPROVED 63

VIII. THE ASSUMPTION OF INDEMNITY OBLIGATIONS UNDER THE PLAN SHOULD BE APPROVED 65

IX. THE DISCHARGE, INJUNCTION, RELEASE AND EXCULPATION PROVISIONS EMBODIED IN THE PLAN ARE PERMISSIBLE AND SHOULD BE APPROVED OVER THE REMAINING OBJECTIONS TO CERTAIN PLAN DISCHARGE AND RELEASE PROVISIONS FILED BY THE PREFERRED HOLDERS AND BARON & BUDD. 68

1. The Discharge and Injunction Provisions Set Forth in Sections 10.1 and 10.3 of the Plan Comply With the Bankruptcy Code 69

2. The Direct Releases by the Debtors in Section 10.2 of the Plan Satisfy the Zenith Factors. 70

3. The Third Party Releases Set Forth in Section 10.2.2 of the Plan are Consensual and Therefore Should be Approved 71

4. The Exculpation Provisions are Appropriate and Should be Approved 74

X. EACH OF THE UNRESOLVED OBJECTIONS ARE WITHOUT MERIT AND SHOULD BE OVERRULED. 77

A. The Equity Objectors' Objections Should be Denied. 78

1. The Plan Has Been Developed in Good Faith and Satisfies Section 1129(a)(3) of the Bankruptcy Code. 78

2. The Consensual Releases in the Plan Do Not Impact the Holders of Interests and Are Permissible Under Applicable Law. 80

3. The Preferred Holders' Allegation That The Plan Results In De Facto Substantive Consolidation Does Not Impact Equity And Should Not Affect Plan Confirmation. ... 82

4. The Prepetition Lenders of SSCC are a Valid, Non-Insider Impaired Class That Has Voted to Accept the Plan, Satisfying Section 1129(a)(10) of the Bankruptcy Code With Respect to SSCC. 84

B. The Ontonagon Objection, the MAEDC Response and Request and the Montana AG Joinder Do Not Present Confirmation Issues and Should be Denied. 87

1. There is No Need for Further Status Hearings 89

2. Ontonagon's Plan Objection Is Without Merit and Should be Denied 90

C. Baron & Budd's Objection Should be Overruled. 91

1. The Plan Does Not Unfairly Discriminate Against the Baron & Budd Claimants....... 91

2. The Plan Was Solicited in Good Faith.......... 91

3. Baron & Budd's Objections to the Plan's Release and Exculpation Provisions Must be Overruled.......... 92

XI. CONCLUSION.......... 93

Table of Authorities

Cases

Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship, 526 U.S. 434, 441 n.13 (1999) 47, 60
CoreStates Bank, N.A. v. United Chem Tech., Inc., 202 B.R. 33 (E.D. Pa. 1996) 54
Heartland Fed'n Sav. & Loan Ass'n v. Briscoe Enters. Ltd. II (In re Briscoe Enters., Ltd. II), 994 F.2d 1160 (5th Cir. 1993) 29, 54
In re 11,111, Inc., 117 B.R. 471, 478 (Bankr. D. Minn. 1990) 59, 60
In re 203 N. LaSalle St. Ltd. P'ship., 190 B.R. 567, 585 (Bankr. N.D. Ill. 1995), aff'd, 126 F.3d 955 (7th Cir. 1997), rev'd on other grounds, 526 U.S. 434 (1999) 59, 60
In re 433 South Beverly Drive, 117 B.R. 563 (Bankr. C.D. Cal. 1990) 86
In re Ace-Texas, Inc., 217 B.R. 719 (Bankr. D. Del. 1998) 86
In re Alta+Cast, LLC, 2004 Bankr. LEXIS 219 (Bankr. D. Del. Mar. 2, 2004) 29
In re Am. Family Enters., 256 B.R. 377 (D.N.J. 2000) 47
In re American Solar King Corp., 90 B.R. 808, 819 (Bankr. W.D. Tex. 1988) 85
In re Armstrong World Indus., Inc., 432 F.3d 507, 512 n.2 (3d Cir. 2005) 85
In re Bally Total Fitness of Greater New York, Inc., 2007 WL 2779438, at *8 (Bankr. S.D.N.Y. Sept. 17, 2007) 75
In re Buttonwood Partners, Ltd., 111 B.R. 57, 62 (Bankr. S.D.N.Y. 1990) 59, 61
In re Cellular Info. Sys., Inc., 171 B.R. 926, 945 (Bankr. S.D.N.Y. 1994) 42
In re Celotex Corp., 204 B.R. 586, 608-09 (Bankr. M.D. Fla. 1996) 28
In re Century Glove, 1993 WL 239489 (D. Del. Feb. 10, 1993) 42
In re Continental Airlines, 203 F.3d 203, 214 (3d Cir. 2000) 73
In re Coram Healthcare Corp., 315 B.R. 321 (Bankr. D. Del. 2004) .... passim
In re Decora Indus., Inc., 2002 WL 32332749, *8 (D. Del. May 20, 2002) 67
In re Drexel Burnham Lambert Group Inc., 138 B.R. 723 (Bankr. S.D.N.Y. 1992) 30, 41, 48
In re Elsinore Shore Assocs., 91 B.R. 238 (Bankr. D.N.J. 1988) 30, 40
In re Enron Corp., 326 B.R. 497, 501 (S.D.N.Y. 2005) 76
In re Fleming Companies, Inc., 2004 WL 385517 (Bankr. D. Del. Feb. 27, 2004) 67
In re Freymiller Trucking, Inc., 190 B.R. 913, 916 (Bankr. W.D. Okla. 1996) 59
In re Future Energy Corp., 83 B.R. 470 (Bankr. S.D. Ohio 1988) 61
In re G Survivor Corp., 171 B.R. 755, 757 (Bankr. S.D.N.Y. 1994) 64
In re Genesis Health Ventures, Inc., 266 B.R. 591 (Bankr. D. Del. 2001) 73, 74
In re Greate Bay Hotel & Casino, 251 B.R. 228 (Bankr. D.N.J. 200) 55
In re Greystone III Joint Venture, 995 F.2d 1274 (5th Cir. 1991) 30
In re Int'l Wireless Communications Holdings, Inc., 1999 Bankr. LEXIS 1853 (Bankr. D. Del. 1999) 59
In re Ion Media Networks, Inc., 2009 WL 4047995 (Bankr. S.D.N.Y. Nov. 24, 2009) 80
In re Jartran, Inc., 44 B.R. 331, 389-94 (Bankr. N.D. Ill. 1984) 47
In re Jersey City Med. Ctr., 817 F.2d 1055 (3d Cir. 1987) 30, 31
In re Johns-Manville Corp., 68 B.R. 618, 630 (Bankr. S.D.N.Y. 1986) 40
In re Johns-Manville Corp., 843 F.2d 636, 649 (2d Cir. 1988) 54
In re Kennedy, 158 B.R. 589, 599 (Bankr. D. N.J. 1993) 60, 61
In re Martin, 66 B.R. 921, 924 (Bankr. D. Mont. 1986) 52
In re Mayer Pollack Steel Corp., 174 B.R. 414 (Bankr. E.D. Pa. 1994) 54
In re Monroe Well Service, Inc., 80 B.R. 324, 334-35 (Bankr. E.D. Pa. 1987) 73
In re Moody Nat'l SHS Houston H, LLC, 2010 Bankr. LEXIS 919 (Bankr. S.D. Tex. 2010) at *21 86
In re Mottola, 1997 WL 860674, *3 (Bankr. E.D. Pa Dec. 3, 1997) 67
In re Mount Vernon Community Plaza Urban Redevelopment Corp. I, 79 B.R. 305, 306 (Bankr. S.D. Ohio 1987) 28
In re Network Access Solutions, Corp., 330 B.R. 67 (Bankr. D. Del. 2005) 67
In re Oneida Ltd., 351 B.R. 79, 94 n.22 (Bankr. S.D.N.Y. 2006) 76
In re Orion Pictures Corp., 4 F.3d 1095, 1099 (2d Cir. 1993) 64
In re Phoenix Bus. Park Ltd. P'ship., 257 B.R. 517 (Bankr. D. Ariz. 2001) 86
In re Placid Oil Co., 92 B.R. 183, 190 (Bankr. N.D. Tex. 1988) 28

In re PPI Enters. (U.S.), Inc., 228 B.R. 339 (Bankr. D. Del. 1998) 41
In re Prussia Assocs., 322 B.R. 572 (Bankr. E.D. Pa. 2005) 55
In re PWS Holding Corp., 228 F.3d 224, 248 (3d Cir. 2000) 40, 73, 75
In re River Village Assocs., 161 B.R. 127, 140 (Bankr. E.D. Pa. 1993), aff'd, 181 B.R. 795 (E.D. Pa. 1995) 40
In re Rivera Echevarria, 129 B.R. 11, 13 (Bankr. D.P.R. 1991) 61
In re Schatz, 2009 BNH 30 (Bankr. D.N.H. 2009) 86
In re Sherwood Square Assocs., 107 B.R. 872 (Bankr. D. Md. 1989) 45
In re Sound Radio, Inc., 103 B.R. 521 (D.N.J. 1989) 54
In re Source Enters., Inc., 2007 WL 2903954, at *13 (Bankr. S.D.N.Y. Oct. 1, 2007) 75
In re Spansion, Inc., --B.R.--, 2010 WL 1292837 (Bankr. D. Del. Apr. 1, 2010) 80
In re Spiegel, Inc., 2006 WL 2577825 (Bankr. S.D.N.Y. Aug. 16, 2006) 76
In re Texaco, 84 B.R. 893, 908 (Bankr. S.D.N.Y. 1988) 45
In re Texaco, Inc., 85 B.R. 934 (Bankr. S.D.N.Y. 1988) 44
In re T-H New Orleans Ltd. P'ship, 116 F.3d 790, 801 (5th Cir. 1997) 54, 55
In re The Leslie Fay Companies, Inc., 207 B.R. 764 (Bankr. S.D.N.Y. 1997) 47, 59
In re Toy & Sports Warehouse, 37 B.R. 141, 150 (Bankr. S.D.N.Y. 1984) 49, 55
In re Trans World Airlines, Inc., 185 B.R. 302, 322 (Bankr. E.D. Mo. 1995) 28
In re Vencor, Inc., 2001 WL 34135323, at *2 (Bankr. D. Del. 2001) 59
In re Vencor, Inc., 2003 WL 21026737, *3 (Bankr. D. Del. April 30, 2003) 67
In re W.E. Parks Lumber Co., 19 B.R. 285, 292 (Bankr. W.D. La. 1982) 45
In re Wabash Valley Power Ass'n, 72 F.3d 1305, 1321 (7th Cir. 1995) 85
In re West Coast Video Enter., Inc., 174 B.R. 906, 911 (Bankr. E.D. Pa. 1994) 72
In re Worldcom, Inc., 2003 WL 23861928, at *28 (Bankr. S.D.N.Y. Oct. 31, 2003) 76
In re Zenith Elecs. Corp., 241 B.R. 92, 107 (Bankr. D. Del. 1999) .... passim
John Hancock Mut. Life Ins. Co. v. Route 37 Bus. Park Assoc., 987 F.2d 154, 158 (3d Cir. 1993) 31, 59
Liberty Nat'l Enters. v. Ambanc La Mesa Ltd. P'ship (In re Ambanc La Mesa Ltd. P'ship), 115 F.3d 650 (9th Cir. 1997) 59
Lubrizol Enterprises, Inc. v. Richmond Metal Finishers (In re Richmond Metal Finishers, Inc.), 756 F.2d 1043, 1047 (4th Cir. 1985) 64
Mabey v. Southwestern Elec. Power Co. (In re Cajun Elec. Power Coop., Inc.), 150 F.3d 503, 519 (5th Cir. 1998) 59
Master Mortgage Investment Fund, Inc., 168 B.R. 930, 935-37 (Bankr. W.D. Mo. 1994) 73
NLRB v. Bildisco & Bildisco, 465 U.S. 513, 523 (1984) 64
Richmond Leasing Co. v. Capital Bank, N.A., 762 F.2d 1303 (5th Cir. 1986) 64
Sharon Steel Corp. v. Nat'l Fuel Gas Dist. Corp., 872 F.2d 36, 40 (3d Cir. 1989) 64
Stolrow v. Stolrow's, Inc. (In re Stolrow's, Inc.), 84 B.R. 167, 172 (B.A.P. 9th Cir. 1988) 43
Teamsters Nat'l Freight Indus. Negotiating Comm. v. U.S. Truck Co., Inc. (In re U.S. Truck Co.), 800 F.2d 581, 586 (6th Cir. 1986) 31

Statutes

11 U.S.C. § 1122(a) 30
11 U.S.C. § 1123(a) 32
11 U.S.C. § 1123(a)(1) 33
11 U.S.C. § 1123(a)(2) 33
11 U.S.C. § 1123(a)(3) 33
11 U.S.C. § 1123(a)(4) 34
11 U.S.C. § 1123(a)(5) 34
11 U.S.C. § 1123(a)(6) 36
11 U.S.C. § 1123(a)(7) 36
11 U.S.C. § 1124(1) 85
11 U.S.C. § 1126(c) 49

11 U.S.C. § 1126(f) 49
11 U.S.C. § 1127(a) 27
11 U.S.C. § 1129(a)(1) 30
11 U.S.C. § 1129(a)(10) 52
11 U.S.C. § 1129(a)(11) 54
11 U.S.C. § 1129(a)(12) 56
11 U.S.C. § 1129(a)(13) 56
11 U.S.C. § 1129(a)(2) 40
11 U.S.C. § 1129(a)(3) 41
11 U.S.C. § 1129(a)(4) 44
11 U.S.C. § 1129(a)(9) 50
11 U.S.C. § 1129(b)(1) 58
11 U.S.C. § 1129(b)(2)(C) 60
11 U.S.C. § 1141(a) 69
11 U.S.C. § 365(a) 64
28 U.S.C. § 157(b)(2)(L) 75

Rules

Fed. R. Bankr. P. 3019 28

Treatises

7 Collier on Bankruptcy, ¶ 1129.03[1] (15th ed. rev. 2007) 40

Other Authorities

H.R. Rep. No. 95-595, at 412 (1977) 41
S. Rep. No. 95-989, at 126 (1978) 40

I. INTRODUCTION

Smurfit-Stone Container Corporation and its subsidiaries (each a "Debtor" and collectively, the "Debtors" or the "Company"), hereby submit this memorandum of law (the "Memorandum") in support of an order confirming the Joint Plan of Reorganization for Smurfit-Stone Container Corporation and its Debtor Subsidiaries and Plan of Compromise and Arrangement for Smurfit-Stone Canada Inc. and Affiliated Canadian Debtors, dated January 29, 2010 [Docket No. 4500] (as such has been or may be further amended, modified, or supplemented form time to time, the "Plan") pursuant to section 1129 of title 11 of the United States Code (the "Bankruptcy Code").[2] This Memorandum addresses the confirmation standards under the Bankruptcy Code and each of the objections to the Plan that have been filed except for (i) the valuation objections by the equity factions (the "Valuation Objections"), and (ii) the Stone FinCo II Fund Objections (as defined below). The Debtors will file a brief in response to the Valuation Objections on April 16, 2010 (the "Valuation Brief"). The hearing on the Stone FinCo II Objections is scheduled for April 19, 2010, and the Debtors will file a responsive brief on April 15, 2010 addressing those objections (the "Stone FinC II Brief", and together with the Memorandum and the Valuation Brief, and all affidavits and other supporting materials filed therewith, the "Supporting Materials").

II. PRELIMINARY STATEMENT

The Plan satisfies all the requirements of the Bankruptcy Code and the Bankruptcy Rules and is confirmable. The Debtors have at all times acted in good faith in dispatching their duties as debtors in possession and in formulating the Plan. The Debtors embarked upon a painstaking and detailed process to build a long term business plan which forms the basis for the Debtors'

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan or related Disclosure Statement [Docket No. 4735] (the "Disclosure Statement").

financial projections and ultimately the Plan. Based on those projections, it is apparent that the Reorganized Debtors will be healthy and viable going concerns on a restructured basis. Those projections also make it clear that the value of the Debtors does not support payment in full of all of the unsecured claims against SSCE. In order to address this value shortfall, the Debtors constructed a plan of reorganization which implements a conversion of substantially all of the unsecured claims against SSCE into the equity of Reorganized SSCE. The result is that the Reorganized Debtors will equitize approximately $3 billion of debt and emerge with a strong balance sheet that will afford the Reorganized Debtors the financial flexibility to compete in their highly competitive industry and to maximize the potential return on the New SSCC Common Stock. Additionally, the Reorganized Debtors will have the ability to support the $1.2 billion of secured debt upon emergence.

The Plan is the culmination of extensive, and at times contentious, arm's length negotiations with the Official Unsecured Creditors Committee (the "Committee"), an ad hoc group of prepetition noteholders holding over $500 million of the Debtors' prepetition notes (the "Ad Hoc Noteholders"), the Prepetition Lenders, and other stakeholders including the United Steelworkers. Additionally, the Debtors sought and obtained feedback on the Plan from the CCAA Monitor, which acts as an independent officer of the court in Canada, and who ultimately endorsed the Plan and recommended that creditors of the Canadian Debtors vote to accept the Plan.[3]

Two equity factions (the "Preferred Holders" and the "Certain Holders" and collectively, the "Equity Objectors") have raised several confirmation issues, but they primarily boil down to their shared view that the value of the Debtors supports a recovery to the equity

[3] The Thirteenth Report of the Monitor, dated March 19, 2010 (the "Monitor's Report") was filed with the Bankruptcy Court on April 9, 2010 [Docket No. 6770].

holders of SSCC. Based on this view, the Equity Objectors conclude that the Plan violates the absolute priority rule because creditors who are receiving substantially all of the equity of Reorganized SSCE are receiving a greater than 100% recovery.

The Debtors strongly disagree with the Equity Objectors and will demonstrate in the Valuation Brief, the affidavits submitted in connection therewith and through evidence adduced at the Confirmation Hearing that there is no value to distribute to the Equity Objectors and therefore the Plan satisfies the absolute priority rule and all other provisions of the Bankruptcy Code and should be confirmed.

As will be more fully set forth in the Valuation Brief, the affidavits filed in connection therewith and the evidence introduced at the Confirmation Hearing, the Debtors' projections, which were prepared in good faith after an extensive and thorough process, encompass the fully informed and sound business judgment of the Debtors. These projections are reliable and are the Debtors' best estimate of the future performance of the Reorganized Debtors. The valuation performed by Lazard based on those projections simply does not support a view that there is any distributable value available to the Equity Objectors.

Although the Equity Objectors would have the Bankruptcy Court conclude that the Plan is materially flawed, the fact is that the Plan is the result of a good faith restructuring process which the Bankruptcy Code is designed to achieve. The Plan provides a full recovery to all Prepetition Lenders and a significant distribution to holders of General Unsecured Claims of SSCE. The Plan provides for the assumption of the Debtors' collective bargaining agreements and pension plans and therefore preserves thousands of jobs and billions of dollars of pension benefits. The Debtors will continue to be a significant participant in their highly competitive industry, thus providing a continued source of business or product for suppliers and customers.

Accomplishing these goals is a successful illustration of the very purpose of the Bankruptcy Code. And the overwhelming number of creditors agree, as illustrated by the practically unanimous acceptance of the Plan at the Voting Classes (as defined below).

Despite this overwhelming support, in addition to the Equity Objectors, approximately thirty other parties, including two holders of approximately 60% of the 7.375% Notes Due 2014 (the "Stone FinCo II Notes"), Aurelius Capital Management, LP and Columbus Hill Capital, L.P. (the "Stone FinCo II Fund Managers") and Manufacturers and Traders Trust Company, the successor in interest to BNY Midwest Trust as the indenture trustee for the Stone FinCo II Notes ("M&T", and together with the Stone FinCo II Fund Mangers and the other objecting parties, the "Objectors"), have objected to the Plan (the "Objections"). The Debtors have come to resolution with the vast majority of the Objectors, with any remaining Objections to be addressed in this Memorandum and on the record of the Confirmation Hearing. As fully addressed herein, in the other Supporting Materials and to be addressed on the record at the Confirmation Hearing, the Plan satisfies all of the confirmation requirements set forth in the Bankruptcy Code and Bankruptcy Rules, is in the best interests of the Debtors, their estates and creditors, clearly achieves the goals of chapter 11, and should be confirmed.

III. BACKGROUND AND OVERVIEW OF THE PLAN

A. Business of the Debtors

Based in Creve Coeur, Missouri, and Chicago, Illinois, the Company is one of the leading integrated manufacturers of paperboard and paper-based packaging in North America and one of the world's largest paper recyclers. Hunt Aff., ¶ 5. The Company sells a broad range of paper-based packaging products, including containerboard, corrugated containers, kraft paper and point of purchase displays, to a broad range of manufacturers of industrial and consumer products. Id. The Company also has a complete line of graphics capabilities for packaging.

As of the Petition Date, the Company held approximately 18% of the North American containerboard market capacity. Id. As of the Petition Date, the Company operated 159 manufacturing facilities located primarily in the United States and Canada. Id. at ¶ 6. The Company's operations spanned all phases of the container industry including as of the Petition Date, and included: 14 paper mills which produce containerboard; 117 corrugated container facilities which convert containerboard into corrugated containers that are sold to a wide array of customers, principally in the food and beverage consumer product industries; and 26 reclamation plants which process recyclable materials to be sold to the Company's mills or third-party customers. Id. In addition, the Company operated one wood products plant and one lamination plant. Id. The Company also owned approximately one million acres of timberland in Canada and operates wood harvesting facilities in the United States. Id.

B. Certain Events Preceding the Chapter 11 Filings

The Company's financial performance depends primarily upon the market demand for its products and the prices that it receives for such products. Hunt Aff., ¶ 27. The downturn in the global economy in 2007 and 2008 resulted in an unprecedented decline in demand for the Company's products, leading to increased inventory levels and downward pressure on the Company's operating income. Id. At the same time, substantial price competition and volatility in the pulp and paper industry resulted in decreased prices for the Company's products which, coupled with the Company's highly leveraged financial position and the recent volatility in energy prices and the cost of raw materials, adversely impacted the Company's financial performance. Id. In addition, dramatic changes in the capital markets adversely impacted the Company's prospects for refinancing its revolving credit and securitization facilities. Id. Toward the end of 2008, the Debtors' advisors initially contacted approximately twenty-five (25) potential lenders regarding possible out-of-court financing. Id. It soon became apparent that the

Debtors would not be able to secure out-of-court financing in the then current lending market in the time period available to the Debtors, particularly in light of their liquidity position and their significant leverage. Id. Because of these factors, the Debtors found it necessary to commence their Chapter 11 Cases. Id.

