

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c.C-36 AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF SERTAPAK INC.

Applicant

MOTION RECORD
RETURNABLE MAY 28, 2009

COHEN HIGHLEY LLP

Lawyers
255 Queens Avenue, 11th Floor
London, Ontario N6A 5R8

Frank A. Highley (LSUC No. 15200T)

Telephone: (519) 672-9330

Fax: (519) 672-5960

Email: highley@cohenhighley.com

Lawyers for the Applicant

TO: Service List

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TAB 1

SERVICE LIST

- TO: **Bank of Montreal**
c/o Chaitons LLP
Barristers & Solicitors
185 Sheppard Ave. West
Toronto, ON M2N 1M9
Attention: Mr. Gary Feldman
Email: gary@chaitons.com
Phone: 416-222-8888
Fax: 416-222-8402
- AND TO: **Business Development Bank of Canada**
c/o Harrison Pensa LLP
Lawyers
450 Talbot Street, P.O. Box 3237
London, ON N6A 4K3
Attention: Mr. Thomas S. Robson
Email: trobson@harrisonpensa.com
Phone: 519-679-9660
Fax: 519 667-3362
- AND TO: **BDO Dunwoody Limited**
c/o Weir Foulds LLP
Barristers & Solicitors
The Exchange Tower
1600-130 King Street West, PO Box 480
Toronto, ON M5X 1J5
Attention: Mr. Paul Guy
Email: pguy@weirfoulds.com
Attention: Mr. David Brown
Email: dbrown@weirfoulds.com
Phone: 416 365-1110
Fax: 416-365-1876
- AND TO: **Century Services LP**
c/o Torkin Manes Cohen Arbus LLP
Barristers & Solicitors
151 Yonge Street, Suite 1500
Toronto, ON M5C 2W7
Attention: S. Fay Sulley
Email: fsulley@torkinmanes.com
Phone: 416-863-1188 / 416 777-5419
Fax: 888-587-5769
- AND TO: **Forming Technologies, LLC**
c/o Burchfield, Park & Pollesch, P.C.
225 E. Grand River, Suite 203
Brighton, MI USA 48116
Attention: Kenneth E. Burchfield
Email: kburchfield@bppattorneys.com
Phone: 810-227-3100
Fax: 810-227-2996

AND TO: **J.I.T. Packaging, Inc.**
c/o Burchfield, Park & Pollesch, P.C.
225 E. Grand River, Suite 203
Brighton, MI USA 48116
Attention: Kenneth E. Burchfield
Email: kburchfield@bppattorneys.com
Phone: 810-227-3100
Fax: 810-227-2996

AND TO: **Fowler Metal Industries Ltd.**
Waterous, Holden, Amey, Hitchon LLP
Barristers and Solicitors
20 Wellington Street
Brantford, ON N3T 5V6
Attention: Patrick R. Corless
Email: pcorless@waterousholden.com
Phone: 519-759-6220
Fax: 519-759-8360

AND TO: **E.F. Walter Inc.**
Laishley Reed LLP
Barristers and Solicitors
3 Church Street, Ste. 205
Toronto, Ontario M5E 1M2
Attention: Chris E. Reed
Email: creed@llr-law.com
Phone: 416-981-9337
Fax: 416-981-0060

TAB 2

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c.C-36 AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE
OR ARRANGEMENT OF SERTAPAK INC.

Applicant

NOTICE OF MOTION

THE APPLICANT will make a motion to the Commercial Court on Thursday, May 28, 2009, at 10:00 a.m. in the forenoon, or as soon after that time as the motion can be heard, at 393 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard

- in writing under subrule 37.12.1(1) because it is (*insert one of*) on consent, unopposed *or* without notice;
- in writing as an opposed motion under subrule 37.12.1(4);
- orally;

THE MOTION IS FOR:

1. An order, if necessary, abridging or waiving the time for service, dispensing with service or validating the method of service, *nunc pro tunc* of this notice of motion, motion record;

2. An extension of the stay period as described and set forth in the Initial Order issued by Mr. Justice Campbell on January 20, 2009 and the subsequent Extension Orders issued by Mr. Justice Wilton-Siegel on February 18, 2009 and April 15, 2009 to Thursday, July 16, 2009.
3. The approval by this Court of the activities of the Monitor to date and its fees and disbursements and the fees and disbursements of its counsel, as described and set forth in the Monitor's Third Report to this Court dated the 25th day of May, 2009.
4. An Order substantially in the form attached at Tab 4 (black-lined) and 5 (clean), *inter alia*, authorizing and directing that the Applicant complete the sale of substantially all of its assets (the "Purchased Assets) as contemplated under an Agreement of Purchase and Sale signed or effective as of May 5, 2009 to Chalmers International Holdings Inc. (the "Purchaser") on an "as is, where is" basis, and vesting those assets in the Purchaser free and clear, a redacted copy of which Agreement of Purchase and Sale is attached as Exhibit "F" to the Monitor's Third Report at Tab 3 of this Motion Record.
5. The granting of a Stay Extension Order in substantially the form of the draft Order at Tab 6 of this Motion Record.

THE GROUNDS FOR THE MOTION ARE :

1. The Honourable Mr. Justice Campbell issued an Initial (Short Form) Order pursuant to the provisions of the *Companies' Creditors Arrangement Act* ("CCAA") on Tuesday, the 20th day of January, 2009 in favour of the Applicant;

2. By Order of the Honourable Mr. Justice H.J. Wilton-Siegel dated Wednesday the 18th day of February, 2009, the stay was extended to April 15, 2009, and authority was given to the Applicant to file a plan of compromise or arrangement with the Court between itself and one or more classes of its secured and/or unsecured creditors, and certain other rights with respect to restructuring and a sale process, and an enhancement of the Monitor's powers were authorized.

3. By Order of the Honourable Mr. Justice H.J. Wilton-Siegel dated Wednesday the 15th day of April, 2009 the stay was further extended to May 29, 2009.

4. The Applicant has entered into an Agreement of Purchase and Sale dated 5th day of May, 2009 to sell the Purchased Assets to the Purchaser.

5. The transaction with the Purchaser represents the sale of all of the Applicant's assets and undertaking, other than its accounts receivable and the other assets excluded by the operation of Schedule 4 of the said Agreement of Purchase and Sale.

6. Prior to the signing of the Agreement of Purchase and Sale, the Applicant engaged in an extensive process to market the Purchased Assets for sale with the assistance and under the guidance of the Monitor. The Purchased Assets have been fully exposed to the marketplace.

7. The purchase price being paid by the Purchaser for the Purchased Assets is, under the circumstances, the best realization of the Purchased Assets.

8. The Applicant is unable, by virtue of the provisions of the *Bulk Sales Act* and its obligations to trade and other creditors, to close the transaction contemplated by the

Agreement of Purchase and Sale itself, and accordingly, the Applicant requires that an Order be obtained approving the sale of the Purchased Assets to the Purchaser and vesting the Purchased Assets in the Purchaser free and clear.

9. The grounds set forth in the Third Report of the Monitor to the Court.
10. Sections 100 and 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and section 67 of the *Personal Property Security Act* R.S.O. 1990, c. P.10.
11. The provisions of the CCAA;
12. Rules 2.03, 3.02, 14.05 and 16 of the *Rules of Civil Procedure*, R.R.O. 1990, Regulation 194; and
13. Such further and other grounds as counsel may advise and this Honourable Court permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The Third Report of the Monitor, BDO Dunwoody Limited, to this Court.

2. Such further and other evidence or material as counsel may advise and this Honourable Court may permit.

Date May 25, 2009

COHEN HIGHLEY LLP
Lawyers
255 Queens Avenue, 11th Floor
London, Ontario N6A 5R8

Telephone: (519) 672-9330
Facsimile: (519) 672-5960
Email: highley@cohenhighley.com