C. Events During the Chapter 11 Cases

The Debtors' primary focus in filing their Chapter 11 Cases was to maintain and, where possible, grow their businesses, while fixing their capital structure in order to maximize value in the reorganized company. Hunt Aff., ¶ 29. These goals, the Debtors' believed, would allow them to forge, in good faith, a consensual plan intended to maximize recoveries for the various creditor constituencies while creating a fiscally-healthy company with viable business prospects upon emergence. Id. The recent Plan voting results, in the United States and Canada, as well as the overall record in these cases, speak for themselves regarding the Debtors' success in formulating and propounding a Plan that achieves these goals. The Plan contains terms intended to maximize recovery for *all* creditors in these cases. Moreover, outstanding leadership from management has led to excellent business performance while navigating the chapter 11 crucible, and has been a major element in the ability of the Debtors to formulate this Plan — a Plan that maximizes the Debtors' total enterprise value and satisfies all the requirements for confirmation.

1. First Day Motions, DIP Facility and Appointment of the Official Committee

On the Petition Date, the Debtors filed certain "first day" motions seeking immediate relief aimed at stabilizing their businesses in the immediate aftermath of the filing, including a motion to obtain debtor-in-possession financing (the "DIP Facility").[4] Hunt Aff., ¶¶ 30-32. The Debtors required this additional working capital financing through the DIP Facility in order to preserve and maintain their business and to replace existing securitization facilities in order to prevent the facilities from automatically "unwinding" as a result of the Debtors' bankruptcy filings. Id. at ¶ 32. All of the Debtors' first-day motions were granted by the Bankruptcy Court in substantially the manner requested by the Debtors on an interim or final basis. Id.

On February 5, 2009, the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed the Committee. The Committee is comprised of the following parties: (i) Wilmington Trust Company, as Successor Indenture Trustee; (ii) United Steelworkers; (iii) Pension Benefit Guaranty Corporation; (iv) UMB Bank, N.A.; (v) Aegon USA Investment Management; (vi) Corn Products International; and (vii) Voith Paper Fabrics US Sales, Inc. Hunt Aff., ¶ 33. On or about April 27, 2009, Wilmington Trust Company determined that it had to resign as indenture trustee for the 7.375% Senior Notes due July 15, 2004 and, upon its resignation, M&T was appointed as successor indenture trustee for the 7.375% Notes effective May 7, 2009. Id. M&T was thereafter appointed as an *ex officio* member of the Committee. Id. The Committee has played a major role in these cases from its inception, particularly in the formulation and negotiation of the drafts and versions of the plan of reorganization that ultimately became the Plan. Id.

---

[4] The "first day" motions sought authority to, among other things, (i) prohibit utility companies from discontinuing, altering, or refusing service, (ii) make tax payments to federal, state and local taxing authorities on an uninterrupted basis, (iii) pay certain pre-petition claims of shippers, warehousemen and other lien claimants; (iv) make payments to certain pre-petition creditors that are critical to the Debtors' uninterrupted operations; (v) continue pre-petition insurance programs and pay all premium installments outstanding in connection therewith; (vi) honor prepetition obligations to certain customers and brokers and continue customer programs; (vii) pay pre-petition wages and other benefits to their employees; (viii) continue using their existing cash management system, bank accounts and business forms; (ix) for authority to continue using cash collateral; and (x) extend time to file schedules of assets and liabilities.

2. CCAA Proceedings

On the Petition Date, certain of the Canadian Debtors brought a motion seeking the CCAA Initial Order, which provided that the Canadian Debtors would remain in possession and control of their current and future property and grants the CCAA Stay. Hunt Aff., ¶ 34. The CCAA Stay precludes any proceeding or enforcement process in any court or tribunal from being commenced or continued in respect of the Canadian Debtors or the CCAA Monitor (as defined below) or affecting the business or property, and stays and suspends any such proceedings currently under way. Id. The Canadian Bankruptcy Court also appointed Deloitte and Touche Inc. to act as monitor for the Canadian Debtors (the "CCAA Monitor"). Id. The CCAA Monitor is an officer of the Canadian Bankruptcy Court charged with monitoring the Canadian Debtors' property and the conduct of their business and has been instrumental in developing and negotiating the Plan that has been unanimously accepted in Canada. Id. On March 19, the CCAA Monitor posted its Monitor's Report, instructing Canadian creditors on the Plan's essential fairness, and recommending that such creditors to vote to accept the Plan in Canada. Among other things, as discussed below, all of the Voting Classes in Canada voted to accept the Plan by a wide margin, providing more evidence of the Debtors' good-faith approach to developing the Canadian Plan and devising the Canadian Asset Sale.

3. Business Operations During Chapter 11 Cases

Because of the size and complexity of the Debtors' cases, the Debtors spent the first several months of these cases making sure that their businesses did not suffer irreparable harm due to the filings in the United States and Canada. Among the myriad tasks handled by the Company, were (i) developing procedures for handling section 503(b)(9) claims; (ii) reconciliation of thousands of claims;[5] (iii) assuming and rejecting thousands of executory contracts and unexpired leases;[6] (iv) selling various properties in the United States and Canada, including 962,204 acres of timberlands in Quèbec, Canada; and (v) undertaking other significant operational and business restructuring initiatives, including determining how to address significant pension underfunding and certain mill closures, which are described in more detail below. Hunt Aff., ¶¶ 35-39. The Debtors believe that all of these business and operational restructuring initiatives were undertaken in good faith, and in their business judgment and have helped maximize value, as manifested in the Plan, for their creditors in these cases.

4. Unfunded Pension Liabilities

One of the central issues the Debtors faced in formulating a restructuring plan is their significant underfunded pension plan liabilities in the United States and Canada. Hunt Aff., ¶ 40. As of December 31, 2009, the unfunded liability for the Debtors' U.S. defined benefit pension plans was approximately $866.1 million, and the unfunded liability for the Debtors' Canadian defined benefit pension plans was approximately CAN$ 161.4 million, all on an accounting basis. Id. The Debtors' senior management engaged in intensive internal discussions, including with the board of directors, as well as with their advisors and the Committee and the Prepetition Lenders regarding the various options for addressing the pension plans. Id.

After thoroughly reviewing the various alternatives and fully vetting them with their advisors, the Debtors determined that the assumption of the pension plans and the related liabilities as part of the plan of reorganization would be in the best interest of the Debtors' estates. Hunt Aff., ¶ 41. Although the assumption of the pension plans will result in a

[5] As of April 13, 2010, the Debtors had filed 25 responses to claims (including omnibus claims objections, 503(b)(9) responses, and notices of satisfaction) addressing over 4,800 claims.
[6] The Debtors have filed 22 omnibus motions to reject executory contracts and unexpired leases (the "Omnibus Rejection Motions"), rejecting over 400 contracts and leases in the process and saving significant estate resources in the process.

significant obligation for the Reorganized Debtors, it will also benefit the Debtors' estates by, among other things, enhancing employee morale and helping the Debtors maintain their current positive relationship with their labor unions. Id. Furthermore, even if termination of the pension plans were possible under applicable law given the facts and circumstances of these cases, any such attempted termination undoubtedly would involve costly and lengthy litigation, would implicate the Debtors' collective bargaining agreements and would result in significant claims by the PBGC against the Debtors' estates (if such termination were achieved). Id. Among other things, embarking upon such litigation would create uncertainty regarding the timing and ultimate ability of the Debtors to successfully emerge from bankruptcy. Id. After carefully balancing these factors, the Debtors determined, along with the support of their key creditor constituencies and other stakeholders, to assume the pension plans. Id.

5. Ontonagon, MI and Missoula, MT Mill Closures

In December 2009, the Debtors announced they would be closing their medium mill in Ontonagon, Michigan (the "Ontonagon Mill") and their linerboard mill in Missoula, Montana (the "Missoula Mill", and together with the Ontonagon Mill, the "Mills"), effective as of the end of 2009. Hunt Aff., ¶ 42. The Ontonagon Mill was already temporarily shut down at the time of the announcement, and the Missoula Mill ceased production in early January. Id. In the weeks following the announcement of the Ontonagon Mill closure, the Bankruptcy Court received several hundred letters from employees, Ontonagon residents and government officials regarding the closure and expressing concern over the economic and environmental ramifications of the closure, and the possibilities for future use of the remaining land and structure. Id.

The Ontonagon Mill and Missoula Mill closures were ordinary course transactions which did not require Bankruptcy Court approval. Hunt Aff., ¶ 43. However, in response to the numerous letters received in response to the closings, on January 14, 2010, a status conference was held regarding the Ontonagon Mill closure. Id. At the status conference, the Debtors explained that during the course of the chapter 11 cases, the Debtors conducted a series of successive temporary mill shutdowns, including at the Ontonagon Mill. Id. As part of this overall strategy, the Ontonagon Mill was shut down for a significant portion of 2009. Id. The Ontonagon Mill and the Missoula Mill were two of the highest cost mills in the Debtors' system. The Debtors, after exercising their business judgment, determined that it was in the best interests of the Debtors' estates that the Ontonagon Mill and the Missoula Mill be permanently closed because of the significant positive impact of such closures on future earnings, which were incorporated into the Debtors' projections set forth in the Disclosure Statement. Id. The Committee concurred that the closures were an appropriate exercise of the Debtors' business judgment. Id. The Debtors continued to consider and explore alternative transactions with respect to the Ontonagon Mill and the Missoula Mill throughout the cases and plan to continue to explore such alternatives post confirmation of the Plan. Id. The Committee supports the Debtors' efforts to explore alternative transactions. The Debtors do not believe that the sale of either facility is critical to the Plan. Id.

The Debtors have worked closely with the Michigan and Montana environmental regulatory agencies since officially announcing the closures of the Mills. Hunt Aff., ¶ 44. The Debtors have developed plans to ensure that all measures were taken so that no adverse environmental consequences result from the closures, and are in the process of completing all necessary activities in that regard. Id. In addition to discussions with the environmental regulators the Debtors have had conversations with various federal, state and local elected officials in both Michigan and Montana to ensure that full information was provided regarding the closures. Id. The Debtors also conducted negotiations with the United Steelworkers Union regarding closures, ultimately reaching an agreement regarding severance and other benefits at both facilities. Id.

Despite these efforts, prior to the hearing on the adequacy of the Disclosure Statement, the Debtors received disclosure statement objections from certain parties in Ontonagon and Missoula, and at the Disclosure Statement hearing, the Debtors heard from, among others attorneys for Missoula, MT and the Ontonagon County Prosecuting Attorney ("Ontonagon"). At the Disclosure Statement hearing, the Court provided for a special status hearing directly following the hearing, in which counsel for Missoula, MT and Ontonagon were allowed to further address their concerns about the post-closure use and status of the Ontonagon Mill and Missoula Mill. Hunt Aff., ¶ 45. As a result of that status hearing, the Debtors agreed to reasonably cooperate with any potential interested parties, and the Bankruptcy Court endorsed such cooperation while providing that the Court was not ordering the Debtors to undertake a sale process to be consummated prior to confirmation of the Plan, and that the consideration or pursuit of any potential transactions with respect to the closed mills should not interfere with the development and confirmation of the Debtors' Plan. Id. The Debtors have complied with this instruction in good faith, and have spoken with many parties and provided information where appropriate. Hunt Aff., ¶ 46.

The Debtors have cooperated with MAEDC and Ontonagon since the status hearing by providing them with information regarding the property and general information regarding the process. Hunt Aff. ¶ 46. SSCE has entered into confidentiality agreements with respect to these facilities with a number of potentially interested parties. Id. The identity of these parties and other facts regarding their interest in the properties remain the subject of those confidentiality agreements, and the Debtors have not shared such information with MAEDC or Ontonagon in order to remain compliant with such agreements. Id. The Debtors retain a sincere interest in completing the sale of these properties for alternative uses, but have been constrained by the lack of internal resources to devote to this process. Id. The employees of the Debtors normally responsible for transactions such as this have been heavily engaged in the processes relating to the potential emergence from Chapter 11, including updating the projections, responding to voluminous discovery requests, claims reconciliation, executory contract and unexpired lease assumption and rejection, related accounting and financial support, and numerous other bankruptcy-related matters. Id.

Now, in anticipation of the Confirmation Hearing, the Debtors have received numerous letters and other correspondence on the Plan, and a formal Objection from Ontonagon, stating, among other things, that the Plan has not been proposed in good faith because it fails to propose a sale of the Ontonagon Mill, and a response from the MAEDC and joinder by the Montana AG (each as defined below), requesting additional status hearings on the Missoula Mill, starting with one at the Confirmation Hearing. As discussed in Section X of this Memorandum, the Debtors disagree that the mill closures are at all tied to the confirmation of the Plan, and do not believe that another status hearing on the closures is appropriate particularly in light of the discussion provided in the Hunt Affidavit regarding the Debtors' efforts since the status hearing regarding the Mills on January 29, 2010. Moreover, Ontonagon's Objection are simply miscast complaints about the Debtors' failure thus far to sell, or provide for a formal sale process for, the Ontonagon Mill, and should be dismissed accordingly.

6. Development of Plan and Filing of Plan and Disclosure Statement

Since filing for chapter 11 protection, the Debtors have laid the foundation for, and worked diligently and consistently to formulate, an equitable and confirmable plan of reorganization that will maximize the value of the Debtors' estates for the benefit of all economic stakeholders. Hunt Aff., ¶ 54. The Debtors' objective throughout these cases has been to seek input from and to work with their key creditor groups in order to reach consensus as to the terms of a plan of reorganization that could be fully supported by all key creditor constituencies and economic stakeholders. Id. The Plan, as filed and as may be amended or modified, is the culmination of vigorous, extensive and arm's length negotiations with the Committee and the Ad Hoc Noteholders and other key creditor constituencies. Id.

In the third quarter of last year, the Debtors and The Levin Group, L.P. finalized a detailed business plan for the Debtors going forward that ultimately formed the basis of the Plan. Hunt Aff., ¶ 55. The Debtors shared the business plan with the Committee and the Prepetition Lenders and began negotiating the terms of a plan of reorganization for all of the Debtors, including the Canadian Debtors. Id.

The Debtors' long-term business plan demonstrated that the Debtors were viable on a restructured basis as a going concern, but that their operations could not support their current debt burden. Hunt Aff., ¶ 56. After extensive discussions with their advisors, consideration of all relevant facts and circumstances including our long term business plan and discussions and negotiations with the Committee and other key creditor constituencies and stakeholders, the Debtors determined that a stand alone plan of reorganization which provided for the conversion of substantially all of the unsecured debt of SSCE into the equity of the reorganized Debtors was in the best interests of the Debtors' estates. Id.

Having conducted an extensive, ground-up business plan development process, the Debtors' and their advisors drafted a plan of reorganization incorporating their general goal of payment of their secured debt and equitization of their unsecured debt at SSCE. Hunt Aff., ¶ 57.

In addition, in order to address the various issues in Canada, the Debtors incorporated a "plan within a plan" in Articles IV and V of the Plan, which articles address the Canadian Proceedings and the Canadian Asset Sale. Id. The Canadian Plan primarily affects the Debtors' restructuring with respect to the Canadian Debtors through the sale of substantially all of the Canadian assets to a new holding company that will be an wholly-owned subsidiary of the reorganized Company. Id. As with the other Plan provisions, the Debtors heavily negotiated, at arm's length and in good faith, the Canadian Asset Sale with the Committee and various other key creditor constituencies and stakeholders. Id. In fact, with respect to the Canadian Plan and the Canadian Asset Sale, the CCAA Monitor filed an independent report reviewing the Plan, dated March 19, 2010 (the "Monitor's Report"), and indicated its support for the Plan, including the Canadian Asset Sale. The Monitor's Report is further evidence of the Debtors' successful attempt to develop and negotiate a good faith resolution of the Canadian issues and development of the Canadian Asset Sale that was overwhelmingly supported by their creditors in Canada.

In addition to developing their internal restructuring plan, the Debtors also had discussions with potentially interested investor groups (the "Potential Investors"). Hunt Aff., ¶ 59. The Debtors entered into confidentiality arrangements with the Potential Investors. Two of the Potential Investors received preliminary due diligence materials and terminated their discussions with the Debtors without providing any type of formal proposal. Id.

The Debtors' key management had several in-depth meetings with the third Potential Investor and provided them with voluminous due diligence materials, including satisfying several follow up diligence requests. Hunt Aff. ¶ 60. After several detailed discussions and management presentations, these discussions were terminated around December 2009 by the Potential Investor without any formal offer having been received by the Debtors. Id. This

Potential Investor indicated that despite its significant analysis of alternatives and transactional structures, it could not justify a value for the Debtors that would have provided a par recovery for the unsecured creditors of the Debtors. Id. However, the Debtors have continued to remain open to third-party discussions and/or proposals throughout the duration of these cases. Id.

Although such potential transactions were explored, the Debtors determined not to pursue a formal marketing process of their assets because of the costs, the disruption to their businesses, the potential impact on their vendors and customers, and the competitive nature of their industry as well as the very limited number of potential investors who would have the platform and ability to execute a sale transaction with the Debtors. Hunt Aff., ¶ 58. This approach was carefully vetted with, and approved by, the Committee and other key constituencies. Id.

In addition to diligently pursuing the indications of interest referred to above, in order to make clear that the Debtors would consider any bona fide offer which included cash in an amount sufficient to pay all the claims in full with interest (as applicable) of the claims against the Debtors, the Debtors included language in the original disclosure statement making clear that we had the ability to modify the plan of reorganization to pursue any such offer. Hunt Aff., ¶ 61. The Equity Holders objected to such language and ultimately when the Disclosure Statement hearing occurred and no such bona fide offers were made, the language was removed. Id.

The result of this extensive and thorough process is the Plan. Hunt Aff., ¶ 62. On December 1, 2009, the Debtors filed the Joint Plan of Reorganization for Smurfit-Stone Container Corporation and its Debtor Subsidiaries and Plan of Compromise and Arrangement for Smurfit-Stone Container Canada Inc. and Affiliated Canadian Debtors. Id. Also, on December 1, 2009, the Debtors filed their Disclosure Statement for the Joint Plan of Reorganization from Smurfit-Stone Container Corporation and its Debtor Subsidiaries. Id. The Debtors filed revised versions of the Plan and Disclosure Statement on December 22, 2009, January 29, 2010 and February 4, 2010. Id. The Plan is a joint plan for all of the Debtors, however, as noted above and evidenced in the Technical Plan Modifications filed concurrently herewith, the Debtors have determined not to pursue confirmation of a chapter 11 plan for Stone FinCo II. Id.

7. Exit Financing

A key element of the restructuring contemplated by the Plan is the availability of exit financing that provides sufficient funding for the Debtors to meet their cash obligations under the Plan and for the Reorganized Debtors to have sufficient working capital for their business operations and general corporate purposes. Hunt Aff., ¶ 63. After conducting a thorough market process with Lazard to identify financial institutions to lead the exit financing facility, the Debtors selected JPMorgan Chase Bank, N.A., J.P. Morgan Securities Inc., Deutsche Bank Securities Inc. and Banc of America Securities LLC to structure, arrange and syndicate a US $1,200,000,000 exit term loan facility (the "Term Loan Facility"). Id. The Debtors also selected Deutsche Bank AG New York Branch, Deutsche Bank Securities Inc., JPMorgan Chase Bank, N.A., J.P. Morgan Securities Inc., General Electric Capital Corporation, GE Capital Markets, Inc., Bank of America, N.A., Banc of America Securities, LLC, Wells Fargo Capital Financing, LLC, The Bank of Nova Scotia and Regions Bank to arrange, syndicate and finance a US $ 650,000,000 ABL revolving facility (the "ABL Facility"). Id.

In January 2010, the Court granted the Debtors authority to enter into the Engagement and Arrangement Letter and related fee letter for the Term Loan Facility. Hunt Aff., ¶ 64. The Court approved the credit agreement for the Term Loan Facility in February 2010. Id. Also in February 2010, the Court granted the Debtors authority to enter into the Commitment Letter and related fee letters for the ABL Facility. Id. The Debtors are currently seeking approval of the credit agreement for the ABL Facility. Id.

8. Management Incentive and Equity Plans

Historically and in the ordinary course of its business, the Debtors have implemented various compensation and benefits programs that are designed to incentivize future performance, align management incentives with those of the Debtors' other stakeholders through equity-based compensation, provide employees with a market-based, competitive compensation opportunities and benefits packages, and reward its management employees for excellent service. Hunt Aff., ¶ 65. This compensation philosophy continued through these cases as the Debtors sought, and on April 22, 2009, the Bankruptcy Court approved, annual and long-term cash incentive programs in the form of the Debtors' 2009 Management Incentive Plan, 2010 Management Incentive Plan, and 2009 Long-Term Incentive Plan, each of which was designed to drive the Debtors' financial performance and, in the case of the 2009 Long-Term Incentive Plan, restructuring objectives, during the chapter 11 cases. Id.

Moreover, consistent with historical practices and continued efforts to provide management with market-based compensation opportunities after the Debtors' emergence from bankruptcy, the Debtors will provide initial grants of equity to certain key members of management and reserve equity for future grants under an Equity Incentive Plan, through a mix of options, restricted stock units, and/or other equity-based awards, subject to certain vesting criteria and other terms and conditions, to provide management with immediate incentives to continue to enhance the value of the Reorganized Debtors over the long-term as well as provide incentives for them to remain employed with the Reorganized Debtors. Hunt Aff., ¶ 66. These Equity Incentive Plans were developed by the Debtors along with their compensation consultant, Hewitt & Associates ("Hewitt"). Id. Hewitt assisted the Debtors by providing expert analysis of market compensation policies of similarly situated companies, and extensive market research and other advice on how to develop and implement fair and reasonable Equity Incentive Plans. Id. After formulating these Equity Incentive Plans, which will provide up to 8% on a fully diluted basis of the New SSCC Common Stock to certain Employees, officers and directors of the Reorganized Debtors, with Hewitt's and their other advisors' assistance, the Debtors' negotiated the Equity Incentive Plans through extensive, and at times contentious, discussions with the Committee prior to the filing of the Plan and through the filing of the Plan Supplement. Id. All of these negotiations were conducted in good faith and at arm's length, and the resulting Equity Incentive Plan is in keeping with market. Id.

D. Plan Summary

The Plan provides that (i) Holders of the Allowed Prepetition Lender Claims will receive a cash payment of 100% of the principal amount of such Allowed Prepetition Lender Claim, plus any accrued but unpaid interest thereon payable at the applicable non-default interest rate, (ii) CIT Group Claims and Union Bank Claims will receive a 100% recovery in the form of cash, (iii) Holders of General Unsecured Claims against SSCE will receive their Pro Rata Share of the New SSCC Common Stock Pool to be issued pursuant to the Plan,[7] and Holders of General Unsecured Claims against Cameo Container, Calpine Corrugated and SSPRI will receive a 100% recovery in the form of cash, (iv) Holders of General Unsecured Claims against SSCC and Holders of General Unsecured Claims against Non-Operating Debtors (United States) will be extinguished and receive no recovery, and (v) SSCC Interests will be extinguished. Hunt Aff., ¶ 67.

[7] A Holder of a General Unsecured Claim against SSCE may be eligible to receive cash on account of its claim by either (i) electing Convenience Class treatment or (ii) participating in the Cash-Out Auction.

With respect to Canada, the Plan seeks to implement the Canadian Asset Sale. Hunt Aff., ¶ 68. As detailed in Section 5.1.2 of the Plan, the Canadian Asset Sale is an offer by Canadian Newco, a newly formed wholly owned subsidiary of Reorganized SSCE, to the Canadian creditors to purchase substantially all of the assets of the Canadian Debtors. Id. As fully described in Section 5.1.2 of the Plan, in consideration for the purchase of these assets, Canadian Newco will, among other consideration, satisfy the prepetition secured claims of the Canadian Debtors and provide cash to fund the SSC Canada Distribution Pool and the Smurfit-MBI Distribution Pool. Id. Consummation of the Canadian Asset Sale would only be achievable if the classes of unsecured creditors at SSC Canada and Smurfit-MBI voted to accept the Plan. Id. As fully detailed in Section 5.1.6 of the Plan, absent such acceptance, a marketing process for the Canadian Assets would have been conducted. Id. Canadian Newco would have been able to fully participate in that process, however, the initial offer by Canadian Newco would not have included the cash sufficient to fund the SSC Canada Distribution Pool and the Smurfit-MBI Distribution Pool. Id. This marketing alternative afforded the Canadian creditors the opportunity to evaluate the merits of the Canadian Newco offer and determine whether they felt the offer was sufficient for the Canadian Assets. Id. If the Canadian creditors had not believed the offer was sufficient and voted to reject the Plan, the Canadian assets would have become subject to a marketing process. Id. In addition, the CCAA Monitor filed an independent report reviewing the Plan, date March 19, 2010 (the "Monitor's Report"), and indicated its support for the Plan, including the Canadian Asset Sale, and listed a number of reasons why it believed that the Canadian Sale was the preferred option for the Canadian creditors. Id.

Because of the unanimous vote to accept the Plan in the Canadian Proceedings,[8] the Plan provides that the Canadian Assets will be transferred to Canadian Newco and the Unsecured creditors of SSC Canada and Smurfit-MBI will receive either payment in full in cash (for Claims for less than $5,000) or their Pro Rata Share of the SSC Canada Distribution Pool and the Smurfit-MBI Distribution Pool, respectively. Hunt Aff., ¶ 69. Other Affected Creditors under the Plan will be treated as follows: (i) Holders of the Allowed Prepetition Canadian Lender Claims will receive a cash payment of 100% of the principal amount of such Allowed Prepetition Canadian Lender Claim, plus any accrued but unpaid interest thereon payable at the applicable non-default interest rate, (ii) Holders of General Unsecured Claims against B.C. Shippers Supplies and Francobec Company will receive a 100% recovery in the form of cash, (iii) Holders of General Unsecured Claims against MBI Limited, 3083527 Nova Scotia Company and Non-Operating Debtors (Canada) will be extinguished and receive no recovery, and (iv) SSC Canada Interests, Smurfit-MBI Interests and Francobec Company Interests will be extinguished. Id. The overwhelming acceptance of the Plan by the Canadian creditors demonstrates that the terms of the Canadian Asset Sale, including the amount of consideration, are fair and reasonable. Id.

On March 19, 2010, the Debtors filed with the Bankruptcy Court the Plan Supplement (as amended, modified or supplemented from time to time) [Docket No. 6044] (the "Plan Supplement") which consisted of the following exhibits to the Plan: (1) Amended and Restated By-Laws of Reorganized SSCC; (2) Amended and Restated Certificate of Incorporation of Reorganized SSCC; (3) Management Incentive Plans; (4) Directors and Officers and Creditor Representative of Reorganized SSCC; (5) Directors and Officers of Reorganized Debtors Other than Reorganized SSCC; (6) Asset Purchase Agreement (Canadian Asset Sale); (7) Canadian

[8] Except, as described below, in Class 18C, the General Unsecured Claims against Stone FinCo II. As noted above, the Debtors are no longer trying to confirm the Plan with respect to Stone FinCo II.

Newco Partnership Agreement; (8) Canadian Holdco Articles of Association; (9) Canadian Holdco Memorandum of Association; (10) List of Previously Assumed Unexpired Leases to be Assigned to Canadian Newco in Connection with the Canadian Asset Sale; (11) List of Executory Contracts and Unexpired Leases to be Assumed and Assigned to Canadian Newco in Connection with the Canadian Asset Sale; (12) Employee Benefit Plans; (13) Employment and Retirement Benefit Agreements; (14) Restructuring Transactions; and (15) Exit Facility Documentation.

E. Disclosure Statement and Plan Solicitation

On January 29, 2010, the Bankruptcy Court entered the Voting Procedures Order which, among other things, established March 29, 2010 at 4:00 p.m. (Eastern Time) as the deadline (i) by which all Ballots and Master Ballots must have been submitted and received by the Voting Agent (as defined below) (the "Voting Deadline"), and (ii) the deadline by which objections to the confirmation of the Plan must have been filed with the Bankruptcy Court (the "Plan Objection Deadline"). In addition, the Voting Procedures Order scheduled a hearing to consider Confirmation of the Plan to commence on April 14, 2010 at 10:00 a.m., prevailing Eastern Time (as subsequently modified to begin on April 15, 2010 at 10:00 a.m. prevailing Eastern Time, the "Confirmation Hearing").[9]

In accordance with the Voting Procedures Order, on or about February 12, 2010 in the United States and on or about February 16, 2010 in Canada, (the "Solicitation Commencement Date"), the Debtors commenced the solicitation of votes to accept or reject the Plan from holders of Claims in Classes 1C, 2C, 2D, 2E, 3C, 4C, 4D, 4E, 5C, 15B, 15C, 15D, 16B, 16C, 16D, 17B, 17C, 19B, 19C, 20B, 20C, 20D, 21B and 21C (the "Voting Classes") who held such Claims as of

[9] See Notice of Rescheduled Omnibus Hearing Date and Confirmation Hearing Date [Docket No. 5935].

February 5, 2010 (the "Record Date")[10]. Also, on or about the Solicitation Commencement Date, the Debtors caused Epiq Bankruptcy Solutions, LLC (the "Voting Agent") to transmit copies of: (i) the Disclosure Statement; (ii) the Plan and exhibits annexed thereto; (iii) the Voting Procedures Order, excluding exhibits annexed thereto; (iv) notice of the Confirmation Hearing (the "Confirmation Hearing Notice"); (v) for parties entitled to vote on the Plan, an appropriate Ballot and/or Master Ballot with a return envelope; (vi) notices of non-voting status (for parties not entitled to vote on the Plan); and (vii) certain other approved solicitation materials (collectively, the "Solicitation Packages"). See Affidavit of Service executed by Panagiota Manatakis of Epiq Bankruptcy Solutions, LLC, filed with the Bankruptcy Court on February 5, 2010 [Docket No. 4766] (the "Solicitation Affidavit of Service"). At the same time the Debtors, through the Voting Agent, also served the Confirmation Hearing Notice on all other parties-in-interest in these Chapter 11 Cases not entitled to receive a Solicitation Package. On March 3, 2010, the Debtors published a version of the Confirmation Hearing Notice in the national editions of The Wall Street Journal and USA Today. See Solicitation Affidavit of Service; Affidavits of Service executed by Erin Ostenson, Advertising Clerk of The Wall Street Journal, and Antoinette Chase, principal clerk of USA Today [Docket Nos. 5755 & 5619] (collectively, the "Publication AOS").

The Debtors did not solicit votes on the Plan from Holders of Unclassified Claims or Holders of Claims or Interests classified in Classes 1A, 1B, 2A, 2B, 2G, 3A, 3B, 3E, 4A, 4B, 5A, 5B, 5E, 6A through 14A, 6B through 14B, 6E through 14 E, 15A, 16A, 17A, 17F, 19A, 19E, 20A, 21A, 21F, 22A through 25A, 22B through 25B, and 22E through 25E (the "Deemed Rejecting Classes", and with any other Class entitled to vote that votes to reject the Plan, the

[10] As discussed, Stone FinCo II has been removed from the Plan, and therefore the Stone FinCo II Classes are not referenced in the discussion concerning voting procedures, voting results and other confirmation matters addressed below.

"Rejecting Classes"), each of which was deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. The Debtors did not solicit votes on the Plan from Holders of Claims or Interests classified in Classes 1D, 1F, 1G, 4G, 6C through 14C, 15F, 15G, 16F, 17D, 20F, 21D, and 22C through 25C, each of which was deemed to have rejected the Plan pursuant to section 1129(g) of the Bankruptcy Code.

Under the Voting Procedures Order, the creditors entitled to vote on the Plan were provided a full and fair opportunity to review, consider and vote on the Plan. In fact, Holders of Claims in the Voting Classes were given approximately 45 days after the Solicitation Commencement Date to submit votes to the Voting Agent. Moreover, Holders of Claims in Voting Classes against the Canadian Debtors were given until the CCAA Creditors' Meeting, held on April 6, 2010, to vote on the Plan.

Every Voting Class populated by Claims entitled to vote accepted the Plan.[11] See Declaration of Stephenie Kjontvedt of Epiq with Respect to the Tabulation of Votes on the Joint Plan of Reorganization for Smurfit-Stone Container Corporation and its Debtor Subsidiaries and Plan of Compromise and Arrangement for Smurfit-Stone Canada Inc. and Affiliated Canadian Debtors (the "Epiq Voting Declaration") filed contemporaneously herewith, Exhibit A; Fifteenth Report of the Monitor Dated April 13, 2010 (attached as Exhibit D to the Epiq Voting Declaration, the "Monitor Voting Report" and, together with the Epiq Voting Declaration, the "Voting Declarations"), ¶ 27.

IV. OBJECTIONS TO THE PLAN

Thirty objections to confirmation of the Plan were filed by March 29, 2010, and one limited objection was filed subsequently in accordance with an extension granted by the Debtors. The Objections were filed by (1) Pee Dee Electric Cooperative; (2) Texas Comptroller of Public

[11] Other than Class 4C and 4D

Accounts (the "Texas Comptroller"); (3) the Internal Revenue Service ("IRS"); (4) Richard Carroll; (5) County of Ontonagon, Township of Ontonagon and Village of Ontonagon ("Ontonagon"); (6) Gexa Energy, LP; (7) California Self-Insurers Security Fund; (8) The Dow Chemical Company and Rohm and Haas Canada LP ("Dow"); (9) Caterpillar Financial Services Corporation; (10) Union Bank of California; (11) Certain Claimants Represented by Baron & Budd, P.C. ("Baron & Budd"); (12) the State of Oregon; (13) the United States Department of Justice ("DOJ"); (14) Fort Worth ISD, Arlington ISD and Eagle Mountain-Saginaw ISD; (15) Andritz Inc.; (16) Montana Department of Revenue ("Montana DOR"); (17) Missoula Area Economic Development Corporation ("MEADC"); (18) Attorney General of the State of Montana (the "Montana AG"); (19) the Acting United States Trustee (the "U.S. Trustee"); (20) M&T; (21) IFCO Systems, N.A., Inc.; (22) Catalyst Paper Inc.; (23) the Stone FinCo II Fund Managers;[12] (24) Bond Safeguard Insurance Co. and Lexon Insurance Co.; (25) The CIT Group/ Equipment Financing Inc.; (26) PPL EnergyPlus LLC; (27) Mark W Mayer, Larry C. Welsh and Brandi Young (the "ERISA Claimants"); (28) Local Texas Tax Authorities (Dallas County, El Paso County, Gregg County, Harris County, Smith County, Sulphur Springs, Sulphur Springs ISD and Tarrant County); (29) the People of the State of California; (30) Henry Fernandez, Jr.; and (31) U.S. Bank Trust National Association, as indenture trustee for certain utility system bonds. The Debtors also received numerous letters from holders of common stock objecting to the cancellation of the common stock pursuant to the Plan.[13]

[12] As discussed above, the Debtors will file a separate response to the Stone FinCo II Fund Managers' objection on or before Thursday, April 15, 2010.

[13] Sixty-six letters from holders of common stock were filed with the Court, and the Debtors received numerous letters that were not filed. The letters stated that the holders of common stock believed the Debtors are solvent and objected to the cancellation of common stock. These arguments will be addressed in the Valuation Brief.

In addition, pursuant to a separate briefing schedule agreed to among the Debtors and the Equity Objectors,[14] the Equity Objectors filed Plan objections not related to valuation on April 6, 2010 (the "Equity Objections") and filed Plan objections related to valuation on April 12, 2010 (the "Valuation Objections").[15]

The Objections and Equity Objections raise several issues regarding the Plan, including the treatment of specific claims, the payment of interest on tax claims, the provisions relating to set-off rights, the scope of the release and exculpation provisions in Article X of the Plan, the treatment of unliquidated claims; provisions relating to the assumption or rejection of executory contracts; and the Debtors' compliance with various provisions of section 1129(a) of the Bankruptcy Code. Certain of the Objections have been resolved by language proposed in the Confirmation Order, modifications to the Plan or other agreements between the parties. In fact, besides the Stone FinCo II Objectors and the Equity Objectors, the Debtors believe that only a couple of Objectors still have live Objections or other responses. The Debtors respectfully request that this Court overrule each of the unresolved objections for the reasons set forth below in Section X.

V. MODIFICATIONS TO THE PLAN

A. Request for Authorization to Make Plan Modifications

The Debtors hereby request authority to make certain modifications to the Plan. The Debtors are filing these modifications to the Joint Plan of Reorganization for Smurfit-Stone Container Corporation and its Debtor Subsidiaries and Plan of Compromise and Arrangement for Smurfit-Stone Canada Inc. and Affiliated Canadian Debtors, dated April 13, 2010 (the

---

[14] See Certification of Counsel Regarding Proposed Scheduling Order, filed March 19, 2010 [Docket No. 6025] and Scheduling Order entered March 19, 2010 [Docket No. 6043].
[15] As discussed above, the Equity Objections will be fully briefed in the Valuation Brief, to be filed on April [16], 2010.

"Modifications"), filed contemporaneously herewith. The Modifications do not materially or adversely affect or change the treatment of any Claim against or Interest in any Debtor.

The Modifications are all technical changes or clarifications that have been made by the Debtors in their continuing review of the Plan or in response to informal and formal objections or requests for clarification made by parties in interest or, in the case of Stone FinCo II, in respect to the voting results. The changes contained in the Modifications do not adversely affect or change the treatment of any Claim against or Interest in any Debtor. The Voting Classes are not adversely affected in any way, and no other Claims or Interests are impaired as a result of the Modifications.[16]

B. Authority for Requested Relief

Section 1127(a) of the Bankruptcy Code provides as follows:

> (a) The proponent of a plan may modify such plan at any time before confirmation, but may not modify such plan so that such plan as modified fails to meet the requirements of sections 1122 and 1123 of this title. After the proponent of a plan files a modification of such plan with the court, the plan as modified becomes the plan.

11 U.S.C. § 1127(a). Under this provision, a plan proponent may modify its plan prior to confirmation so long as the modified plan meets the requirements of sections 1122 and 1123 of the Bankruptcy Code. Bankruptcy Rule 3019 provides as follows:

> In a chapter 9 or chapter 11 case, after a plan has been accepted and before its confirmation, the proponent may file a modification of the plan. If the court finds after hearing on notice to the trustee, any committee appointed under the Code, and any other entity designated by the court that the proposed modification does not adversely change the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted in writing the modification, it shall be deemed accepted by all creditors and equity security holders who have previously accepted the plan.

[16] The changes in the Modifications with respect to Stone FinCo II were dictated by the votes of the creditors at Stone FinCo II to reject the Plan and do not adversely affect such creditors.

Fed. R. Bankr. P. 3019. The Modifications comply with these requirements.

Courts consistently have held that a proposed modification to a plan of reorganization under Bankruptcy Rule 3019 will be deemed accepted by all creditors and equity security holders who previously accepted the plan where the proposed modification does not cause a material adverse change in the treatment of the claim of any creditor or the interest of any equity security holder. See, e.g., In re Celotex Corp., 204 B.R. 586, 608-09 (Bankr. M.D. Fla. 1996); In re Trans World Airlines, Inc., 185 B.R. 302, 322 (Bankr. E.D. Mo. 1995); In re Placid Oil Co., 92 B.R. 183, 190 (Bankr. N.D. Tex. 1988); and In re Mount Vernon Community Plaza Urban Redevelopment Corp. I, 79 B.R. 305, 306 (Bankr. S.D. Ohio 1987).

Moreover, as contemplated by the Plan, the Plan Supplement, contains certain schedules and exhibits to the Plan, was filed in the Bankruptcy Court ten days prior to the voting deadline on March 19, 2010, providing adequate notice and opportunity to object to such Plan Supplement at the Confirmation Hearing. Similarly, the Modifications were filed on April 13, 2010, providing notice to creditors in advance of the Confirmation Hearing. Under these authorities, the Debtors are authorized to make the Modifications to the Plan, and the Modifications should be deemed accepted by the Holders of all Claims against the Debtors who previously accepted the Plan.

VI. THE PLAN SHOULD BE CONFIRMED BECAUSE IT COMPLIES WITH THE REQUIREMENTS OF SECTION 1129 OF THE BANKRUPTCY CODE

A. The Plan Meets Each Requirement for Confirmation Under Section 1129(a) of the Bankruptcy Code

Section 1129 of the Bankruptcy Code governs confirmation of a plan of reorganization and sets forth the requirements that must be satisfied in order for a plan to be confirmed. As the proponents of the Plan, the Debtors bear the burden of establishing that all elements necessary for confirmation of the Plan under section 1129(a) of the Bankruptcy Code have been met by a preponderance of the evidence. See Heartland Fed'n Sav. & Loan Ass'n v. Briscoe Enters. Ltd. II (In re Briscoe Enters., Ltd. II), 994 F.2d 1160, 1165 (5th Cir. 1993) (stating that the Bankruptcy Court must find that the Debtors have satisfied the provisions of section 1129 by a preponderance of the evidence); In re Alta+Cast, LLC, 2004 Bankr. LEXIS 219, *6 (Bankr. D. Del. Mar. 2, 2004) (same).

As addressed in detail below, the Plan satisfies all of the applicable requirements of Section 1129(a) of the Bankruptcy Code, other than section 1129(a)(8) with respect to the Rejecting Classes. Pursuant to section 1129(b)(1) of the Bankruptcy Code, the Plan may be confirmed notwithstanding the fact that the Rejecting Classes have not accepted the Plan so long as the Plan is fair and equitable with respect to each such Class and does not unfairly discriminate against each such Class.

As set forth herein and in the other Supporting Materials, the preponderance of the evidence demonstrates that the Plan and the Debtors have complied with the requirements of (i) section 1129(a) of the Bankruptcy Code with respect to all classes of Claims or Interests, other than section 1129(a)(8) with respect to the Rejecting Classes, and (ii) section 1129(b)(2)(B) and 1129(b)(2)(C) of the Bankruptcy Code are satisfied with respect to each of the Rejecting Classes. Accordingly, the Plan should be confirmed.

1. The Plan Complies with All Applicable Provisions of the Bankruptcy Code – 11 U.S.C. § 1129(a)(1)

Section 1129(a)(1) of the Bankruptcy Code provides that a court may confirm a plan of reorganization only if "[t]he plan complies with the applicable provisions of [the Bankruptcy

Code]." 11 U.S.C. § 1129(a)(1).[17] As set forth below, the Plan complies fully with the requirements of the Bankruptcy Code in terms of both the Plan's classification of Claims and its content.

a. The Classification of Claims and Interests in the Plan Satisfies the Classification Requirements of Section 1122 of the Bankruptcy Code

Section 1122 of the Bankruptcy Code governs the classification of claims and interests under a plan. Section 1122(a) of the Bankruptcy Code provides that the claims or interests within a given class must be "substantially similar." 11 U.S.C. § 1122(a). Section 1122(a), however, does not mandate that "substantially similar" claims be classified together. See id.; see also In re Jersey City Med. Ctr., 817 F.2d 1055, 1061 (3d Cir. 1987) (agreeing that section 1122 permits the grouping of similar claims in different classes); In re Coram Healthcare Corp., 315 B.R. 321, 348 (Bankr. D. Del. 2004) ("Section 1122 . . . provides that claims that are not 'substantially similar' may not be placed in the same class; it does not expressly prohibit placing 'substantially similar' claims in separate classes"); In re Drexel Burnham Lambert Group Inc., 138 B.R. 723, 757 (Bankr. S.D.N.Y. 1992) ("Courts have found that the Bankruptcy Code only prohibits the identical classification of dissimilar claims. It does not require that similar classes be grouped together.").

Courts have generally permitted the separate classification of substantially similar claims so long as the claims were not classified to "gerrymander" an accepting impaired class. See In re Greystone III Joint Venture, 995 F.2d 1274, 1279 (5th Cir. 1991) ("Thou shalt not classify similar claims differently in order to gerrymander an affirmative vote on a reorganization plan.");

[17] The legislative history of section 1129(a)(1) explains that this provision encompasses the requirements of sections 1122 and 1123 governing classification of claims and contents of the plan, respectively. See H.R. Rep. No. 95-595, at 412 (1977); S. Rep. No. 95-989, at 126 (1978); see also In re Century Glove, Inc., 1993 WL 239489, at *6 (D. Del. Feb. 10, 1993) (Nos. 90-400, 90-401); In re Resorts Int'l, Inc., 145 B.R. 412, 446-47 (Bankr. D.N.J. 1990); In re Elsinore Shore Assocs., 91 B.R. 238, 256 (Bankr. D.N.J. 1988).

see also John Hancock Mut. Life Ins. Co. v. Route 37 Bus. Park Assoc., 987 F.2d 154, 158 (3d Cir. 1993). While gerrymandering claims in order to create an impaired assenting class is not permissible, section 1122 provides debtors with a great degree of flexibility in classifying claims and interests and courts are afforded broad discretion in approving a proponent's classification scheme and to properly consider the specific facts of each case before rendering a decision. See In re Jersey City Med. Ctr., 817 F.2d at 1060-61 ("Congress intended to afford bankruptcy judges broad discretion [under section 1122] to decide the propriety of plans in light of the facts of each case"); Teamsters Nat'l Freight Indus. Negotiating Comm. v. U.S. Truck Co., Inc. (In re U.S. Truck Co.), 800 F.2d 581, 586 (6th Cir. 1986) (noting the "broad discretion" of courts to determine proper classifications).