Frank A. Highley (LSUC 15200T1B)
Lawyers for the Applicant

TO: Service List

SERVICE LIST

- TO: **Bank of Montreal**
c/o Chaitons LLP
Barristers & Solicitors
185 Sheppard Ave. West
Toronto, ON M2N 1M9
Attention: Mr. Gary Feldman
Email: gary@chaitons.com
Phone: 416-222-8888
Fax: 416-222-8402
- AND TO: **Business Development Bank of Canada**
c/o Harrison Pensa LLP
Lawyers
450 Talbot Street, P.O. Box 3237
London, ON N6A 4K3
Attention: Mr. Thomas S. Robson
Email: trobson@harrisonpensa.com
Phone: 519-679-9660
Fax: 519 667-3362
- AND TO: **BDO Dunwoody Limited**
c/o Weir Foulds LLP
Barristers & Solicitors
The Exchange Tower
1600-130 King Street West, PO Box 480
Toronto, ON M5X 1J5
Attention: Mr. Paul Guy
Email: pguy@weirfoulds.com
Attention: Mr. David Brown
Email: dbrown@weirfoulds.com
Phone: 416 365-1110
Fax: 416-365-1876
- AND TO: **Century Services LP**
c/o Torkin Manes Cohen Arbus LLP
Barristers & Solicitors
151 Yonge Street, Suite 1500
Toronto, ON M5C 2W7
Attention: S. Fay Sulley
Email: fsulley@torkinmanes.com
Phone: 416-863-1188 / 416 777-5419
Fax: 888-587-5769
- AND TO: **Forming Technologies, LLC**
c/o Burchfield, Park & Pollesch, P.C.
225 E. Grand River, Suite 203
Brighton, MI USA 48116
Attention: Kenneth E. Burchfield
Email: kburchfield@bppattorneys.com
Phone: 810-227-3100
Fax: 810-227-2996

AND TO: **J.L.T. Packaging, Inc.**
c/o Burchfield, Park & Pollesch, P.C.
225 E. Grand River, Suite 203
Brighton, MI USA 48116
Attention: Kenneth E. Burchfield
Email: kburchfield@bppattorneys.com
Phone: 810-227-3100
Fax: 810-227-2996

AND TO: **Fowler Metal Industries Ltd.**
Waterous, Holden, Amey, Hitchon LLP
Barristers and Solicitors
20 Wellington Street
Brantford, ON N3T 5V6
Attention: Patrick R. Corless
Email: pcorless@waterousholden.com
Phone: 519-759-6220
Fax: 519-759-8360

AND TO: **E.F. Walter Inc.**
Laishley Reed LLP
Barristers and Solicitors
3 Church Street, Ste. 205
Toronto, Ontario M5E 1M2
Attention: Chris E. Reed
Email: creed@llr-law.com
Phone: 416-981-9337
Fax: 416-981-0060

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c.C-36 AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SERTAPAK INC.

**ONTARIO SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED
AT TORONTO, ONTARIO

NOTICE OF MOTION

COHEN HIGHLEY LLP
Lawyers
255 Queens Avenue, 11th Floor
London, ON N6A 5R8

Tel: 519.672-9330
Fax: 519.672-5960

FRANK A. HIGHLEY (LSUC # 15200T)
Lawyers for the Applicant, Sertapak Inc.

TAB 3

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR
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THE MONITOR'S THIRD REPORT

(May 25, 2009)

INTRODUCTION

1. On January 20, 2009, Sertapak Inc. ("**Sertapak**" or the "**Company**") filed for and obtained protection from its creditors by Order of the Honourable Mr. Justice Colin Campbell (the "**Initial Order**") made pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). A copy of the Initial Order is attached as **Exhibit "A"**.
2. On February 18, 2009, an extension was granted by Mr. Justice Wilton-Siegel (the "**First Extension Order**"). A copy of the First Extension Order is attached as **Exhibit "B"**.
3. On April 15, 2009, a second extension was granted by Mr. Justice Wilton-Siegel (the "**Second Extension Order**"). A copy of the Second Extension Order is attached as **Exhibit "C"**.
4. Pursuant to paragraph 18 of the Initial Order, BDO Dunwoody Limited was appointed monitor (the "**Monitor**").

5. The role and responsibilities of the Monitor are set out in the CCAA and further articulated in paragraph 19 of the Initial Order, which provides that the Monitor is directed and empowered to:
 - (a) monitor Sertapak's receipts and disbursements;
 - (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
 - (c) have full and complete access to the books, records and management, employees and advisors of the Applicant and to the Business and the Property to the extent required to perform its duties arising under this Order;
 - (d) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
 - (e) perform such other duties as are required by this Order or by this Court from time to time.