Article III of the Plan classifies up to thirteen (13) Classes of Claims against and Interests in the Debtors, which are described more fully in the Plan and Disclosure Statement. Pursuant to 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims and Priority Tax Claims are not classified and are separately treated. The classes, with respect to each applicable Debtor, are designated as follows: Priority Non-Tax Claims (Classes 1A through 25A); Other Secured Claims (Classes 1B through 25B); Prepetition Lender Claims (Classes 1C and 2C); Union Bank Claims (Class 4C); CIT Group Claims (Class 4D); Prepetition Canadian Lender Claims (Classes 15C through 17C, 20C, 21 C); General Unsecured Claims (Classes 1D, 2E, 3C, 4E, 5C through 14C, 15D through 17D, 19C, 20D, 21D, 22C through 25C); Convenience Claims (Class 2D); Intercompany Claims (Classes 1E, 2F, 3D, 4F, 5D through 14D, 15E through 17E, 19D, 20E, 21E, 22D through 25D); Stone FinCo II Intercompany Claims (Class 15F); SSCC Preferred Interests (Class 1F); SSCC Common Interests (Class 1G); and Interests (Classes 2G, 3E, 4G, 5E through 14E, 15G, 16F, 17F, 19E, 20F, 21F, 22E through 25E).

This classification scheme complies with section 1122(a) of the Bankruptcy Code because each Class contains only Claims or Interests that are substantially similar to each other. Furthermore, the classification scheme created by the Plan is based on the similar nature of the Claims or Interests contained in each Class and not upon an impermissible classification factor. Finally, similar Claims have not been placed into different Classes in order to affect the outcome of the vote on the Plan.

Because each Class consists of only similar Claims or Interests, the Court should approve the classification scheme set forth in the Plan as consistent with section 1122(a) of the Bankruptcy Code.

b. **The Plan Satisfies the Requirements of Section 1123(a) of the Bankruptcy Code**

The Plan also complies with Section 1123(a) of the Bankruptcy Code, which sets forth seven (7) requirements with which every chapter 11 plan must comply. 11 U.S.C. § 1123(a). As demonstrated below, the Plan fully complies with each requirement. First, the Plan designates Classes of Claims and Interests as required by section 1123(a)(1) of the Bankruptcy Code. (Plan, Art. III.) Second, the Plan specifies which Classes of Claims and Interests are not Impaired and sets forth the treatment for those Classes of Claims and Interests that are Impaired, as required by sections 1123(a)(2) and (3) of the Bankruptcy Code. Id. Indeed, the Plan specifies the treatment of all of the Classes designated under the Plan, regardless of whether such Classes are Impaired. Id. Third, the Plan provides for the same treatment for each Claim or Interest within a particular Class as required by section 1123(a)(4) of the Bankruptcy Code. Id. Fourth, the Plan provides for adequate means of implementation as required by section 1123(a)(5). (Plan, Art. VI.) Fifth, the Debtors will amend, as of the Effective Date, each of their charters to, among other things, comply with section 1123(a)(6) of the Bankruptcy Code. (Plan, § 6.2.1). Finally, the Plan contains only provisions that are consistent with the interests of creditors and equity security holders as required by section 1123(a)(7) of the Bankruptcy Code.

Designation of Classes of Claims and Interests — 11 U.S.C. § 1123(a)(1). Section 1123(a)(1) of the Bankruptcy Code requires a plan to designate classes of interests and claims, other than the types of claims specified in Bankruptcy Code sections 507(a)(1) (administrative expense claims), 507(a)(2) (claims arising in the "gap" period in an involuntary case),[18] and 507(a)(8) (priority tax claims). 11 U.S.C. § 1123(a)(1). Article III of the Plan designates Classes of Claims and Interests as required under section 1123(a)(1). Accordingly, Administrative Expense Claims and Priority Tax Claims are not classified in Article III.

Specification of Unimpaired Classes — 11 U.S.C. § 1123(a)(2). Section 1123(a)(2) of the Bankruptcy Code requires that a plan "specify any class of claims or interests that is not impaired under the plan." 11 U.S.C. § 1123(a)(2). In particular, Article III of the Plan provides that Claims and Interests in Classes 1A, 1B, 2A, 2B, 2G, 3A, 3B, 3E, 4A, 4B, 5A, 5B, 5E, 6A through 14A, 6B through 14B, 6E through 14E, 15A, 16A, 17A, 17F, 19A, 19E, 20A, 21A, 21F, 22A through 25A, 22B through 25B, and 22E through 25E are Unimpaired under the Plan; therefore, the Plan satisfies this Bankruptcy Code requirement.

Specification of Treatment of Impaired Classes — 11 U.S.C. § 1123(a)(3). Section 1123(a)(3) of the Bankruptcy Code requires that a plan "specify the treatment of any class of claims or interests that is impaired under the plan." 11 U.S.C. § 1123(a)(3). As provided in Article III of the Plan, Claims in Classes 1C, 1D, 1E, 1F, 1G, 2C, 2D, 2E, 2F, 3C, 3D, 4C, 4D, 4E, 4F, 4G, 5C, 5D, 6C through 14C, 6D through 14D, 15B, 15C, 15D, 15E, 15F, 15G, 16B, 16C, 16D, 16E, 16F 17B, 17C, 17D, 17E, 19B, 19C, 19D, 20B, 20C, 20D, 20E, 20F, 21B, 21C,

---

[18] The Debtors commenced voluntary chapter 11 cases; therefore, there are no "gap" period claims of the kind specified in section 507(a)(2) of the Bankruptcy Code.

21D, 21E, 22C through 25C and 22D through 25D are designated as Impaired under the Plan in that the legal, equitable, or contractual rights of holders of Claims in those Classes are altered in connection with the Plan. In accordance with section 1123(a)(3), Article III of the Plan specifies the treatment afforded to each Impaired Class of Claims and the Impaired Classes of Interests.

Same Treatment of Claims or Interests Within Each Class — 11 U.S.C. § 1123(a)(4). Section 1123(a)(4) of the Bankruptcy Code requires that the treatment of each Claim or Interest in each particular Class is the same as the treatment of all other Claims or Interests in such Class unless the holder of a particular Claim agrees to less favorable treatment. 11 U.S.C. § 1123(a)(4). The Plan complies with section 1123(a)(4) by ensuring that the treatment of each Claim or Interest in each particular Class is the same as the treatment of all other Claims or Interests in such Class.

Adequate Means for Implementation of Plan — 11 U.S.C. § 1123(a)(5). Section 1123(a)(5) of the Bankruptcy Code requires that a plan "provide adequate means for the plan's implementation," and gives several examples of what may constitute "adequate means." See 11 U.S.C. § 1123(a)(5).[19] In accordance with section 1123(a)(5) of the Bankruptcy Code, the Plan, including Article VI of the Plan, provides adequate means for its implementation, including,

---

[19] Section 1123(a)(5) requires a plan to provide for "adequate means" for the plan's implementation, "such as—

(A) retention by the debtor of all or any part of the property of the estate;

(B) transfer of all or any part of the property of the estate to one or more entities, whether organized before or after confirmation of such plan;

(C) merger or consolidation of the debtor with one or more persons;

(D) sale of all or any part of property of the estate … among those having an interest in such property of the estate;

(E) satisfaction or modification of any lien;

(F) cancellation or modification of any indenture or similar instrument;

(G) curing or waiving of any default;

(H) extension of a maturity date or change in an interest rate or other term of outstanding securities;

(I) amendment of the debtor's charter; or

(J) issuance of securities of the debtor, or of any entity referred to in subparagraph (B) or (C) of this paragraph, for cash, for property, for existing securities, or in exchange for claims or interests, or for any other appropriate purpose;"

11 U.S.C. § 1123(a)(5).

among other things: (i) except as otherwise provided under the Plan or the Restructuring Transactions, the continued corporate existence of the Debtors and the vesting of assets in the Reorganized Debtors under Section 6.6 of the Plan; (ii) the adoption of the corporate constituent documents that will govern the Reorganized Debtors and the identification of the initial boards of directors of the Reorganized Debtors as provided in Sections 6.2.1 and 6.2.2 of the Plan, respectively; (iii) the issuance of new securities for distribution in accordance with the terms of the Plan, as detailed in Section 6.3 of the Plan; (iv) the entry by the Debtors into the Exit Facility Documentation, as detailed in Section 6.5 of the Plan; (v) the cancellation of credit documents, debt instruments and interests (in each case, to the extent provided in the Plan as detailed in Section 6.9); (vi) the consummation of any Restructuring Transactions in connection with Section 6.14 of the Plan, including the Restructuring Transactions set forth in Exhibit 14 of the Plan (filed with the Plan Supplement); (vii) the cancellation of any Lien securing any Other Secured Claim (to the extent provided for in the Plan), as detailed in Section 6.10 of the Plan; (viii) the retention of certain rights of action by the Reorganized Debtors pursuant to Section 10.7 of the Plan; (ix) the various discharges, releases, injunctions, indemnifications and exculpations provided in Article X of the Plan; (x) the continuation of certain employee compensation and benefit programs and the adoption of the MIP Documents, as described in Sections 6.11, 6.12, and 6.13 of the Plan; and (xi) the assumption, assumption and assignment or rejection of executory contracts and unexpired leases to which any Debtor is a party, as stated in Article VII of the Plan. Accordingly, the provisions in the Plan comply with section 1123(a)(5) of the Bankruptcy Code.

Prohibition on the Issuance of Nonvoting Equity Securities —11 U.S.C. § 1123(a)(6). Under section 1123(a)(6) of the Bankruptcy Code, a plan for a corporate debtor must provide that the debtor's corporate charter will prohibit the issuance of nonvoting equity securities. 11 U.S.C. § 1123(a)(6). In accordance with section 1123(a)(6) of the Bankruptcy Code, the Reorganized Debtors' charters, by-laws, or similar constituent documents (including those set forth as Exhibits 1 and 2 to the Plan Supplement) contain provisions prohibiting the issuance of nonvoting equity securities and provide for the appropriate distribution of voting power among all classes of equity securities authorized for issuance. In particular, Section 6.2.1 of the Plan provides that the Certificates of Incorporation of each of the Reorganized Debtors will, among other things, prohibit the issuance of nonvoting equity securities to the extent required under section 1123(a) of the Bankruptcy Code. (Plan § 6.2.1(a).) This prohibition is stated in section 4.D in the form of Amended and Restated Certificate of Incorporation of Reorganized SSCC filed as Exhibit 2 of the Plan (filed the Plan Supplement). Accordingly, the provisions in the Plan comply with section 1123(a)(6) of the Bankruptcy Code.

Selection of Directors and Officers — 11 U.S.C. § 1123(a)(7). Section 1123(a)(7) of the Bankruptcy Code provides that a plan shall "contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director or trustee under the plan and any successor to such officer, director or trustee." 11 U.S.C. § 1123(a)(7).

In accordance with section 1123(a)(7) of the Bankruptcy Code, the provisions of the Plan and the Reorganized Debtors' charters, by-laws and similar constituent documents regarding the manner of selection of officers and directors of the Reorganized Debtors are consistent with the interests of creditors and equity security holders and with public policy. Hunt Aff., ¶ 79. In accordance with Section 6.2.2 of the Plan and as listed in Exhibit 4 of the Plan (filed with the Plan Supplement), the initial board of directors of Reorganized SSCC shall consist of the following eleven (11) directors: (i) Patrick J. Moore (Chief Executive Officer), (ii) Steven J. Klinger (President and Chief Operating Officer), (iii) Ralph F. Hake (Chairman), (iv) James J. O'Connor, (v) Timothy J. Bernlohr, (vi) Terrell K. Crews, (vii) Eugene I. Davis, (viii) Michael E. Ducey, (ix) Jonathan F. Foster, (x) Ernst A. Haberli, and (xi) Arthur W. Huge. Id. On the Effective Date, consistent with Section 6.2.2 and 6.2.3 of the Plan, the term of any current directors of the board of directors of SSCC not identified as directors of Reorganized SSCC on Exhibit 4 to the Plan (filed with the Plan Supplement) shall expire, and such persons shall be deemed to have been removed as a director on the Effective Date. Id. In accordance with the Plan, all existing executive officers of Reorganized SSCC are expected to continue to serve in their existing capacities on and after the Effective Date. Id. Such existing executive officers are listed in Exhibit 4 of the Plan (filed with the Plan Supplement). In accordance with Section 6.2.4 of the Plan, the board of directors of each Reorganized Debtor (other than Reorganized SSCC) is identified and listed on Exhibit 4 of the Plan (filed with the Plan Supplement).

Pursuant to an order entered by the Court on December 16, 2009, the Debtors retained Spencer Stuart as search consultant. The Committee and the Debtors agreed to allow certain members of the Committee to actively participate in identifying, interviewing and selecting qualified candidates for the board of directors of Reorganized SSCC. Hunt Aff., ¶ 79. In light of the foregoing, the manner of selection of the initial directors of Reorganized Debtors as set forth in the Plan, the Certificate of Incorporation and By-Laws or other constituent documents of the applicable Reorganized Debtor and applicable state law, is consistent with the interests of the holders of Claims and Interests and public policy. (Plan § 6.2.2, 6.2.3, 6.2.4; Hunt Aff., ¶ 79). Accordingly, the Plan satisfies the requirements of 1123(a)(7) of the Bankruptcy Code.

As set forth above, the Plan satisfies the seven (7) mandatory plan requirements contained in section 1123(a) of the Bankruptcy Code.

Impairment of Claims and Interests — 11 U.S.C. § 1123(b)(1). As permitted by section 1123(b)(1) of the Bankruptcy Code, Article III of the Plan provides for the impairment of certain classes of Claims and Interests, while leaving other Classes unimpaired. The Plan thus modifies the rights of the Holders of certain Claims and Interests and leaves the rights of others unaffected.

Assumption, Assumption and Assignment or Rejection of Executory Contracts and Unexpired Leases – 11 U.S.C. § 1123(b)(2). In accordance with section 1123(b)(2) of the Bankruptcy Code, Article VII and other provisions of the Plan and the Confirmation Order provide for the assumption, assumption and assignment, or rejection of the executory contracts and unexpired leases of the Debtors that have not been previously assumed, assumed and assigned, or rejected pursuant to section 365 of the Bankruptcy Code and appropriate authorizing orders of the Bankruptcy Court. (Plan Art. VII.) Accordingly, the Plan provisions comply with section 1123(b)(2) of the Bankruptcy Code.

Retention, Enforcement and Settlement of Claims Held by the Debtors – 11 U.S.C. § 1123(b)(3). In accordance with section 1123(b)(3) of the Bankruptcy Code, Section 10.7 of the Plan provides that, except as otherwise provided in the Plan, the Confirmation Order, or in any document, instrument, release or other agreement entered into in connection with the Plan, the Debtors and their Estates shall retain the Litigation Claims. The Plan further provides that the Reorganized Debtors, as the successors in interest to the Debtors and their Estates, may enforce, sue on, settle or compromise (or decline to do any of the foregoing) any or all of the Litigation Claims. In the Plan, the Debtors or the Reorganized Debtors also expressly reserve all rights to prosecute any and all Litigation Claims against any Person, except as otherwise expressly provided in the Plan, and no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise), or laches, shall apply to such Litigation Claims upon, after, or as a consequence of Confirmation or the occurrence of the Effective Date. (Plan § 10.7.) Accordingly, the provisions in the Plan comply with section 1123(b)(5) of the Bankruptcy Code.

Other Provisions Not Inconsistent with Applicable Provisions of the Bankruptcy Code – 11 U.S.C. § 1123(b)(6). Moreover, in accordance with section 1123(b)(6) of the Bankruptcy Code, the Plan includes additional appropriate provisions that are not inconsistent with the applicable provisions of the Bankruptcy Code, including: (i) the provisions of Article III of the Plan governing treatment on account of Allowed Claims; (ii) the provisions of Article VIII of the Plan governing distributions under the Plan; and (iii) the provisions of Article XI of the Plan regarding retention of jurisdiction by the Bankruptcy Court over certain matters after the Effective Date. (Plan Art. III, VIII and XI.) Such provisions, and all other provisions of the Plan, are consistent with the Bankruptcy Code in accordance with section 1123(b)(6) of the Bankruptcy Code.

Cure of Defaults – Section 11 U.S.C. § 1123(d). In accordance with section 1123(d) of the Bankruptcy Code, Section 7.2 of the Plan and the Confirmation Order provide for the satisfaction of any monetary amounts by which each executory contract and unexpired lease to be assumed is in default by payment of the default amount in cash on the Effective Date or on such other terms as the parties to each such executory contract or unexpired lease may otherwise agree in accordance with section 365(b)(1) of the Bankruptcy Code. All cure amounts (including, without limitation, the Cure Amounts) have been fixed or will be fixed pursuant to an order granting the relief requested in the Omnibus Assumption Motion[20] or, to the extent applicable, as otherwise set forth in Section 7.2 of the Plan. Accordingly, the Plan satisfies the requirements of section 1123(d) of the Bankruptcy Code.

2. The Debtors Have Complied with the Applicable Provisions of the Bankruptcy Code – 11 U.S.C. § 1129(a)(2)

Section 1129(a)(2) of the Bankruptcy Code requires that the proponent of a plan comply "with the applicable provisions of this title." 11 U.S.C. § 1129(a)(2).[21] Whereas section 1129(a)(1) of the Bankruptcy Code focuses on the form and content of a plan itself, section 1129(a)(2) is concerned with the applicable activities of a plan proponent under the Bankruptcy Code. See 7 Collier on Bankruptcy, ¶ 1129.03[1] (15th ed. rev. 2007). In determining whether a plan proponent has complied with this section, courts focus on whether the proponent has adhered to the disclosure and solicitation requirements of sections 1125 and 1126. See In re PWS Holding Corp., 228 F.3d 224, 248 (3d Cir. 2000); In re Resorts Int'l Inc., 145 B.R. at 468 (applying section 1129(a)(2) only to disclosure requirements of Bankruptcy Code); In re Johns-Manville Corp., 68 B.R. 618, 630 (Bankr. S.D.N.Y. 1986) ("Objections to confirmation raised under § 1129(a)(2) generally involve the alleged failure of the plan proponent to comply with § 1125 and § 1126 of the Code."), aff'd in part, rev'd in part on other grounds, 78 B.R. 407 (S.D.N.Y. 1987), aff'd sub nom. Kane v. Johns-Manville Corp., 843 F.2d 636 (2d Cir. 1988); see also S. Rep. No. 95-589, at 126 (1977), reprinted in 1978 U.S.C.C.A.N. 65787, 5912 (Section

[20] The "Omnibus Assumption Motion" means that certain Omnibus Motion of the Debtors and Debtors in Possession for an Order Authorizing the Assumption of Certain Executory Contracts and Unexpired Leases, filed by the Debtors on March 22, 2010 [Docket No. 6145], seeking entry of an order (i) authorizing the Debtors to assume executory contracts and unexpired leases and (ii) fixing cure amounts thereto.

[21] The legislative history to section 1129(a)(2) reflects that this provision is intended to encompass the disclosure and solicitation requirements under sections 1125 and 1126. H.R. Rep. No. 95-595, at 412 (1977); S. Rep. No. 95-989, at 126 (1978) ("Paragraph (2) [of § 1129(a)] requires that the proponent of the plan comply with the applicable provisions of chapter 11, such as section 1125 regarding disclosure."); see also In re Resorts Int'l, Inc., 145 B.R. 412, 468-69 (D.N.J. 1990); In re Elsinore Shore, 91 B.R. 238, 258 (D.N.J. 1988); In re River Village Assocs., 161 B.R. 127, 140 (Bankr. E.D. Pa. 1993), aff'd, 181 B.R. 795 (E.D. Pa. 1995).

1129(a)(2) "requires that the proponent of the plan comply with the applicable provisions of chapter 11, such as section 1125 regarding disclosure"); H.R. Rep. No. 95-595, at 412 (1978), reprinted in 1978 U.S.C.C.A.N. 5963, 6368 (same).

The Debtors have complied with all solicitation and disclosure requirements set forth in the Bankruptcy Code, the Bankruptcy Rules, and the Voting Procedures Order governing notice, disclosure, and solicitation in connection with the Plan and the Disclosure Statement. Among other things, as evidenced by the Solicitation Affidavit of Service and the Epiq Voting Declaration, it is clear that the Debtors have complied with all previous orders of the Court regarding solicitation of the Plan, including the Voting Procedures Order, and that the Debtors have complied with the Bankruptcy Code, the Bankruptcy Rules, and other applicable law with respect to the foregoing. Accordingly, the requirements of section 1129(a)(2) have been satisfied. See In re Drexel Burnham Lambert Group Inc., 138 B.R. at 769). Section 1129(a)(2) satisfied where debtors complied with all provisions of Bankruptcy Code and Bankruptcy Rules governing notice, disclosure and solicitation relating to Plan).

3. The Plan Has Been Proposed in Good Faith and Not by Any Means Forbidden by Law – 11 U.S.C. § 1129(a)(3)

Section 1129(a)(3) requires a plan of reorganization be "proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1129(a)(3). "The good faith standard requires that the plan be 'proposed with honesty, good intentions and a basis for expecting that a reorganization can be effected with results consistent with the objectives and purposes of the Bankruptcy Code.'" In re Coram Healthcare Corp., 271 B.R. 228, 234 (Bankr. D. Del. 2001) (citations omitted); see also In re Zenith Elecs. Corp., 241 B.R. 92, 107 (Bankr. D. Del. 1999); In re PPI Enters. (U.S.), Inc., 228 B.R. 339 (Bankr. D. Del. 1998) (quoting In re Toy & Sports Warehouse, Inc., 37 B.R. 141, 149 (Bankr. S.D.N.Y. 1984)). "Where the plan is proposed with the legitimate and honest purpose to reorganize and has a reasonable hope of success, the good faith requirement of section 1129(a)(3) is satisfied." In re Century Glove, 1993 WL 239489 at *4 (D. Del. Feb. 10, 1993) (Nos. 90-400, 90-401) (citations omitted). In determining whether a plan has been proposed in good faith, courts have recognized that they should avoid applying any hard and inflexible rules, but should instead evaluate each case on its own merits. See Id., at *4 (good faith should be evaluated in light of the totality of the circumstances surrounding confirmation); In re Cellular Info. Sys., Inc., 171 B.R. 926, 945 (Bankr. S.D.N.Y. 1994) (same).