6. The purpose of this, the Monitor's Third Report (the "**Third Report**"), is to advise and update this Honourable Court as to:
 - (a) the activities of the Monitor since the Monitor's Second Report (which was filed in support of the Second Extension Order);
 - (b) the activities of Sertapak since the Monitor's Second Report;
 - (c) approval of a sale of the ongoing business of the Company including substantially all of the accounts receivable, inventory, machinery, equipment and intellectual property (the "**Purchased Assets**") to

Chalmers International Holdings Inc., or its nominee, ("**Chalmers**" or the "**Purchaser**");

- (d) Sertapak's actual cash-flow for the period ending May 15, 2009;
 - (e) the fees of the Monitor and its legal counsel; and
 - (f) Sertapak's and the Monitor's planned activities should this Court grant an additional extension of the Stay Period to July 16, 2009 which is being sought by Sertapak.
7. The information contained in this report has been obtained from the accounting records of Sertapak and is based on discussions with, and representations made by Sertapak's management, including in particular Messrs. David Nettleton, Peter Corbiere and Bruce Orr. The Monitor has not verified the accuracy of this information and expresses no opinion upon it. Further, given that the information is based on management's assumptions regarding future events, actual results may vary from forecast and such variations may be material.
8. The Monitor assumes no responsibility or liability for any loss or damage occasioned by any party as a result of the circulation, publication, re-production or use of this report. Any use which any party, other than the Court, makes of this report, or any reliance on or decision made based on it, is the responsibility of such party.
9. Capitalized terms not defined herein are as defined in the Initial Order or the affidavit of Sertapak's President, Chief Executive Officer and director, David Nettleton, sworn January 15, 2009, in support of the Initial Order (the "**Nettleton Affidavit**").
10. All references to dollars are in Canadian currency unless otherwise noted.

BACKGROUND

11. Sertapak is a privately held corporation incorporated under the laws of the Province of Ontario. The Company is a major supplier of custom packaging solutions for a variety of industries.
12. Sertapak operates a 140,000 sq ft production facility from leased premises at 1039 Dundas Street, in Woodstock, Ontario. At the time of the initial filing, 106 individuals were employed at this facility on a full-time basis, while 58 were employed on a temporary basis.
13. The Company also operated a much smaller sales and design office in Portland (Nashville), Tennessee, which currently employs three individuals. The office has been shut down and the employees work from their home offices.
14. The Company's operations and the cause of its current financial difficulties are described in the Nettleton Affidavit.

THE MONITOR'S ACTIVITIES SINCE THE MONITOR'S SECOND REPORT

15. The Monitor has posted the Initial Order, the First Extension Order, the Second Extension Order and other documents filed with the Court to date in the within proceedings on a website maintained by the Monitor with the following URL: www.bdo.ca/sertapak.
16. The Monitor has been and continues to work closely with the Company's management, in particular Messrs. Nettleton, Corbiere and Orr. Sertapak's management is directing execution of the Company's restructuring plan with the support and guidance of the Monitor.
17. The Monitor has and continues to advise and assist Sertapak on a number of matters since the issuance of the Initial Order, including:

- (i) the implementation of appropriate procedures for the daily monitoring of receipts and disbursements, along with the weekly review of Sertapak's cash flow and reporting to the Bank of Montreal ("BMO"); and
- (ii) assisting Sertapak with its weekly cash-flow reporting obligations; its reporting obligations to the BMO; its dealings with Century Services Inc. ("Century"), a factoring company; communications with the Business Development Bank of Canada ("BDC"), a term lender; and various other creditor-related issues and reporting matters.

SERTAPAK'S OPERATIONS AND ACTIVITIES SINCE THE MONITOR'S SECOND REPORT

- 18. Sertapak has provided the Monitor with full co-operation and unrestricted access to the Company's premises, books and records.
- 19. Since the commencement of the within proceedings, and with the assistance of the Monitor, Sertapak has stabilized its operations.
- 20. The Company had, from the date of the Initial Order to March 27, 2009, operated in compliance with a forbearance agreement entered into prior to the commencement of the within proceedings with its major lender, BMO.
- 21. Subsequent to that date, the Company has been unable to meet all of the terms of the Forbearance Agreement. The Company, with the participation of the Monitor, prepared a revised projected cash flow for the period to 26 June 2009 (the "Second Updated Projected Cash Flow"); advised BMO that it would be unable to meet the terms of the Forbearance Agreement; and initiated negotiations for an extension and amendment of the Forbearance Agreement.
- 22. Since then the Forbearance Agreement has been extended by agreement between BMO and the Company.