The Plan is consistent in all respects with the overriding purposes of the Bankruptcy Code. The Plan allows the Debtors to reorganize on a going concern basis which maximizes the recoveries available to creditors. The Plan preserves jobs and pension benefits and puts the Reorganized Debtors in a position to continue competing in a highly competitive industry, which benefits suppliers and customers alike. See Hunt Aff., ¶ 40-41. The Plan creates a capital structure that will allow the Reorganized Debtors to satisfy their obligations with sufficient liquidity and capital reserves and to fund necessary capital expenditures and otherwise conduct their business in the ordinary course. Id. at ¶ 83. In short, the Plan engenders the very goals of the Bankruptcy Code.

As fully set forth in the Hunt Affidavit, the Debtors engaged in a painstaking and complex process to develop a long term business plan which resulted in the projections which form the basis of the Plan. See Hunt Aff., ¶¶ 54-62. The Debtors vetted this business plan and the resulting projections with the Committee and other key constituencies. Id. at ¶ 55. The Debtors then embarked upon crafting a plan of reorganization based upon the business plan and the projections and the provisions of the Bankruptcy Code. Id. ¶ 55-57. As part of this process, the Debtors engaged in significant arm's-length negotiations with the Committee, the Prepetition

Lenders and the Ad Hoc Noteholders, and each of their respective representatives, and sought and obtained feedback from the CCAA Monitor and its representatives, over the provisions of the Plan. Id. This extensive and thorough process (a) resulted in the Plan which is currently the subject of the Confirmation proceedings and (b) demonstrates that the Debtors have proposed the Plan in good faith and not by any means forbidden by law and with the legitimate purpose of reorganizing the Debtors in order to maximize the value of their respective estates. See generally Hunt Aff.; see Stolrow v. Stolrow's, Inc. (In re Stolrow's, Inc.), 84 B.R. 167, 172 (B.A.P. 9th Cir. 1988) (holding that good faith in proposing plan "also requires a fundamental fairness in dealing with one's creditors.").

In addition to fulfilling the rehabilitative function of the Bankruptcy Code, the Plan also allows creditors to realize the highest possible recoveries under the circumstances. See Affidavit of Cyrus N. Pardiwala in Support of Confirmation of the Plan (the "Pardiwala Affidavit") and the Hunt Affidavit filed contemporaneously herewith. The support of the Plan by the Debtors' major creditor constituencies, including the Committee, reflects their acknowledgement that the Plan is fundamentally fair to the Debtors' creditors and was proposed in good faith. This conclusion is further evidenced by the overwhelming support of the Plan by Holders of Claims in all of the Voting Classes. See Epiq Voting Declaration, Exhibit A; Monitor Voting Report, ¶ 27. Inasmuch as the Plan promotes the rehabilitative objectives and purposes of the Bankruptcy Code, the Plan has been filed in good faith and satisfies the requirements of section 1129(a)(3).

4. The Plan Provides that Payments Made by the Debtors for Services or Costs and Expenses are Subject to Approval – 11 U.S.C. § 1129(a)(4)

Section 1129(a)(4) of the Bankruptcy Code provides that the Court shall confirm a plan only if "[a]ny payment made or to be made by the proponent, [or] by the debtor, . . . for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable." 11 U.S.C. § 1129(a)(4). In other words, the debtor must disclose to the Court all professional fees and expenses, and such professional fees and expenses must be subject to Court approval. See In re Texaco, Inc., 85 B.R. 934, 939 (Bankr. S.D.N.Y. 1988).

In accordance with section 1129(a)(4) of the Bankruptcy Code, no payment for services or costs and expenses in or in connection with the Chapter 11 Cases, or in connection with the Plan and incidental to the Chapter 11 Cases, including Claims for professional fees, has been or will be made by a Debtor other than payments that have been authorized by order of the Bankruptcy Court. Hunt Aff., ¶ 84. Section 2.1 of the Plan provides for the payment of various Administrative Claims, including Claims for professional fees, which are subject to Bankruptcy Court approval and the standards of the Bankruptcy Code. In addition, the Prepetition Notes Indenture Trustee Fees, the Industrial Revenue Bond Indenture Trustee Fees, and Professional Fees of the Ad Hoc Noteholders which are payable by the Debtors pursuant to Section 12.10 and 12.11 of the Plan will be subject to a "reasonableness" standard. Accordingly, the provisions in the Plan comply with section 1129(a)(4) of the Bankruptcy Code.

5. The Debtors Have Disclosed All Necessary Information Regarding the Debtors' Direction and Officers and Insiders – 11 U.S.C. § 1129(a)(5)

Section 1129(a)(5) of the Bankruptcy Code provides that a plan of reorganization may be confirmed only if the proponent discloses the identity of those individuals who will serve as management of the reorganized debtor, the identity of any insider to be employed or retained by the reorganized debtor and the compensation proposed to be paid to such insider. In addition, under section 1129(a)(5)(A)(ii), the appointment or continuation in office of existing management must be consistent with the interests of creditors, equity security holders, and public policy. The Plan satisfies such requirements.

In determining whether the post-confirmation management of a debtor is consistent with the interests of creditors, equity security holders, and public policy, a court must consider proposed management's competence, discretion, experience, and affiliation with entities having interests adverse to the debtor. See In re W.E. Parks Lumber Co., 19 B.R. 285, 292 (Bankr. W.D. La. 1982) (a court should consider whether "the initial management and board of directors of the reorganized corporation will be sufficiently independent and free from conflicts and the potential of post-reorganization litigation so as to serve all creditors and interested parties on an even and loyal basis") (emphasis omitted). In general, however, "[t]he debtor should have first choice of its management, unless compelling cause to the contrary exists. . . ." See In re Sherwood Square Assocs., 107 B.R. 872, 878 (Bankr. D. Md. 1989). The case law also is clear that a plan may contemplate the retention of the debtor's existing directors and officers. See, e.g., In re Texaco, 84 B.R. 893, 908 (Bankr. S.D.N.Y. 1988) (holding that section 1129(a)(5) was satisfied where notice was provided that the debtor's existing directors and officers would continue to serve in office after plan confirmation).

In the Disclosure Statement, the Plan, the Hunt Affidavit and Exhibits 4 and 5 to the Plan (filed with the Plan Supplement or otherwise at or prior to the Confirmation Hearing), the Debtors have disclosed all necessary information regarding the Debtors' and Reorganized Debtors' officers and directors, including for those directors and officers who may constitute insiders and the applicable compensation paid or to be paid as of the Effective Date. The appointment or continuance of the proposed directors and officers is consistent with the interests of the holders of Claims and Interests and with public policy. Hunt Aff., ¶ 85. Accordingly, the Plan satisfies the requirements of section 1129(a)(5) of the Bankruptcy Code.[22]

6. The Plan Does Not Contain Any Rate Changes Subject to the Jurisdiction of Any Governmental Regulatory Commission – 11 U.S.C. § 1129(a)(6)

Bankruptcy Code section 1129(a)(6) requires that any regulatory commission having jurisdiction over the rates charged by the reorganized debtor in the operation of its business approve any rate change provided for in the plan. The Plan does not provide for or contemplate any rate changes because the Debtors' businesses do not involve the establishment of rates over which any regulatory commission has jurisdiction or will have jurisdiction after Confirmation. Accordingly, section 1129(a)(6) is inapplicable in these Chapter 11 Cases.

[22] In addition, pursuant to section 12.14 of the Plan, the Committee has appointed its representative, which is listed on Exhibit 4-B of the Plan (included as part of the Plan Supplement).

7. The Plan Is in the Best Interests of Creditors – 11 U.S.C. § 1129(a)(7)

Section 1129(a)(7) of the Bankruptcy Code requires that a plan be in the best interests of creditors and equity holders. This "best interests" test focuses on individual dissenting creditors rather than classes of claims. See Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship, 526 U.S. 434, 441 n.13 (1999). The best interests test requires that each holder of a claim or equity interest will either accept the plan or receive or retain under the plan property having a present value, as of the effective date of the plan, not less than the amount such holder would receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code. 11 U.S.C. § 1129(a)(7).

"[U]nder the best interests test, the court 'must find that each [dissenting] creditor will receive or retain value that is not less than the amount he [or she] would receive if the debtors were liquidated'" as of the effective date of the plan. In re The Leslie Fay Companies, Inc., 207 B.R. 764, 787 (Bankr. S.D.N.Y. 1997) (quoting In re Constr. Co., Inc., 42 B.R. 145, 151 (Bankr. C.D. Cal. 1984)); see also In re Am. Family Enters., 256 B.R. 377, 403 (D.N.J. 2000) (finding debtors' burden of proof under section 1129(a)(7) met where debtors showed that creditors would receive at least as much under the plan as they would receive in a liquidation of the debtors' assets under chapter 7); In re Jartran, Inc., 44 B.R. 331, 389-94 (Bankr. N.D. Ill. 1984) (best interests test satisfied by showing that, upon liquidation, the cash received would be insufficient to pay priority claims and secured creditors so that unsecured creditors and stockholders would receive no recovery).

As section 1129(a)(7) itself makes clear, the liquidation analysis applies only to non-accepting impaired claims or equity interests. See 11 U.S.C. § 1129(a)(7). If a class of claims or equity interests unanimously approves the plan, the best interests test is deemed satisfied for all members of that class. In re Drexel Burnham Lambert Group, Inc., 138 B.R. at 761. Under the Plan, Classes 1C, 1D, 1E, 1F, 1G, 2C, 2D, 2E, 2F, 3C, 3D, 4C, 4D, 4E, 4F, 4G, 5C, 5D, 6C through 14C, 6D through 14D, 15B, 15C, 15D, 15E, 15F, 15G, 16B, 16C, 16D, 16E, 16F 17B, 17C, 17D, 17E, 19B, 19C, 19D, 20B, 20C, 20D, 20E, 20F, 21B, 21C, 21D, 21E, 22C through 25C and 22D through 25D are Impaired; consequently, the best interests test is applicable only to non-accepting Holders of Claims and Interests in such Classes. The test requires that each holder of a claim or interest must either accept the plan or receive or retain under the plan property having a present value, as of the effective date of the plan, not less than the amount that such holder would receive or retain if the debtor were liquidated under chapter 7.

Based on the liquidation analysis annexed to the Disclosure Statement as Exhibit D (the "Liquidation Analysis"), including the methodology used and estimations and assumptions made therein, it is clear that the best interests test is satisfied as to each of the impaired Classes under the Plan, because a chapter 7 liquidation of the Debtors' estates would result in a substantial diminution in the value to be realized by holders of Claims and Interests in each such Class, when compared to the proposed distributions under the Plan. See Pardiwala Aff., ¶ 12; Exhibit A. In short, a liquidation under chapter 7 as set forth in the Liquidation Analysis would profoundly and materially adversely affect the ultimate proceeds available for distribution to all holders of Allowed Claims in the Chapter 11 Cases. Pardiwala Aff. ¶ 12.

8. The Plan Has Been Accepted by Each Impaired Voting Class – 11 U.S.C. § 1129(a)(8)

Subject to the exceptions identified in section 1129(b) of the Bankruptcy Code, section 1129(a)(8) requires that each class of claims and interests either has accepted or is not impaired under the plan of reorganization. A class of claims or interests that is not impaired under a plan is "conclusively presumed" to have accepted the plan and need not be further examined under section 1129(a)(8). See 11 U.S.C. § 1126(f); In re Toy & Sports Warehouse, 37 B.R. 141, 150 (Bankr. S.D.N.Y. 1984). A class of claims accepts a plan if the holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in the number of claims in the class vote to accept the plan, counting only those claims whose holders actually vote to accept or reject the plan. 11 U.S.C. § 1126(c).

As indicated in Article III of the Plan and as set forth in the Epiq Voting Declaration, Classes 1A, 1B, 2A, 2B, 2G, 3A, 3E, 4A, 4B, 5A, 5B, 5E, 6A through 14A, 6B through 14B, 6E through 14E, 15A, 16A, 17A, 17F, 19A, 19E, 20A, 21A, 21F, 22A though 15A, 22B through 25B and 22E through 25E are Unimpaired under the Plan and are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. As further indicated in the Voting Affidavits, each Impaired Class of Claims entitled to vote to accept or reject the Plan has voted to accept the Plan pursuant to section 1126(c) of the Bankruptcy Code, except for Classes 4C and 4D. In addition to Classes 4C and 4D, because the Plan provides that the Holders of Claims and Interests in Classes 1D, 1F, 1G, 4G, 6C through 14C, 15F, 15G, 16F, 17D, 20F, 21D and 22C through 25C will not receive any distributions or retain any property under the Plan, such Classes are conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. The Debtors seek confirmation of the Plan despite the actual or deemed rejection by the Rejecting Classes, pursuant to section 1129(b) of the Bankruptcy Code, as described below.

9. The Plan Provides for Payment in Full of All Allowed Priority Claims – 11 U.S.C. § 1129(a)(9)

Under Bankruptcy Code section 1129(a)(9), unless otherwise agreed, a plan must provide that:

(A) the holder of a claim entitled to priority under section 507(a)(2) or 507(a)(3) will receive cash for the allowed amount of the claims on the effective date of the plan;

(B) the holder of a claim entitled to priority under section 507(a)(1), (4), (5), (6), or (7) will receive either deferred cash payments for the allowed amount or cash for the allowed amount for the claim on the effective date of the plan;

(C) the holder of a tax claim entitled to priority under section 507(a)(8) will receive regular installment payments in cash (i) of the total value, as of the effective date of the plan, equal to the allowed amount of such claim; (ii) over a period ending not later than 5 years after the date of the order of relief under section 301, 302, or 303; and (iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122(b)); and

(D) the holder of a secured claim which would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8), but for the secured status of that claim, will receive cash payments on account of that claim in the same manner and over the same period, as prescribed in subparagraph (C).

11 U.S.C. § 1129(a)(9).

The Plan meets the requirements regarding the payment of Administrative Claims, Priority Tax Claims, and Priority Non-Tax Claims as set forth in section 1129(a)(9) of the Bankruptcy Code. Section 2.1 of the Plan provides that either (i) the latest to occur of (x) the Effective Date (or as soon as reasonably practicable thereafter), (y) the first Distribution Date after such Administrative Expense Claim becomes an Allowed Claim and (z) such other date as agreed upon by the Debtors and the Holder of such Administrative Expense Claim; or (ii) on such other date as the Bankruptcy Court may order, each Holder of an Allowed Administrative Expense Claim shall receive, on account of and in full and complete settlement, release and discharge of, and in exchange for, such Allowed Claim, (a) cash equal to the full unpaid amount of such Allowed Administrative Expense Claim, or (b) such other treatment as the applicable Debtor and such Holder shall have agreed; provided, however, that (aa) Allowed Administrative

Expense Claims not yet due or that represent obligations incurred by the Debtors in the ordinary course of their business during these Chapter 11 Cases, or assumed by the Debtors during these Chapter 11 Cases, shall be paid or performed when due in the ordinary course of business and in accordance with the terms and conditions of the particular agreements governing such obligations; and (bb) Allowed Administrative Expense Claims against SSC Canada or Smurfit-MBI that are not yet due on the Effective Date, or that represent obligations incurred by SSC Canada or Smurfit-MBI in the ordinary course of their business operations after the Petition Date, shall be assumed by Canadian Newco pursuant to the Asset Purchase Agreement and shall be paid or performed by Canadian Newco when due in the ordinary course of business and in accordance with the terms and conditions of the particular agreements or applicable non-bankruptcy law governing such obligations.

Section 2.4 of the Plan provides that, except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment (in which event such other agreement shall govern), each Holder of an Allowed Priority Tax Claim against any of the Debtors that is due and payable on or before the Effective Date shall receive, on account of and in full and complete settlement, release and discharge of, and in exchange for, such Allowed Priority Tax Claim, cash equal to the amount of such Allowed Priority Tax Claim on the later of (i) the Effective Date (or as soon as is reasonably practicable thereafter); and (ii) the first Distribution Date after such Priority Tax Claim becomes an Allowed Claim, or as soon as is reasonably practicable thereafter. Section 2.4 also provides that such Priority Tax Claims will, to the extent required by section 1129(a)(9)(C) of the Bankruptcy Code, receive interest at the rate determined under applicable nonbankruptcy law pursuant to section 511 of the Bankruptcy Code. Section 8.1 of the Plan also provides that all Allowed Priority Tax Claims against any of the Debtors which are not due and payable on the Effective Date shall be paid in the ordinary course of business by the Reorganized Debtors in accordance with the terms thereof.

In addition, Article III of the Plan provides that except to the extent that a Holder of an Allowed Claim in Classes 1A through 25A (Priority Non-Tax Claim) has agreed in writing to a different treatment (in which event such other writing will govern), each Holder of an Allowed Priority Non-Tax Claim that is due and payable on or before the Effective Date shall receive, on account of, and in full and complete settlement, release and discharge of and in exchange for, such Claim, at the election of the Debtors: (i) cash equal to the amount of such Allowed Priority Non-Tax Claim in accordance with section 1129(a)(9) of the Bankruptcy Code, on the later of (a) the Effective Date (or as soon as reasonably practicable thereafter) and (b) the first Distribution Date after such Claim becomes an Allowed Priority Non-Tax Claim, or as soon thereafter as is practicable, or (ii) such other treatment required to render such Allowed Priority Non-Tax Claim Unimpaired pursuant to section 1124 of the Bankruptcy Code. All Allowed Claims in Classes 1A through 25A which are not due and payable on or before the Effective Date shall be paid by the Reorganized Debtors when such claims become due and payable in the ordinary course of business in accordance with the terms thereof.

Accordingly, the provisions in the Plan comply with section 1129(a)(9) of the Bankruptcy Code.

10. At Least One Impaired Class Has Accepted the Plan – 11 U.S.C. § 1129(a)(10)

In general, section 1129(a)(10) requires that to the extent there is a class of impaired claims under the Plan that at least one impaired class of claims must accept the plan, excluding the votes of any insiders. 11 U.S.C. § 1129(a)(10); see In re Martin, 66 B.R. 921, 924 (Bankr. D. Mont. 1986) (holding that acceptance by three classes of impaired creditors, exclusive of insiders, satisfied requirement of section 1129(a)(10)). As described in the Voting Declarations, every Class populated by at least one properly voted Claim, except for Classes 4C and 4D, accepted the Plan, consisting of the following:

Voting Class	% of Dollar Amount of Claims Voting to Accept the Plan	% of Number of Holders Voting to Accept the Plan	% of Dollar Amount of Claims Voting to Reject the Plan	% of Number of Holders Voting to Reject the Plan
1C	95.65%	93.58%	4.35%	6.42%
2C	95.65%	93.58%	4.35%	6.42%
2D	99.57%	99.51%	0.43%	0.49%
2E	86.02%	82.72%	13.98%	17.28%
3C	99.74%	98.11%	0.26%	1.89%
4C	0%	0%	100%	100%
4D	0%	0%	100%	100%
4E	99.91%	96.77%	0.09%	3.23%
5C	99.66%	96.77%	0.34%	3.23%
15B	100%	100%	0%	0%
15C	95.48%	91.46%	4.52%	8.54%
15D	98.72%	98.58%	1.28%	1.42%
16B	100%	100%	0%	0%
16C	95.48%	91.46%	4.52%	8.54%
16D	99.20%	99.12%	0.80%	0.88%
17C	95.48%	91.46%	4.52%	8.54%
19C	100%	100%	0%	0%
20C	95.48%	91.46%	4.52%	8.54%
21C	95.48%	91.46%	4.52%	8.54%

See Epiq Voting Declaration, Exhibit A; Monitor Voting Report, ¶¶ 27. As demonstrated above, at least one Impaired Class of Claims has voted in sufficient number and amount to accept the Plan, without regard to the votes of insiders, at every Debtor except for the non-operating subsidiary Debtors. Such Debtors will either be dissolved or merged into the Reorganized Debtors on the Effective Date. Accordingly, the Plan satisfies section 1129(a)(10).

11. The Plan Is Feasible – 11 U.S.C. § 1129(a)(11)

Pursuant to section 1129(a)(11) of the Bankruptcy Code, a plan of reorganization may be confirmed only if "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan." 11 U.S.C. § 1129(a)(11). As described below, the Plan is feasible under section 1129(a)(11) of the Bankruptcy Code.

To establish that a plan is feasible, it is not necessary that success be guaranteed. Rather, it need only be shown that there is a "reasonable assurance that the debtor will remain commercially viable for a reasonable time." In re Sound Radio, Inc., 103 B.R. 521, 523 (D.N.J. 1989). Indeed, "[u]nder 1129(a)(11), all that is required is a 'reasonable' prospect for financial stability and success." Id. at 524; In re Johns-Manville Corp., 843 F.2d at 649 ("As the Bankruptcy Court correctly stated, the feasibility standard is whether the plan offers a reasonable assurance of success. Success need not be guaranteed.").

While the debtor bears the burden of proving plan feasibility, the applicable standard is by a preponderance of the evidence, which means presenting proof that a given fact is "more likely than not." In re Briscoe Enters., Ltd., 994 F.2d at 1164 . See also In re T-H New Orleans Ltd. P'ship, 116 F.3d 790, 801 (5th Cir. 1997); CoreStates Bank, N.A. v. United Chem Tech., Inc., 202 B.R. 33, 45 (E.D. Pa. 1996). Further, a number of courts have held that this constitutes a "relatively low threshold of proof." In re Mayer Pollack Steel Corp., 174 B.R. 414, 423 (Bankr. E.D. Pa. 1994) (stating that the debtors "have established that they meet the requisite low threshold of support for the Plan as a viable undertaking . . . "). The courts have fashioned a series of factors to be considered in the determination of whether a debtor's plan is feasible. These factors, while varying from case to case, traditionally include: (i) the adequacy of the debtor's capital structure; (ii) the earning power of its business; (iii) economic conditions; (iv) the ability of the debtor's management; (v) the probability of the continuation of the same management; and (vi) other related matters affecting successful performance under the provisions of the plan. See, e.g., In re Prussia Assocs., 322 B.R. 572, 584 (Bankr. E.D. Pa. 2005); In re Greate Bay Hotel & Casino, 251 B.R. 213, 228 (Bankr. D.N.J. 2000) (citing In re Temple Zion, 125 B.R. 910, 915 (Bankr. E.D. Pa. 1991)); In re Toy & Sports Warehouse, Inc., 37 B.R. at 151 (citing In re Landmark at Plaza Park, Ltd., 7 B.R. 653, 659 (Bankr. D.N.J. 1980)). See also In re T-H New Orleans Ltd. P'ship, 116 F.3d at 801 (discussing the factors that the bankruptcy court examined in its decision that the debtor's plan was feasible). As demonstrated below, the Plan satisfies each of the factors courts consider in determining whether a plan of reorganization is feasible.