Supplier Issues

23. Sertapak, with the assistance of the Monitor, continues to promptly address supplier concerns to ensure an orderly and cohesive communication strategy with suppliers.
24. Sertapak has been required to pay most suppliers on a COD or weekly basis to ensure continued supply.
25. Since the issuance of the Initial Order, the Company has, with the concurrence of the Monitor, made payment of pre-filing liabilities, to various suppliers, in the amounts of Cdn\$7,700 and US\$8,636.

Customer Issues

26. Sertapak is in continuous communication with its key customers, including Toyota, its largest single customer.
27. To date, no customer has cancelled an existing order. However, due to the economic environment, some customers have postponed their programmes.

Employee Issues

28. Sertapak has reviewed its staffing levels at its principal location in Woodstock, Ontario. At the date of this report, some 67 individuals were employed at this facility on a full-time basis.
29. The Company has also scaled back operations at its subsidiary facility located in Portland (Nashville), Tennessee. Production has been moved to the Woodstock location and the subsidiary is focused on sales. The three remaining employees are working from their home offices.

ACTUAL CASH FLOWS FOR THE PERIOD ENDING MAY 15, 2009

30. The Monitor has reviewed Sertapak's actual unaudited cash flow for the six week period from April 3, 2009, being the date of the review reported in the Second Report, through May 15, 2009 and has compared it to management's forecast cash flow for the same period. Actual net cash flow for this period was negative \$10,807 as compared to a forecast of positive \$217,978. The comparison of the actual cash flows to the forecast is attached hereto as **Exhibit "D"**.
31. Receipts for the period were \$1,325,593. The shortfall from the projected receipts of \$1,677,306 is largely the result of the delay in various customer programmes, as described above, resulting in lower than projected sales.
32. For the period, Sertapak's disbursements of \$1,336,401 are less than projected by some \$122,927. This positive variance is offset by accruals of some \$186,000. The Monitor understands these accrued post-filing liabilities will be assumed by the purchaser, as described below, or otherwise paid from the proceeds of the proposed transaction.
33. The reduced cash flow as described in the Second Report and the negative variance in net cash flow means that the loan balance to BMO remains at \$1.3 million.

CASH FLOW PROJECTIONS TO JUNE 26, 2009

34. Sertapak has not updated its cash flow projections since the Second Updated Projected Cash Flow reported in the Second Report, which was for the period to June 26, 2009. As the proposed sale transaction detailed below is scheduled to close on May 29, 2009, the Company, with the concurrence of the Monitor, determined that a further updated projected cash flow was not required.

MARKETING AND SALES PROCESS

- 35. As contemplated in the Nettleton Affidavit (see e.g., para. 34), Sertapak has attempted to close a transaction with a strategic or financial investor.

- 36. The Monitor has been actively assisting the Company in regards to this sale process, in particular in attempting to identify a possible purchaser of and/or investor in the Company's business, obtaining Letters of Intent and preparing the Company for the due diligence process.

- 37. The previously reported timeline for a sales transaction is outlined in the table below:

PHASE	TIMING	ACTION
I	Completed	<ul style="list-style-type: none">• Develop sales objectives, timeline, sales process and marketing strategy• BDO conduct site visits, review projections and other valuation data and compile preliminary potential purchaser's list.• Prepare a confidential information memorandum ("CIM").
II	Completed	<ul style="list-style-type: none">• Finalize potential purchaser's list and sales strategy• Begin preparation of data room
III	Completed	<ul style="list-style-type: none">• Advertisements will be placed in national newspapers and publications as the Monitor and Sertapak deem appropriate<ul style="list-style-type: none">○ Advertisement placed in the Globe and Mail on February 24, 2009.• Potential purchasers will be contacted and interested parties will be asked to execute a confidentiality agreement ("CA"). Parties that execute a CA will be provided with the CIM• A timeline will be given for interested purchasers to submit non-binding indications of interest (Friday March 6, 2009) and these interested parties will

		constitute the second round of potential purchasers
IV	March 6, 2009 to May 30, 2009	<ul style="list-style-type: none"> • Interested purchasers will be given access to the due diligence data room and site visits will be arranged • A draft purchase and sale agreement will be circulated and binding offers will be required to be submitted substantially in the form of the draft purchase and sale agreement • Negotiations with the top bidders/preferred parties will be entered into and a purchaser will be selected • A definitive purchase and sale agreement will be negotiated, executed and court approval of the sale will be sought