Here, the updated projections filed on March 25, 2010 (the "Financial Projections"), the Hunt Affidavit, and the evidence in the record demonstrate that the Plan is feasible. These projections demonstrate that the Debtors will have sufficient cash flow to meet their obligations under the Plan. See Financial Projections; Hunt Aff. ¶¶ 63-64, 91. Although the Debtors' businesses operate in highly competitive industries and markets, and although it is impossible to predict with certainty the precise future profitability of the Debtors' businesses or industries and markets in which the Debtors operate, confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial reorganization of the Debtors, the Reorganized Debtors, or any successor to the Reorganized Debtors under the Plan. See Id. at 91; Financial Projections. The proposed Plan, negotiated in good faith between the Debtors and their major creditor constituencies, has more than a reasonable likelihood of success because the transactions contemplated under the Plan will enable the Debtors to continue their current operations and will eliminate a substantial portion of debt.

In formulating the Plan, the Debtors and their professionals sought to ensure that the Plan would provide sufficient free cash flow to allow the Debtors to continue to operate their businesses successfully after emergence and to satisfy all of their obligations under the Plan. Hunt Aff., ¶ 83. By substantially reducing the Debtors' prepetition debt, the Reorganized Debtors will be better positioned to service ongoing debt obligations and generate cash flow to reinvest in their businesses. Accordingly, the Plan provides for a workable scheme of reorganization, with more than a reasonable likelihood of success, and, therefore, satisfies section 1129(a)(11) of the Bankruptcy Code.

12. All Statutory Fees Have or Will Be Paid – 11 U.S.C. § 1129(a)(12)

Bankruptcy Code section 1129(a)(12) provides that a court may confirm a plan of reorganization only if "[a]ll fees payable under section 1930 of Title 28, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan." 11 U.S.C. § 1129(a)(12). Section 12.9 of the Plan provides for the payment, on or before the Effective Date, of any fees as determined by the Bankruptcy Court at the Confirmation Hearing, due pursuant to section 1930 of title 28 of the United States Code or other statutory requirement. Therefore, the Plan meets the requirements of Bankruptcy Code section 1129(a)(12).

13. The Plan Provides for the Continuation of the Retiree Benefit Obligations – 11 U.S.C. § 1129(a)(13)

Section 1129(a)(13) of the Bankruptcy Code requires that a plan of reorganization provide for the continued payment of certain retiree benefits "for the duration of the period that the debtor has obligated itself to provide such benefits." 11 U.S.C. § 1129(a)(13). The Plan satisfies these requirements. Section 6.11 of the Plan provides that except and to the extent previously assumed by an order of the Bankruptcy Court, as of the Confirmation Date, but subject to the occurrence of the Effective Date, all Employee Benefit Plans, including the Employment and Retirement Benefit Agreements, of the Debtors, as amended or modified, including programs subject to sections 1114 and 1129(a)(13) of the Bankruptcy Code, entered into before, on or after the Petition Date and not since terminated, shall be deemed to be, and shall be treated as though they are, executory contracts that are assumed by the Debtors and assigned to the Reorganized Debtors, except for (i) executory contracts or plans specifically rejected pursuant to the Plan, and (ii) executory contracts or plans that have previously been rejected, are the subject of a motion to reject or have been specifically waived by the beneficiaries of any plans or contracts; provided, however, that (x) the Debtors shall pay all "retiree benefits" (as defined in section 1114(a) of the Bankruptcy Code), and (y) the Debtors shall amend those certain Employment and Retirement Benefit Agreements attached as Exhibit 13 of the Plan (filed with the Plan Supplement) prior to (or upon) the assumption thereof by the Debtors (and assignment thereof to the Reorganized Debtors) to provide that the implementation of the restructuring in accordance with the Plan shall not alone constitute "Good Reason" or "Good Cause" (or provide any other similar basis) for any employee of the Debtors or the Reorganized Debtors to terminate his or her employment nor constitute a "Change in Control" that would result in any obligation of the Debtors or Reorganized Debtors to provide any payments or other benefits to any employee.

14. Section 1129(a)(14)-(a)(16) of the Bankruptcy Code are Inapplicable

Based on the facts of these Chapter 11 Cases, sections 1129(a)(14) through (16) of the Bankruptcy Code are not applicable.

15. The Plan Is Not an Attempt to Avoid Tax Obligations – 11 U.S.C. § 1129(d)

Section 1129(d) of the Bankruptcy Code provides that a court may not confirm a plan if the principal purpose of the plan is to avoid taxes or the application of Section 5 of the Securities Act of 1933. The Plan meets these requirements because the principal purpose of the Plan is not avoidance of taxes or avoidance of the requirements of Section 5 of the Securities Act of 1933, and there has been no filing by any governmental agency asserting such avoidance.

B. The Plan Satisfies the "Cram Down" Requirement for Confirmation Under Section 1129(b) of the Bankruptcy Code

The Plan has been accepted by all of the Voting Classes (as set forth in greater detail in the Voting Affidavits), except for Classes 4C and 4D, and section 1129(b) of the Bankruptcy Code is also implicated by the Plan with respect to actual deemed rejecting Classes 1D, 1F, 1G, 4C, 4D, 4G, 6C through 14C, 15F, 15G, 16F, 17D, 20F, 21D and 22C through 25C. The Plan nevertheless satisfies all of the requirements of section 1129(b) of the Bankruptcy Code with respect such classes. Pursuant to section 1129(b)(1) of the Bankruptcy Code, the Plan shall be confirmed notwithstanding the fact that Classes 1D, 1F, 1G, 4C, 4D, 4G, 6C through 14C, 15F, 15G, 16F, 17D, 20F, 21D and 22C through 25C are impaired and have or are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code.

Section 1129(b) of the Bankruptcy Code provides that, if certain requirements are met, a plan shall be confirmed notwithstanding that section 1129(a)(8) is not satisfied with respect to one or more classes:

> [I]f all of the applicable requirements of . . . section [1129(a) of the Bankruptcy Code] other than paragraph (8) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted the plan.

11 U.S.C. § 1129(b)(1). Thus, to confirm a plan that has not been accepted by all impaired classes, the plan proponent must show that the plan "does not discriminate unfairly" and is "fair and equitable" with respect to the non-accepting impaired classes. See In re Zenith Elecs., 241 B.R. at 105; see also Mabey v. Southwestern Elec. Power Co. (In re Cajun Elec. Power Coop.,

Inc.), 150 F.3d 503, 519 (5th Cir. 1998); Liberty Nat'l Enters. v. Ambanc La Mesa Ltd. P'ship (In re Ambanc La Mesa Ltd. P'ship), 115 F.3d 650, 653 (9th Cir. 1997); John Hancock Mut. Life Ins. Co. v. Route 37 Bus. Park Assocs., 987 F.2d at 157 n.5 . The plan proponent bears the burden of proof by a preponderance of the evidence. In re Vencor, Inc., 2001 WL 34135323, at *2 (Bankr. D. Del. 2001).

The section 1129(b)(1) "unfair discrimination" standard does not prohibit all types of discrimination among holders of impaired, dissenting classes; it merely prohibits *unfair* discrimination. Leslie Fay, 207 B.R. at 791 n.37 ; In re Buttonwood Partners, Ltd., 111 B.R. 57, 62 (Bankr. S.D.N.Y. 1990); In re 11,111, Inc., 117 B.R. 471, 478 (Bankr. D. Minn. 1990). This requirement focuses on the treatment of such dissenting class relative to other classes consisting of similar legal rights. See H.R. Rep. No. 95-595, at 416-17 (1977) ("The plan may be confirmed. . . if the class is not unfairly discriminated against with respect to equal classes"). The Bankruptcy Code does not provide a standard for when "unfair discrimination" exists. See In re 203 N. LaSalle St. Ltd. P'ship., 190 B.R. 567, 585 (Bankr. N.D. Ill. 1995), aff'd, 126 F.3d 955 (7th Cir. 1997), rev'd on other grounds, 526 U.S. 434 (1999). Rather, courts typically examine the facts and circumstances of the case and determine whether unfair discrimination has occurred in each particular case. See, e.g., In re Freymiller Trucking, Inc., 190 B.R. 913, 916 (Bankr. W.D. Okla. 1996) (holding that a determination of unfair discrimination requires a court to "consider all aspects of the case and the totality of circumstances"); see also Leslie Fay, 207 B.R. at 791 n.37 (finding "[t]he section 1129(b)(1) test boils down to whether the proposed discrimination between classes has a reasonable basis and is necessary for the reorganization"); In re Int'l Wireless Communications Holdings, Inc., 1999 Bankr. LEXIS 1853 (Bankr. D. Del. 1999). As such, a plan unfairly discriminates in violation of section 1129(b)(1) of the

Bankruptcy Code only if (i) classes comprising similarly situated claims or interests (ii) receive treatment under the plan that is not equivalent, and (iii) there is no reasonable basis for the disparate treatment. See, e.g., 203 N. LaSalle St. Ltd. P'ship, 190 B.R. at 585-86 ("any discrimination must be supported by a legally accepted rationale"); In re Kennedy, 158 B.R. 589, 599 (Bankr. D. N.J. 1993); In re Resorts Int'l, 145 B.R. at 481.

Section 1129(b)(2)(C) provides that a plan is fair and equitable with respect to a class of interests if the plan provides that "the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property." 11 U.S.C. § 1129(b)(2)(C). Particularly, under section 1129(b)(2)(C)(ii), a plan is fair and equitable with respect to a dissenting class of interests as a matter of law if no class junior to such class receives or retains any property under the plan on account of its prepetition interest. 11 U.S.C. § 1129(b)(2)(C)(ii). In addition, the retention of property by a junior interest is only retained "on account of" the junior interest holder's prepetition interest if there is "a causal relationship between holding the prior claim or interest and receiving or retaining property" under the plan. See In re 203 N. LaSalle St. P'ship, 526 U.S. at 451 . For the Supreme Court, the degree of causation required to determine whether a "causal relationship" exists between the retention of property by a junior interest holder and that holder's prepetition interest is determined in light of "the two recognized policies underlying Chapter 11. . . preserving going concerns and maximizing property available to satisfy creditors." Id. at 453.

1. The Plan Does Not Discriminate Unfairly with Respect to Holders of Claims or Interests in the Rejecting Classes

As stated above, section 1129(b)(1) of the Bankruptcy Code does not prohibit discrimination between classes. Rather, it prohibits discrimination against impaired dissenting classes that is unfair. See In re 11,111, Inc., 117 B.R. 471, 478 (Bankr. D. Minn. 1990). The weight of judicial authority holds that a plan unfairly discriminates in violation of section 1129(b) of the Bankruptcy Code only if similar claims are treated differently without a reasonable basis for the disparate treatment. See, e.g., In re Greate Bay Hotel & Casino, Inc., 251 B.R. at 228; In re Kennedy, 158 B.R. at 599; In re Buttonwood Partners, Ltd., 111 B.R. 57; In re Future Energy Corp., 83 B.R. 470 (Bankr. S.D. Ohio 1988). Accordingly, as between two classes of claims or two classes of interests, there is no unfair discrimination if, taking into account the particular facts and circumstances of the case, there is a reasonable basis for such disparate treatment. See, e.g., Buttonwood Partners, 111 B.R. at 63; In re Rivera Echevarria, 129 B.R. 11, 13 (Bankr. D.P.R. 1991).

Based on the foregoing standards, the Plan does not discriminate unfairly with respect to the Rejecting Classes. Classes 1D, 6C through 14C, 17D, 21D and 22C through 25C are general unsecured claims and are not receiving different treatment than other claims against the Debtor with the same priority, and therefore the Plan does not discriminate unfairly with respect to such Classes. Hunt Aff., ¶¶ 94-97. Classes 4C and 4D are secured claims and are not receiving different treatment than other claims against the Debtor with the same priority, and therefore the Plan does not discriminate unfairly with respect to such Classes. Id. at ¶ 95. Class 15F, consisting of the Stone FinCo II Intercompany Claim against SSC Canada, is not receiving any distribution on account of such Claim while general unsecured claims against SSC Canada are receiving the distribution set forth in Section 3.8.4 of the Plan. Id. at ¶ 96. Although Class 15F is receiving different treatment than general unsecured claims, this is not unfair discrimination because the Debtors have a reasonable basis for the disparate treatment: the contract giving rise to the Stone FinCo II Intercompany Claim provides, and the Canadian Bankruptcy Court determined, that the Stone FinCo II Intercompany Claim shall receive shares of equity on account of the Stone FinCo II Intercompany Claim, which shares are worth zero dollars. Id. Therefore, the Stone FinCo II Intercompany Claim is not entitled to a distribution under the Plan.

The Plan also satisfies the "unfair discrimination" requirements of section 1129(b)(1) with respect to Classes 1F, 1G, 4G, 15G, 16F and 20F because there are no other classes with similar legal rights to those of such Classes. See Plan, Arts. II, III. Accordingly, the Plan's separate classification and treatment of Classes 1F, 1G, 4G, 15G, 16F and 20F is consistent with the legal entitlements and priorities of such Interests, and the Plan does not discriminate unfairly with respect to Classes 1F, 1G, 4G, 15G, 16F and 20F for purposes of section 1129(b)(1) of the Bankruptcy Code.

2. The Plan is Fair and Equitable with Respect to Holders of Claims or Interests in the Rejecting Classes

A plan is not "fair and equitable" if a junior unsecured creditor receives or retains property through a plan on account of its prepetition claim or interest. 11 U.S.C. § 1129(b)(2)(B)(ii); In re 203 N. LaSalle St. P'ship, 526 U.S. at 450-51. The Plan is "fair and equitable" with respect to Classes 1F, 1G, 4G, 15G, 16F and 20F because: (i) there are no Classes junior to such Classes that will receive any distributions under the Plan and (ii) no Class of Claims or Interests senior to such Classes will receive more than full payment on account of the Claims or Interest in such Classes. Hunt Aff., ¶¶ 94-97. For this reason, the Plan meets the fair and equitable requirements of section 1129(b) with respect to Classes 1F, 1G, 4G, 15G, 16F and 20F.

The Plan is "fair and equitable" with respect to Holders of Claims in Classes 1D, 6C through 14C, 15F, 17D, 21D and 22C through 25C because: (i) there are no Classes junior to such Classes that will receive any distributions under the Plan and (ii) no Class of Claims or Interests senior to such Classes will receive more than full payment on account of the Claims or

Interest in such Classes. Hunt Aff., ¶¶ 94-97. The Plan is also "fair and equitable" with respect to Classes 4C and 4D, because these Classes consist of secured claims that are receiving their indubitable equivalent in exchange for such claims. Id.

With respect to Classes 1F, 1G, 4G, 15G, 16F and 20F, the Plan is also "fair and equitable" because Holders of Interests in Classes 1F, 1G, 4G, 15G, 16F and 20F are not entitled receive or retain property under the Bankruptcy Code because all Holders of general unsecured claims have not been paid in full. The Equity Objectors have disputed this in their respective Equity Objections, and the Debtors will address their absolute priority arguments in the Valuation Brief, certain affidavits to be filed in connection therewith, and on the record at the Confirmation Hearing.

VII. THE ASSUMPTION, ASSUMPTION AND ASSIGNMENT OR REJECTION OF EXECUTORY AND POST-PETITION CONTRACTS AND UNEXPIRED LEASES UNDER THE PLAN SHOULD BE APPROVED

Pursuant to Article VII of the Plan, upon the occurrence of the Effective Date, all executory contracts or unexpired leases of the Debtors, including those executory contracts or unexpired leases listed on Exhibits A through E to the Omnibus Assumption Motion,[23] shall be deemed assumed in accordance with, and subject to, the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code and be deemed ratified by the Canadian Debtor that is a party to such executory contract or unexpired lease, unless such executory contract or unexpired lease (i) was previously assumed or rejected by the Debtors pursuant to an order of the Bankruptcy Court (a "Prior Assumption/Rejection Order"); (ii) previously expired or terminated in accordance with its terms; (iii) is rejected pursuant to the Omnibus Rejection Motions in the Chapter 11 Cases; or (iv) is the subject of a motion pending before the Bankruptcy Court as of

[23] Capitalized terms used in this section but not otherwise defined in this Memorandum shall have the meaning ascribed to them in the Omnibus Assumption Motion.

the Confirmation Date to assume or reject such contract or lease. Entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such assumptions pursuant to sections 365(a) and 1123 of the Bankruptcy Code.

Section 365(a) provides that a debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease." 11 U.S.C. § 365(a). Courts routinely approve motions to assume, assume and assign, or reject executory contracts or unexpired leases upon a showing that the debtor's decision to take such action will benefit the debtor's estate and is an exercise of sound business judgment. See Sharon Steel Corp. v. Nat'l Fuel Gas Dist. Corp., 872 F.2d 36, 40 (3d Cir. 1989); NLRB v. Bildisco & Bildisco, 465 U.S. 513, 523 (1984); In re G Survivor Corp., 171 B.R. 755, 757 (Bankr. S.D.N.Y. 1994) ("In determining whether a debtor may be permitted to reject an executory contract, courts usually apply the business judgment test. Generally, absent a showing of bad faith, or an abuse of discretion, the debtor's business judgment will not be altered.") (internal citations omitted); In re Orion Pictures Corp., 4 F.3d 1095, 1099 (2d Cir. 1993), cert. dismissed, 511 U.S. 1026 (1994). Accordingly, courts will approve the debtor's assumption or rejection of an executory contract or unexpired lease unless evidence is presented that the debtor's decision to assume or reject "was so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice." Lubrizol Enterprises, Inc. v. Richmond Metal Finishers (In re Richmond Metal Finishers, Inc.), 756 F.2d 1043, 1047 (4th Cir. 1985), cert. denied, 475 U.S. 1057 (1986). Indeed, courts recognize that to impose more exacting scrutiny would slow a debtor's reorganization, thereby increasing its cost and undermining the "Bankruptcy Code's provisions for private control" of the estate's administration. Richmond Leasing Co. v. Capital Bank, N.A., 762 F.2d 1303, 1311 (5th Cir. 1986).

The assumption by the Debtors of their executory and postpetition contracts and unexpired leases and assignment to the applicable Reorganized Debtor in accordance with and subject to the terms and conditions of the Plan is both beneficial and necessary to the Debtors' and Reorganized Debtors' business operations upon and subsequent to emergence from chapter 11. Hunt Aff., ¶ 101. The assumption and assignment of each of the executory and postpetition contracts and unexpired leases pursuant to section 365 of the Bankruptcy Code and the Plan is a sound exercise of the Debtors' business judgment and is in the best interest of the Debtors, their estates and their creditors. Id. Based upon, among other things, the Reorganized Debtors' anticipated financial wherewithal after the Effective Date, including, without limitation, the operating cash and liquidity available to the Reorganized Debtors under the Exit Facilities, to fund their post-emergence business operations, each Reorganized Debtor that is assuming an executory contract or unexpired lease pursuant to the Plan will be fully capable of performing under the terms and conditions of the respective contract or lease to be assumed or assumed and assigned on and after the Effective Date. Id. at ¶ 102. Finally, the assumption by the Debtors of (i) all Employee Benefit Plans pursuant to Section 7.1 of the Plan; (ii) all collective bargaining agreements entered into by the Debtors and in effect on the Effective Date pursuant to Section 7.3 of the Plan; and (iii) the assumption of certain insurance policies and agreements pursuant to Section 7.4 of the Plan, and the proposed preservation of such obligations post-emergence, (a) is of fundamental importance to the Debtors' reorganization process, (b) is a sound exercise of the Debtors' business judgment, and (c) is in the best interest of the Debtors and their estates. Id. at ¶ 103.

VIII. THE ASSUMPTION OF INDEMNITY OBLIGATIONS UNDER THE PLAN SHOULD BE APPROVED

Pursuant to Section 10.8 of the Plan, the Debtors will assume any and all indemnity obligations arising pursuant to "certificates or articles of incorporation, codes of regulation, by-laws, limited liability company agreements, limited liability partnership agreements, applicable state or non-bankruptcy law, or specific agreement or any combination of the foregoing." As is customary, these indemnity obligations apply to the Debtors' directors, officers, managers or employees and agents. The Plan further states that the indemnity obligations described in Section 10.8.1 of the Plan "shall be treated as if they are executory contracts that are assumed pursuant to Section 365 of the Bankruptcy Code under the Plan as of the Effective Date."

The Debtors are assuming all of their prepetition executory contracts and unexpired leases upon the Effective Date of the Plan subject to and in accordance with the terms and conditions of the Plan. Therefore, the Debtors' assumption of their indemnification obligations pursuant to Section 10.8 of the Plan is no different than the treatment of the Debtors' other contractual obligations that will be honored and afforded by the Reorganized Debtors after they emerge from chapter 11.

The Debtors believe the directors, officers, and employees entitled to indemnification under the Plan have been critical to the Debtors' reorganization process and will continue to play a major role in the Debtors' ongoing efforts towards emergence from bankruptcy and after the Debtors' emergence from chapter 11. Hunt Aff., ¶ 104. The preservation and survival of such obligations after the Effective Date have been of fundamental importance to the Debtors' reorganization, and have enabled the directors, officers, and employees full participation in these Chapter 11 Cases, and the continued participation of these individuals will be substantially enhanced if the Reorganized Debtors commit to honoring these and other indemnification obligations after the Debtors emerge from bankruptcy. Id. at ¶¶ 104-105.

The Debtors' decision to assume the indemnification obligations as provided in Section 10.8 of the Plan was made after careful consideration and pursuant to the Debtors' sound business judgment. Hunt Aff., ¶ 105. As discussed herein, the assumption or rejection of an executory contract is evaluated using the business judgment standard. The Debtors' good faith decision to assume the indemnification obligations under the Plan certainly satisfies the business judgment standard.

Once a debtor has determined that a particular executory contract should be assumed, the debtor's decision to assume the contract is subject to the "business judgment" standard. In re Network Access Solutions, Corp., 330 B.R. 67, 75 (Bankr. D. Del. 2005); see also In re Fleming Companies, Inc., 2004 WL 385517, *1 (Bankr. D. Del. Feb. 27, 2004) ("the decision to assume or reject an executory contract is a matter within the sound business judgment of the debtor.") In order to determine whether a debtor has satisfied the business judgment standard, a court must evaluate whether or not assuming the contract is in the best interest of the bankruptcy estate. In re Mottola, 1997 WL 860674, *3 (Bankr. E.D. Pa Dec. 3, 1997).

It is well-settled that the business judgment standard offers a great deal of deference to the debtor's decision making. The business judgment rule requires only that the court "determine whether a reasonable business person would make a similar decision under similar circumstances." In re Vencor, Inc., 2003 WL 21026737, *3 (Bankr. D. Del. April 30, 2003) (upholding debtor's business judgment decision to assume contract). "A debtor satisfies the business judgment test when it determines, in good faith, that assumption of an executory contract will benefit the estate and unsecured creditors." In re Decora Indus., Inc., 2002 WL 32332749, *8 (D. Del. May 20, 2002). Thus, so long as a debtor's decision is reasonable and in good faith – as is the case here – the debtor's business judgment should be upheld.

The Debtors have duly exercised their business judgment in deciding to assume the indemnification obligations pursuant to Section 10.8 of the Plan. The Debtors firmly believe that the assumption of these obligations will benefit their estates and creditors by ensuring that management and personnel critical to the Debtors' reorganization efforts and future successes remain part of the Company. Hunt Aff., ¶ 105. As discussed herein, the Debtors believe that the assumption of the indemnification obligations is not only a sound exercise of their business judgment, but is in fact a necessary component of the Plan. Id.

IX. THE DISCHARGE, INJUNCTION, RELEASE AND EXCULPATION PROVISIONS EMBODIED IN THE PLAN ARE PERMISSIBLE AND SHOULD BE APPROVED OVER THE REMAINING OBJECTIONS TO CERTAIN PLAN DISCHARGE AND RELEASE PROVISIONS FILED BY THE PREFERRED HOLDERS AND BARON & BUDD.

Article X of the Plan contains comprehensive and customary discharge, injunction, release and exculpation provisions that are typically afforded to debtors, reorganized debtors and certain other parties. Moreover, as discussed in more detail below, each of the discharges, releases, injunctions and exculpations provided for in Sections 10.1, 10.2, 10.3, 10.4 and 10.5 of the Plan are (1) integral to the terms, conditions and settlements contained in the Plan; (2) fair, equitable, reasonable and in the best interest of the Debtors; (3) appropriate in connection with the reorganization of the Debtors; and (4) supported by fair reasonable consideration. Accordingly, these provisions should be approved.

The U.S. Trustee, the IRS, the Texas Comptroller, the Preferred Holders, Dow, Baron & Budd and Montana DOR each filed objections to some aspect regarding the scope of the discharge, releases and/or exculpatory relief provided in the Plan. Many of these objections have been resolved through the addition of consensual language to the Plan, or through further explanation by the Debtors about the breadth of the Plan provision in question. However, despite resolution with the majority of the objecting parties that objected on these grounds, including the U.S. Trustee, the Debtors have been unable to reach agreement with the Preferred Holders and Baron & Budd. As explained below, based on certain clarifications made to the Plan in the Plan Modifications, and other instances in which the Objectors simply misunderstand the Plan language, the remaining objections are meritless and, accordingly, should be overruled.

1. The Discharge and Injunction Provisions Set Forth in Sections 10.1 and 10.3 of the Plan Comply With the Bankruptcy Code.

Section 10.1.1(a) of the Plan provides for the broad discharge contemplated by section 1141 of the Bankruptcy Code.[24] Further, Sections 10.1.2 and 10.3 provide for an injunction which, in general, enjoins all Persons that, including, without limitation (i) have held or asserted, (ii) currently hold or assert, (iii) may hold, or (iv) allege that they hold, a Claim or other debt or liability or an Interest or other right of an equity security holder from taking certain actions against the Debtors, Reorganized Debtors and each of their respective Related Parties on account of such Claims, Interests or other obligations.

The long embodied fresh start principle of the Bankruptcy Code is provide for in section 1141(a), which provides:

> the provisions of a confirmed plan bind the debtor, any entity issuing securities under the plan, any entity acquiring property under the plan, and any creditor, equity security holder, or general partner in the debtor, whether or not the claim or interest of such creditor, equity security holder, or general partner is impaired under the plan and whether or not such creditor, equity security holder, or general partner has accepted the plan.

11 U.S.C. § 1141(a). As evidenced, in part, by the vote in favor of the Plan (and all the provisions thereof), the Debtors respectfully submit that the discharge and injunction provisions

[24] The Debtors have deleted sub-section 10.1.1(b) of the Plan.

contained in the Plan are reasonable and appropriate, consistent with the Bankruptcy Code and should be approved.

2. The Direct Releases by the Debtors in Section 10.2 of the Plan Satisfy the Zenith Factors.

Section 10.2.1 of the Plan provides for releases by each of the Debtors and Reorganized Debtors, as of the Effective date, of the Released Parties,[25] including the present officers and directors and non-Debtor affiliates of the Debtors, from, among other things, any and all Claims, any and all other obligations, suits, judgments, damages, debts, rights, remedies, and causes of action that are or may be based, in whole or in part, on any act or omission taking place or existing on or prior to the Effective Date (the "Debtor Releases"). In connection with the negotiation of certain provisions of the Plan with the U.S. Trustee, the definition of "Released Parties" in the Plan was modified to make clear that only directors and officers acting in such capacities as of the Petition Date will be included in the Debtors' release of certain parties in Section 10.2.1 of the Plan and the exculpatory provisions in Sections 10.5.1 and 10.5.2 of the Plan.

In reviewing the contemplated release by a debtor of certain claims against non-debtor third parties, courts in this district have considered the following five factors: (i) an identity of interest between the debtor and non-debtor; (ii) a substantial contribution to the plan by the non-debtor; (iii) the necessity of the release to the reorganization; (iv) the overwhelming acceptance of the plan and release by creditors and interest holders; and (v) the payment of all or

[25] The term Released Parties includes each of the Debtors (including the Canadian Debtors), the Reorganized Debtors, Canadian Newco, the Committee, the Prepetition Agent, the Prepetition Facing Agent, the Prepetition Lenders, the DIP Facility Agent, the DIP Facility Lenders, the Prepetition Notes Indenture Trustees, the Industrial Revenue Bonds Indenture Trustees, the CCAA Monitor, and each of their respective Related Persons. As noted above, the Released Parties do not include former directors and officers of the Debtors for prepetition service to the Debtors with respect to Sections 10.2.1, 10.5.1 and 10.5.2 of the Plan.

substantially all of the claims of the creditors and interest holders under the plan. See In re Zenith Elec. Corp., 241 B.R. at 110. Each of the Zenith factors have been met in this case.

First, there is a clear identity of interest between the Debtors and certain third parties (including the current officers and directors and the non-Debtor affiliates of the Debtors) in connection with the negotiation, documentation, and implementation of the Plan, the Plan Supplement and the other Plan Related Documents and the successful and expeditious reorganization. Second, all of the Released Parties have made substantial contributions to the Debtors' reorganization in formulating, negotiating at arm's length, preparing, disseminating, implementing, administering, soliciting, confirming, and/or consummating the Plan. Hunt Aff., ¶¶ 110-113. Third, the releases, discharges, injunctions and exculpations are integral to the Plan as a whole, the Debtors' reorganization efforts, and the continued success of the Reorganized Debtors. Id. at ¶ 109. Fourth, the overwhelming acceptance of the Plan by all holders of Claims in the Voting Classes except for Classes 4C and 4D, as set forth in the Voting Affidavits, gives effect to the discharges, releases, injunctions and exculpations in the Plan. Fifth, the Plan provides for the payment of all or a substantial portion of the Claims of those classes of creditors potentially affected by the discharges, releases, injunctions, indemnifications and exculpations. Accordingly, the Debtors believe they satisfy the Zenith factors.

3. The Third Party Releases Set Forth in Section 10.2.2 of the Plan are Consensual and Should be Approved

Section 10.2.2 of the Plan provides for voluntary releases by Holders of Claims and Interests that are entitled to vote on the Plan of, among other things, certain claims, rights, and causes of action taking place or existing on or prior to the Effective Date that such Holders of Claims or Interests may have against the Released Parties. The release in Section 10.2.2 shall not apply to any Person that exercised its election in accordance with Section 10.2.2 of the Plan to withhold granting a release in favor of those Released Parties other than the Debtors, Reorganized Debtors, Canadian Newco, and their respective predecessors, successors and assigns (whether by operation of law or otherwise) by checking the appropriate box on its respective Ballot.

Indeed, courts have been clear that an "affirmative agreement" from an affected creditor will render a release consensual. See In re Zenith Elecs. Corp., 241 B.R. at 111. Although the parameters of what constitutes "affirmative agreement" are fact specific, courts have held that, by simply voting in favor of a plan with non-debtor releases, a creditor will be found to have affirmatively agreed to such releases. See In re Coram Healthcare Corp., 315 B.R. at 336 ("to the extent creditors or shareholders voted in favor of the Trustee's Plan, which provides for the release of claims they may have against Noteholders, they are bound by that"); In re Zenith Elecs. Corp, 241 B.R. at 111 (approving non-debtor releases for creditors that voted in favor of plan); In re West Coast Video Enter., Inc., 174 B.R. 906, 911 (Bankr. E.D. Pa. 1994) (stating that "each creditor bound by the terms of the release must individually affirm same, either with a vote in favor of a plan including such a provision or otherwise").

In this case, the Plan goes one step further and provides creditors with the express option of granting releases to non-Debtor parties. Indeed, as noted above, the release in Section 10.2.2 of the Plan shall not apply to those creditors that received a Ballot but elected, in accordance with Section 10.2.2 of the Plan, to withhold granting a release in favor of those Released Parties other than the Debtors, Reorganized Debtors and Canadian Newco and their respective predecessors, successors and assigns by checking the appropriate box on such Ballot, such creditor is deemed to preserve whatever direct (and therefore, non-derivative) claims it may have against the applicable non-Debtor third parties under applicable non-bankruptcy law. Thus, under the terms of the Plan, only those creditors that voted a Ballot and did not exercise the option to preserve any direct claims they may have against third parties are bound by the third party releases. Therefore, such releases are clearly consensual. See, e.g., In re Monroe Well Service, Inc., 80 B.R. 324, 334-35 (Bankr. E.D. Pa. 1987) (determining that releases were consensual when creditors had the option of granting such releases).

However, even if the Court were to find that the releases are not consensual, the release provisions provided in Section 10.2 of the Plan offer appropriate consideration to those parties who have substantially contributed, and who will substantially contribute, to the Debtors' Estates and thus comply with the standards for non-consensual releases. By definition, the Released Parties are parties who were actively and integrally involved in these Chapter 11 Cases. Further, the Released Parties all made, or will make, substantial contributions to these cases. See generally In re PWS Holding Corp., 228 F.3d 224; In re Genesis Health Ventures, Inc., 266 B.R. 591 (Bankr. D. Del. 2001). Whether a party is instrumental in formulating a plan of reorganization or provides a substantial contribution to a debtor and, as a result, is entitled to a release, requires a fact intensive analysis and is determined on a case-by-case basis. See Genesis Health, 266 B.R. at 606 (noting that courts should balance the equities in determining whether to grant a release); Master Mortgage Investment Fund, Inc., 168 B.R. 930, 935-37 (Bankr. W.D. Mo. 1994) (noting that courts should conduct a fact intensive analysis in determining whether to grant releases).

A court may authorize a third party release if it provides for "[t]he hallmarks of permissible non-consensual releases – fairness, necessity to the reorganization, and specific factual findings to support these conclusions." In re Continental Airlines, 203 F.3d 203, 214 (3d Cir. 2000). In determining whether the hallmarks of permissible non-consensual releases exist, courts in this district often examine whether the plan proponent can demonstrate (i) that the success of the debtor's reorganization bears a relationship to the release of the non-consensual parties and (ii) that the releases have provided a substantial contribution to the debtor's plan. In re Genesis Health Ventures, Inc., 266 B.R. at 607.[26] Moreover, the court in Zenith found that non-debtor parties need not make a monetary contribution to a plan in order to satisfy this factor. See In re Zenith Elecs. Corp., 241 B.R. at 110 (finding that this factor was satisfied where released parties designed, implemented, and negotiated restructuring); see also In re Coram Healthcare Corp., 315 B.R. at 336 (finding non-debtor had an identity of interest where it "share[d] a goal of achieving a reorganization of the Debtors").

The Released Parties all made, or will make, important contributions to the Chapter 11 Cases. Such contributions include, among other things, (a) compromising claims and accepting diminished recoveries, (b) negotiating and supporting the Plan, and (c) in the case of officers and directors, (i) their efforts on behalf of the Debtors prior to and throughout the Chapter 11 Cases, and (ii) in many instances, their agreeing to continue employment with the Reorganized Debtors after Plan consummation. Hunt Aff., ¶ 110. Without the releases as an incentive, many of the Released Parties would have been unwilling to contribute to the Plan, which would have reduced the enterprise value available for distribution to creditors and would have negatively impacted the reorganization of the Debtors. Id. Therefore, there is ample basis for this Court to approve the Plan's releases.

4. The Exculpation Provisions are Appropriate and Should be Approved

Section 10.5 of the Plan contains customary exculpation provisions which, with certain limitations, protect the Released Parties from liability relating to the postpetition period that

[26] In addition, the court may also examine the Zenith factors discussed above. The Debtors posit that the test set forth in Genesis Health is a distillation of the Zenith factors and that the releases are warranted under either approach.

might arise from the administration of the Chapter 11 Cases. It is important to underscore the difference between the consensual third party releases provided for in Section 10.2.2 and the Plan's exculpation provisions in Section 10.5. Unlike the consensual third party releases, the exculpation provisions do not generally affect the liability of third parties, but rather specifically set a standard of care of gross negligence or willful misconduct in future litigation by a non-releasing party against an exculpated party for acts arising out of the Debtors' restructuring. See In re PWS Holding Corp., 228 F.3d at 245 (holding that an exculpation provision "is apparently a commonplace provision in chapter 11 plans, [and] does not affect the liability of these parties, but rather states the standard of liability under the Code."). As such, an exculpation provision represents a legal conclusion that flows inevitably from several different findings a bankruptcy court must reach in confirming a plan, which are undeniably core matters. See 28 U.S.C. § 157(b)(2)(L). Once a good faith finding is made, it then becomes appropriate to set the standard of care of those involved in the formulation of that plan of reorganization for liability arising from the bankruptcy cases. See PWS, 228 F.3d at 246-247 (observing that creditors providing services to the debtors are entitled to a "limited grant of immunity . . . for actions within the scope of their duties . . . ."). Exculpation clauses, therefore, appropriately prevent future collateral attacks against parties that have made substantial contributions to a case by contributing to a debtor's reorganization. Recognizing this difference, customarily courts have approved exculpations in large chapter 11 cases. See, e.g., In re Source Enters., Inc., 2007 WL 2903954, at *13 (Bankr. S.D.N.Y. Oct. 1, 2007) (approved exculpation provision because provision in the best interests on the debtors' estates and the creditors); In re Bally Total Fitness of Greater New York, Inc., 2007 WL 2779438, at *8 (Bankr. S.D.N.Y. Sept. 17, 2007) (finding that the exculpation, release, and injunction provisions appropriate because they were fair and equitable, necessary to successful reorganization, and integral to the plan); In re Spiegel, Inc., 2006 WL 2577825, at *7-8 (Bankr. S.D.N.Y. Aug. 16, 2006) (citations omitted) (holding that plan's exculpation, release, and injunction provisions were vital to the plan and necessary for successful administration of the estate); In re Enron Corp., 326 B.R. 497, 501 (S.D.N.Y. 2005) (endorsing the findings of the bankruptcy court concerning the propriety and justification for the limited exculpation provision contained in debtor's chapter 11 plan, which excluded acts of gross negligence and willful misconduct); In re Oneida Ltd., 351 B.R. 79, 94 n.22 (Bankr. S.D.N.Y. 2006) (exculpation provision contained in chapter 11 plan that released prepetition and postpetition claims related to various confirmation matters, but excepted gross negligence and willful misconduct, was "sufficiently narrow to be unexceptionable"). The exculpation provisions in the Plan are likewise appropriate and vital because they provide protection to those parties who were essential to the restructuring process.

Here, the Debtors, working with their major creditor constituencies, formulated and negotiated the Plan in good faith. The negotiations and compromises embodied in the Plan were necessary to the formulation of the Plan and likely could not have occurred without protection from liability for the constituents involved. Hunt Aff., ¶ 110. Under these circumstances, it is appropriate to offer protection to these particular parties in the form of exculpation. See In re Worldcom, Inc., 2003 WL 23861928, at *28 (Bankr. S.D.N.Y. Oct. 31, 2003). Indeed, the scope and identity of the Released Parties, which are the subject of, among other things, the exculpation and release provisions set forth in the Plan, are appropriate in light of, among other things, the significant roles played by various of the Released Parties in connection with the negotiation and execution of the "Plan Related Documents" including, without limitation, the Disclosure Statement, the Plan, the Plan Supplement, and each of the documents and agreements attached as Exhibits to the Plan and the Plan Modifications, each of which are instrumental to the Debtors' emergence from chapter 11. Hunt Aff., ¶¶ 110-113.

The proposed exculpations are narrowly and appropriately crafted so as to insulate those parties whose efforts have been instrumental in connection with the formulation and development of the Plan as well as the overall success of the Chapter 11 Cases. Accordingly, the exculpation provision in Section 10.5 of the Plan is fully consistent with the Bankruptcy Code and should be approved.

X. EACH OF THE UNRESOLVED OBJECTIONS ARE WITHOUT MERIT AND SHOULD BE OVERRULED.

As noted above, the vast majority of the Objections have either been formally withdrawn, or will not be pursued at the Confirmation Hearing because of informal discussions or settlement between the Debtors and the objector in question. In fact, of the thirty-one Objections, the Debtors believe that only a couple will remain in addition to the Equity Objections and the Stone FinCo II Objections as of the Confirmation Hearing. As discussed, the Stone FinCo II Objections will be addressed separately in the Stone FinCo II Brief and the Valuation Objections will be addressed separately in the Valuation Brief. Each remaining Objection and Equity Objection should be overruled, and the Plan should be confirmed, for the following reasons.

A. The Equity Objectors' Objections Should be Denied.

1. The Plan Has Been Developed in Good Faith and Satisfies Section 1129(a)(3) of the Bankruptcy Code.

As attested to in the Hunt Affidavit, as described above in Section III, and as will be further demonstrated in the full record of the Confirmation Hearing, the Debtors have acted in good faith and consistent with their duties under applicable law at every stage of the bankruptcy process, including in formulating, drafting and pursuing the Plan. In addition to that abundant factual record, the overwhelming support of the creditors for the Plan further demonstrates the good faith nature in which the Debtors have conducted the Chapter 11 Cases. Not surprisingly, the Equity Objectors have asserted that the Plan was proposed in bad faith. Their bad faith argument, which is simply an extension of their views on valuation (which will be fully addressed in the Valuation Brief and other Supporting Materials) is without merit.

a. Pursuing a Plan Utilizing Their Financial Projections and Valuation Does not Equal Bad Faith by the Debtors.

In their Equity Objections to the Debtors' good faith Plan process, the Equity Objectors argue that the Plan provides an "arbitrarily low valuation" and is otherwise presented in bad faith. While this is consistent with the their position regarding the value of the Debtors, this is simply a restatement of the Equity Objectors' disagreement with the Debtors' projections and the valuation, not a basis for concluding that the Plan was not proposed in good faith.

Furthermore, as discussed above in Section III, the Debtors engaged in an exhaustive process to build a long term business plan which resulted in projections upon which the valuation is based. This process was followed by extensive negotiations and support of the Plan by the Committee, Ad Hoc Noteholders, the Prepetition Lenders and other major stakeholders in these cases, including the CCAA Monitor, who ultimately provided an independent review of the Plan and endorsed it to creditors of the Canadian Debtors in the Monitor's Report. Creditors in the Voting Classes have voted overwhelmingly to support the Plan. In short, the Debtors have at all times acted in good faith in formulating, preparing and ultimately proposing the Plan, and the widespread support for the Plan vindicates this process.

b. Rejecting The Preferred Holders' Proposed Rights Offering does Not Demonstrate a Lack of Good Faith.

On March 26, 2010, 24 business hours before the close of Plan voting, certain Preferred Holders sent a one and a half page letter to the Debtors offering to back stop a rights offering for up to 10% of the common equity value of the Debtors (the "Backstop Letter"). Hunt Aff., ¶ 52. The Debtors and their advisors carefully reviewed the Backstop Letter and solicited the input of the Committee and counsel to the Ad Hoc Noteholders (the "Constituents"). Id.

According to the Backstop Letter, assuming the parties could come to agreement on all the terms necessary for a fulsome rights offering (including a definitive commitment for the back stop) and enter into definitive documentation reflecting such terms and due diligence could be completed in a satisfactory manner, the proposed rights offering would have yielded a maximum of approximately $270 million in cash to the Debtors in exchange for the Debtors' issuance of stock and warrants of Reorganized SSCE to the rights offering participants. Hunt Aff., ¶ 52. However, the Constituents made clear that they would not support a proposal which did not result in the payment of all claims against the Debtors in full in cash with interest (as applicable). Id. Irrespective of whether a transaction could have been fully negotiated and documented while the Debtors maintained their current exit timeframe, which is questionable, because the proposal outlined in the Backstop Letter did not provide for the payment in full in cash with interest (as applicable) of all claims against the Debtors, the Constituents did not support the Debtors' pursuit of the transaction proposed in the Backstop Letter. Id. Therefore, the Debtors exercised their business judgment and declined to pursue the proposal outlined in the Backstop Letter, as detailed in a letter sent on April 7, 2010. Id.

Rejecting the Backstop Letter does not equate to acting in bad faith. See In re Spansion, Inc., --B.R.--, 2010 WL 1292837, *19-20 (Bankr. D. Del. Apr. 1, 2010) (rejecting the argument that the debtors' failure to accept an alternative rights offering was evidence of bad faith and acknowledging the debtors' concern that the alternative rights offering would have an adverse impact on the timing of confirmation and the availability of exit financing, and could cause many creditors who voted in favor of the plan to abandon their support for the plan); see also In re Ion Media Networks, Inc., 2009 WL 4047995 *12 (Bankr. S.D.N.Y. Nov. 24, 2009) (holding it reasonable and in good faith to reject competing proposals in order to prevent introduction of delay, uncertainty, and incremental risk). In Spansion, Judge Carey determined that the Court could not conclude that the debtors' rejection of an alternative rights offering "demonstrates a lack of good faith in seeking confirmation of the Plan . . . [a]bsent some demonstrable impropriety in the confirmation process, it is not for the Court to supplant the Debtors' business judgment with its own." Id. at *20. As set forth above, in determining to decline the proposal in the Backstop Letter, the Debtors acted in good faith and consistent with their business judgment. They solicited the input of the Constituents and considered the proposal in the context of the current status of the Chapter 11 Cases and the anticipated exit time frame. In such circumstances, there is no reason to "supplant" the Debtors business judgment and conclude that the rejection of the Backstop Letter demonstrates the Debtors acted in bad faith.

2. The Consensual Releases in the Plan do not Impact the Holders of Interests and Are Permissible Under Applicable Law.

The Preferred Holders also object to the Debtors' discharge provision in Section 10.1.1(b) of the Plan, and Section 10.2.2 of the Plan relating to the consensual releases by holders of claims against and interests in the Debtors.

The Debtors have, in response to certain formal and informal Objections and responses to the Plan, made certain applicable adjustments to Plan Sections 10.1.1(b), 10.2.1 and 10.2.2 that are described above. Included in these changes are certain revisions that the Debtors believe should settle the Preferred Holders' objection to the discharge in Section 10.1.1(b) of the Plan. In addition, clarifying language carving out willful misconduct and gross negligence has been added where needed, and the discharge, release and exculpation provisions in the Plan are all clear in this respect as well.

With respect to its objection to the consensual release provided in Section 10.2.2, however, the Preferred Holders' objection misapprehends the nature of such release and, more particularly, the standards governing the approval of such release, and should be denied. Pursuant to Section 10.2.5 of the Plan, "the releases set forth in Section 10.2.2 shall not be applicable to (i) any Holders of Claims or Interests that are not entitled to vote to accept the Plan, nor (ii) any Holders in voting Classes that (a) do not vote, or (b) submit a Ballot and "opt-out" by marking the appropriate box on the Ballot." In other words, the release is fully consensual – a party must submit a Ballot and elect not to opt out from the release in order to be bound by the release. The Plan is completely clear that no party will be "deemed" to consent to such release by mistake, or without having any choice in the matter. Thus, given the consensual nature of the third party release and notwithstanding the Preferred Holders' assertion to the contrary, the standards regarding non-consensual releases are not applicable to the release in Section 10.2.2 of the Plan. The Preferred Holders' objection to the third party release is further undermined by the fact that the equity holders were not entitled to vote on the Plan and thus are not bound by the Plan's third party release. Moreover, as demonstrated generally above in Section IX of this Memorandum, the Debtors' releases are appropriate and not overly-broad considering the scope and necessity of participation by the Released Parties in shaping the Plan. For these reasons, the Preferred Holders' objection relating to the consensual release should be denied.

3. The Preferred Holders' Allegation That The Plan Results In De Facto Substantive Consolidation Does Not Impact Equity And Should Not Affect Plan Confirmation.

The Preferred Holders make an additional argument that the Plan may somehow represent a backdoor consolidation of the Debtors, or may not be feasible with respect to certain Debtors, because of cash contributions that may be made by SSCE with respect to certain of the distributions contemplated in the Plan at non-SSCE entities. The insinuation is that SSCE is improperly funding the plans of certain Debtor subsidiaries by downstreaming cash that may otherwise be available for equity. The Preferred Holders' argument is based on the faulty premise that SSCE would act against its own best economic interests, and such argument fails for several reasons.

The Preferred Holders do not specify the Debtors at which this particular objection is aimed. The Debtors will therefore assume it is aimed at Cameo Container Corporation ("Cameo"), Calpine Corrugated, LLC ("Calpine") and Smurfit-Stone Puerto Rico, Inc. ("SSPRI") – the only three Debtor entities with material debt that creditors will receive a distribution on account of, and whose assets are not subject to the Canadian Asset Sale, pursuant to the Plan. As detailed in the Disclosure Statement, the total estimated amount of general unsecured claims at these three Debtors is $4 million dollars -- in total.[27] Thus, regardless of

[27] SSCE is a guarantor of the over $40 million in secured claims against Calpine, so such amounts would have to be paid by SSCE anyway in the event that value at Calpine did not support such payment before any amounts could be.

how the payments of these distributions are funded, the amounts are not material. Furthermore, two of these Debtor entities, Calpine and SSPRI, had adequate cash as of February 28, 2010 to satisfy all of their own unsecured claims.[28] And, even if SSCE were funding all of such distributions, equity would only be implicated by SSCE's business decision to do so if equity were within $4 million of being "in the money." The Debtors will demonstrate at the Confirmation Hearing that this is simply not the case.

The Preferred Holders also ignore the fact that SSCE is the parent of each of the entities at issue, and SSCE is retaining its equity interest in each of these entities under the Plan. Therefore, SSCE – through its equity ownership – directly benefits from the value of Cameo, Calpine and SSPRI. The Plan observes the separateness of each Debtor entity by including a separate plan of reorganization for each such Debtor. Certain of the individual plans of reorganization within the Plan provide for a 100% cash distributions to the unsecured creditors of Debtors that have actual value, such as Calpine, Cameo and SSPRI. Others, such as SSCC and the Non-Operating Debtors, provide no recovery to holders of unsecured claims. Ultimately, SSCE, in its business judgment, concluded that it was in SSCE's best interests to retain its equity interests in, and maintain the operations of Cameo, Calpine and SSPRI as part of the post-emergence business. The Preferred Holders provide no reason to question this business judgment, even if it involves SSCE downstreaming minimal cash for payment of unsecured creditors at entities where SSCE is retaining its equity ownership.

---

made available to equity interests in SSCC. In Exhibit B of the Pardiwala Affidavit, PwC provided updated claims estimates, including broken out estimated allowed claims amounts for Calpine, Cameo and SSPRI.

[28] As demonstrated in Exhibit A of the Pardiwala Affidavit, as of February 28, 2010, Calpine had approximately $3.6 million in cash and cash equivalents and SSPRI had approximately $3.4 million in cash and cash equivalents. This exceeds the approximately $1.3 million in unsecured claims against Calpine and $895,000 in unsecured claims against SSPRI. See Pardiwala Aff., Exhibit B.

Furthermore, the idea that transfers of cash by Reorganized SSCC on and after the Effective Date to creditors of subsidiaries (over which it has retained ownership) would have any impact on a potential SSCC Interest holder recovery defies logic. The Preferred Holders' argument is based upon the premise that SSCE would act against its own best interests by funding payments to creditors of worthless entities. In addition to being completely illogical, this argument ignores the fact that the creditors of SSCE, not the equity holders, are the constituency that would be harmed by any such economically irrational decision. As the Debtors will show at the Confirmation Hearing, the holders of Interests in SSCC are hundreds of millions of dollars away from any recovery in these cases, so the Preferred Holders' claim that such holders may be "robbed of potential value to which they may be entitled" based on cash distributions to the creditors of certain Debtors is baseless.

The Preferred Holders also call into question the feasibility of each Plan which SSCE may provide cash funding to support distributions. This argument fails. As discussed in Exhibit 14 to the Plan, which shows the various restructuring transactions taking place in connection with the Plan, Calpine and Cameo are being merged into Reorganized SSCC on the Effective Date, and will subsequently be part of that bigger and unquestionably feasible enterprise. SSPRI will continue as a wholly-owned subsidiary of Reorganized SSCC, and the Debtors believe that it is, and will remain, able to pay its various creditors pursuant to the Plan, and will not have any difficulty paying it bills and remaining a viable enterprise post-Effective Date. See Hunt Aff., ¶ 91. For the foregoing reasons, the Preferred Holders's objection with respect to deemed consolidation does not present any obstacle to confirmation of this Plan, and should be denied.

4. The Prepetition Lenders of SSCC are a Valid, Non-Insider Impaired Class That Has Voted to Accept the Plan, Satisfying Section 1129(a)(10) of the Bankruptcy Code With Respect to SSCC.

The Certain Holders argue that the Debtors cannot confirm the Plan for SSCC because there is no consenting impaired class of creditors for that Debtor. Their argument is based on the flawed assertions that the Prepetition Lender Claims are either unimpaired under section 1124 of the Bankruptcy Code, or have been "artificially" impaired by the Debtors, and should be denied.

Under section 1124 of the Bankruptcy Code, a class of claims is impaired unless the treatment provided under the plan of reorganization leaves the "legal, equitable and contractual rights" of the class unchanged. 11 U.S.C. § 1124(1). "The Bankruptcy Code defines 'impairment' broadly, thereby maximizing creditor participation in the confirmation process, i.e., even the smallest impairment nonetheless entitles a creditor to participate in voting." In re American Solar King Corp., 90 B.R. 808, 819 (Bankr. W.D. Tex. 1988). Accordingly, the standard for impairment "is very lenient and 'any alteration of the rights constitutes impairment even if the value of the rights is enhanced.'" In re Wabash Valley Power Ass'n, 72 F.3d 1305, 1321 (7th Cir. 1995) (quoting 5 Collier on Bankruptcy ¶ 1124.03[1] (15th Ed. 1994)) (emphasis added); see also In re Armstrong World Indus., Inc., 432 F.3d 507, 512 n.2 (3d Cir. 2005) ("A class is impaired if its legal, equitable, or contractual rights are altered under the reorganization plan.") (citing 11 U.S.C. § 1124); In re Coram, 315 B.R. at 351 ("if the proposed plan ... does not leave the creditor's rights entirely unaltered, the creditor's claim is impaired.") (citing In re PPI Enters. Inc., 324 F.3d 197, 202 (3d Cir. 2003)).

Under the Plan, holders of Prepetition Lender Claims receive "a cash payment of 100% of the principal amount of such [claim], plus any accrued but unpaid interest thereon payable at the applicable non-default interest rate under the Prepetition Credit Documents . . . ." See Plan Section 3.2.3(b) (emphasis added). As the Prepetition Credit Documents provide for the application of a default interest rate (which is 2.25%[29] greater than the non-default interest rate) upon an event of default, including a bankruptcy filing, the Plan clearly alters the Prepetition Lenders' contractual right by not providing a recovery in line with the higher, default interest rate required by the Prepetition Credit Documents. Thus, the Prepetition Lender Claims are unquestionably impaired. See, e.g., In re Ace-Texas, Inc., 217 B.R. 719 (Bankr. D. Del. 1998) (holding that to avoid impairment the entire debt due, including default interest, must be provided for under the plan); In re Moody Nat'l SHS Houston H, LLC, 2010 Bankr. LEXIS 919 (Bankr. S.D. Tex. 2010) at *21 (allowed default interest charges must be paid for a claim to be unimpaired); In re Schatz, 2009 BNH 30 (Bankr. D.N.H. 2009) (same); In re Phoenix Bus. Park Ltd. P'ship., 257 B.R. 517 (Bankr. D. Ariz. 2001) (claims fully provided for minus default interest were classified as impaired); In re 433 South Beverly Drive, 117 B.R. 563 (Bankr. C.D. Cal. 1990) ("creditor is impaired in its treatment under a plan unless the debtor, in addition to cure and reinstatement, compensates the creditor "for any damages incurred as a result of any reasonable reliance" on the "contractual provision" for post-default interest.").

Failing on actual impairment, the Certain Holders next suggest that the Prepetition Lenders may somehow be "artificially impaired" because of some "engineering" process that the Debtors allegedly engaged in. As fully explained in the Hunt Affidavit, the Debtors have run a good faith process in all aspects of the Chapter 11 Cases, including in their development of the plan treatment of, and negotiations with, the Prepetition Lenders. Moreover, the underlying assertion by the Certain Holders that the up to $41,000,000 in default interest potentially owing to the Prepetition Lenders as of March 31, 2010 is "de minimis" is patently ridiculous, as is the comparison of this amount to the approximately $1 billion in principal of Prepetition Lender

[29] This is comprised of 2% that is the "default" step-up plus another .25% that was based upon the calculation of the Applicable Rate, as defined in the Prepetition Credit Agreement, during an Event of Default.

Claims. Putting aside the issue of whether a $41 million reduction could ever be considered a de minimis haircut, there is no distinction between "de minimis" and "substantial" impairment in the Bankruptcy Code or relevant case law. Not only is the impairment of Class 1C not "de minimis", it was real enough to convince some Holders of Prepetition Lender Claims to vote against the Plan – hardly the behavior of Holders of Claims who believe they are unimpaired.

Finally, there is not a shred of evidence to support the Certain Holders' baseless accusations that the Debtors are somehow compensating the Prepetition Lenders – a group comprised of over 200 Holders, including many of the world's most sophisticated and well recognized financial institutions – in any way, shape or form, for foregoing their default interest payments. The good faith process run by the Debtors and Lazard in securing the exit financing, along with the votes against the Plan treatment by some Holders and the sheer number of Prepetition Lenders who would need to be "in on it" clearly demonstrate the absurdity and the questionable bona fides of such argument.

B. The Ontonagon Objection, the MAEDC Response and Request and the Montana AG Joinder Do Not Present Confirmation Issues and Should be Denied.

The submissions by Ontonagon, the MAEDC and the Montana AG (the "Concerned Parties") with respect to the Plan essentially boil down to the same argument: that the Plan must include a sale process for the Mills. The Bankruptcy Code does not require the Debtors to embark upon such a sale process and there is no reason to second guess the Debtors' sound business judgment with respect to their decisions regarding the Mills. Although the issues raised by the Concerned Parties are serious, and the Debtors will continue to treat them in an appropriate fashion and follow this Court's suggestions from the Status Hearing (as defined below), the Concerned Parties' Objections simply do not provide a basis to deny confirmation of the Plan, and should be denied.

As described in the Hunt Affidavit, the Debtors decided, after thorough analysis and applying their sound business judgment, to permanently close the Mills in December of 2009. Hunt Aff., ¶¶ 42-43. The Debtors thoroughly vetted these ordinary course of business closure decisions with the Committee, which concurred with the Debtors' business judgment. Id.

In response to letters and filings by the Concerned Parties, the Court held two status hearings on the closure of the Mills—one on January 14, 2010, and one directly after the Disclosure Statement hearing on January 29, 2010 (the "Status Hearing"). At the Status Hearing, the Court encouraged the Debtors to continue cooperating with the Concerned Parties, and asked that the Debtors communicate with potential suitors and provide information, where appropriate, to assist potential buyers. See Hunt Aff., ¶ 45. Critically, however, the Court noted that "this is not, from my point of view, the debtor running a sale process, I'm not asking [the Debtors] to do that. I know very much what that would entail. I have approved today the disclosure statement. That doesn't contemplate any of that." See Status Hearing Transcript, p. 142 (relevant pages are attached hereto as Exhibit B).

Since the Status Hearing, the Debtors have engaged in good faith discussions with a number of parties at the request of the Concerned Parties, with Debtors' management expending time and effort in an attempt to accommodate the requests of the Concerned Parties. Hunt Aff., ¶ 46. These efforts have included preparing and providing informational documents, speaking on the phone with the Concerned Parties, and entering into confidentiality and non-disclosure agreements regarding the closed Mills. Hunt Aff., ¶ 46. The Debtors have conducted themselves with the utmost good faith in coordinating and communicating with the Concerned Parties. See generally, Hunt Aff., ¶¶ 42-46. The Company has made clear its willingness to sell the Mills for alternative uses and remains open to a sale process under the right circumstances. See Hunt Aff., ¶ 46.

The Debtors understand the gravity of the Mill closures and their decisions to close the Mills were made only after very serious and careful consideration. As set forth on the record at the Status Hearing, in the Disclosure Statement and in the Hunt Affidavit, the Debtors have at all times exercised their business judgment in making the closure decisions. However, the Mill closures have nothing to do with the ongoing Plan confirmation process. The Court made very clear at the Status Hearing that it was not ordering the Debtors to conduct a sale process. The Debtors understand what the Concerned Parties are trying to accomplish; however, there simply is no cause to second guess the Debtors' sound business judgment in making the closure decisions and determining to not include formal sale procedures in the Plan for the Mills. Moreover, the Committee has concurred in that decision and the creditors have voted overwhelmingly in favor of the Plan, which does not include sale provisions for the Mills.

While the Debtors will continue to work in good faith with the Concerned Parties, the issues raised by the Concerned Parties simply do not implicate confirmation of the Plan. As this Court noted at the Status Hearing, "I've told you that I'm not going to allow this process to derail or otherwise distract from the primary function and responsibility of the debtor, which is the prosecution of their Chapter 11 case." See Status Hearing Transcript, p. 145.

1. There is No Need for Further Status Hearings.

The Debtors have responded properly to the Concerned Parties' various requests and continue to comply with this Court's instructions from the Status Hearing. See Hunt Aff., ¶¶ 45-46. In fact, MAEDC admits that "the Debtors appear to be responding to inquiries of potential purchasers, and have provided the MAEDC with an 18 page informational outline regarding the

Plant . . . " See MAEDC Objection, p. 3. Furthermore, the Hunt Affidavit fully details the efforts taken by the Debtors since the Status Hearing. See Hunt Aff., ¶ 46. Thus, the Court has been fully apprised of the status of the issues surrounding the Mills, and the Debtors submit that they should not be burdened by the requirement of further status conferences, especially during or around their already extensive Confirmation Hearing, when it would be overly burdensome for the Debtors to take on an additional, and in this case non-confirmation related, hearing. The Court noted the potential for this burden on the record of the Status Hearing: "I can easily anticipate that if this process gets moving, that it could wind up as a burden on the debtors' management or professionals at a critical time in their bankruptcy. And I recognize that it's a critical time." See Status Hearing Transcript, p. 141.

2. Ontonagon's Plan Objection Is Without Merit and Should be Denied.

Ontonagon has raised what are apparently good faith and best interests test objections in its Plan objection. There is simply no support for these objections and they therefore should be overruled.

As described above and in the Hunt Affidavit, the Debtors' decision to close the Ontonagon Mill was made after careful deliberation and was supported by the Committee. Moreover, although the Plan does not contain sale provisions for the Ontonagon Mill, it was overwhelmingly accepted by the creditors. Under these circumstances, there is simply no basis to find that the Plan was not proposed in good faith. The Debtors have expended considerable time and energy in attempting to address the issues raised by Ontonagon and the other Concerned Parties and will continue to do so. However, there simply is no basis to second guess the Debtors' sound business judgment with respect to the decision to close the mill and not provide for a formal sale process in the Plan.

Additionally, although the Ontonagon Objection does not indicate which Debtor's Plan fails to demonstrate that impaired classes will fail to receive or retain value above the liquidation values as set out in the Liquidation Analysis, as discussed below and in the Liquidation Analysis, the best interests of creditors test has been satisfied for each Debtor.

C. Baron & Budd's Objection Should be Overruled.

1. The Plan Does Not Unfairly Discriminate Against the Baron & Budd Claimants.

Baron & Budd argues that because the Debtors agreed to allow the liquidated, undisputed and non-contingent claims of certain creditors the Plan unfairly discriminates against the Baron & Budd Claimants' unliquidated, contingent and disputed litigation claims. This argument demonstrates a fundamental misunderstanding of 1123(a)(4). Section 1123(a)(4) of the Bankruptcy Code requires that a plan "provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest." As demonstrated in Section VI above, the Plan is fully compliant with section 1123(a)(4) of the Bankruptcy Code. The Baron & Budd Claimants' claims, once liquidated, will receive exactly the same treatment as every other holder of an Allowed Claim in Class 2E – that is, their Pro Rata Share of the New SSCC Common Stock Pool.[30] The notion that the Plan unfairly discriminates against an unsecured tort (or any) creditor holding a unliquidated and/or disputed claim simply because it allows the liquidated, undisputed and non-contingent claims of other creditors in the same class is patently incorrect.

2. The Plan Was Solicited in Good Faith.

As described above, the votes on the Plan were solicited in good faith and in accordance with the Voting Procedures Order. Despite the numerous references to a settlement agreement in

[30] Or, to the extent such claims are liquidated in an amount less than $10,000, in the Class 2D Convenience Class, in which holders will receive 100% in the form of cash.

the Baron & Budd Objection (presumably liquidating the Baron & Budd Claimants' claims), the Baron & Budd Claimants, through their attorneys at Baron & Budd, filed proofs of claim seeking an "unliquidated" amount without any such settlement agreement. In accordance with the Voting Procedures Order, these claims were only entitled to vote in the amount of $1. See Voting Procedures Order, ¶ 40.f. Baron & Budd did not object to this provision in the Solicitation Order at the Disclosure Statement Hearing. Moreover, when Baron & Budd raised this issue in their request to be able to vote their clients' claims in the amount of $20,000 each, the Debtors did not object. The solicitation process has been fair to the Baron & Budd Claimants, and their objections to the Solicitation Process must be overruled.

3. Baron & Budd's Objections to the Plan's Release and Exculpation Provisions Must be Overruled.

As discussed in Section IX above, the release and exculpation provisions contained in Article X of the Plan are appropriate and should be approved.[31]

[31] It is worth noting that the Debtors agreed to permit Baron & Budd to submit Ballots on behalf of its clients. Baron & Budd, on behalf of its clients, opted out of the third party releases such that they do not apply to the Baron & Budd Claimants. Thus, the third party release which the Baron & Budd Claimants now complain about, do not even apply to them or their putative claims.

XI. CONCLUSION

For the reasons set forth in this Memorandum and to be set forth in the other Supporting Materials, the Debtors respectfully request that the Court enter an order confirming the Plan, in substantially the form of the proposed Confirmation Order and Findings of Fact and Conclusions of Law filed with the Court at the earliest practicable time.

Dated: Wilmington, Delaware
April 13, 2010

Respectfully submitted,

SIDLEY AUSTIN LLP
James F. Conlan
Matthew A. Clemente
Dennis M. Twomey
Brian J. Lohan
Andrew F. O'Neill
One South Dearborn Street
Chicago, Illinois 60603
Telephone: (312) 853-7000
Facsimile: (312) 853-7036

-and-

YOUNG CONAWAY STARGATT & TAYLOR, LLP

Robert S. Brady (No. 2847)
Edmon L. Morton (No. 3856)
Robert F. Poppiti, Jr. (No. 5052)
The Brandywine Building
1000 West Street, 17th Floor
P.O. Box 391
Wilmington, Delaware 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253

Counsel to the Debtors and Debtors-in-Possession