Summary of Results

	Strategic	Financial	Total
Total Targets	21	27	48
Total Opportunity Summaries Distributed	15	13	28
Total Executed CAs and CIMs Distributed	10	4	14
Total Non-Binding Expressions of Interest	5	0	5

38. The process is now in Stage IV. The Company received expressions of interest from five interested parties. The interested parties being considered for the next round were invited to attend at the Sertapak premises for a Management Presentation, in which both Sertapak and the interested party each made a presentation to the other about themselves, and a site visit, prior to commencing due diligence.

39. Parties were asked to submit binding offers by April 24, 2009. At that time, Management and the Monitor evaluated the offers in order to determine which party, if any, would be chosen for negotiation of a definitive purchase and sale agreement, subject to the approval of this honourable court.

40. Two parties, Chalmers and the Alternative Bidder, submitted offers to purchase substantially all of the assets of the Company on a going-concern basis, including inventory and accounts receivable. A redacted summary of the offers received is attached as Exhibit "E".
41. The Company and the Monitor analyzed these offers. The key decision criteria were:

Greatest recovery for the benefit of the creditors

42. The two offers were comparable in value. However, the Purchaser has offered more cash on closing,

Certainty of Closing

43. The Purchaser has conducted its due diligence with respect to the purchase and is understood to have dedicated resources to completing the transaction and taking possession of the Purchased Assets. The Alternative Bidder has not conducted significant due diligence, demonstrated that it has the resources available to close a transaction on a timely basis or confirmed that it could adhere to the proposed timetable, therefore there was a substantial risk of its not closing a transaction.

Timing of Closing

44. The Purchaser desires to close as soon as possible and a closing is contemplated for May 29, 2009. The Alternative Bidder has requested a minimum of a further 30 days to conduct due diligence. Given the decision criteria above, there is no apparent benefit to the Company, BMO or any of the other creditors in granting such an extension.
45. The Monitor is of the view that the Applicant adequately canvassed the market for prospective purchasers; that the purchase price to be paid by Chalmers is fair

and commercially reasonable; and that the sale of the Applicant's business to Chalmers represents the best recovery for all stakeholders. BMO concurs with this recommendation.

46. The Company and its legal counsel, with the assistance of the Monitor, have negotiated an Agreement of Purchase and Sale ("APS") with the Purchaser, which was executed on May 5. A redacted APS is attached as Exhibit "F".
47. A deposit of \$330,000 has been received and is being held in trust.

EXTENSION OF THE STAY PERIOD

48. Following the closing of the proposed transaction, Sertapak and the Monitor anticipate that the following activities will be required:
 - (a) Application for a distribution order;
 - (b) Distribution of funds by the Monitor in accordance with the distribution order; and
 - (c) Winding up the affairs of the Company, including realization of any assets not purchased, the filing of any required returns and filings and any other residual issues.
49. To permit all of these to be completed, an extension to July 16, 2009 is being sought.

FEEES AND DISBURSEMENTS OF THE MONITOR AND ITS LEGAL COUNSEL

50. Attached as Exhibit "G" are copies of the Monitor's statements of account for the period August 28, 2008 to March 31, 2009. The activities of the Monitor are detailed in the accounts and in previous reports to Court. A summary of the accounts is as follows:

Accounts of the Monitor		
Period Covered	Invoice No.	Amount (incl. GST)
August 28, 2008 to 31 January, 2009	001	\$89,297.66
February 1 to February 28, 2009	002	\$35,359.99
March 2 to March 31, 2009	003	\$32,024.27
Total:		\$156,681.92

51. Attached as **Exhibit "H"** are copies of the statements of account of WeirFoulds LLP, counsel to the Monitor, for the period January 1, 2009 to April 23, 2009. A summary of the accounts is as follows:

Accounts of WeirFoulds LLP		
Period Covered	Invoice No.	Amount (incl. GST)
January 1 to January 31, 2009	183662	\$ 19,876.97
February 1 to February 28, 2009	184191	\$ 9,750.28
March 1 to April 23, 2009	185532	<u>\$ 10,315.23</u>
Total:		<u>\$ 39,942.48</u>

52. The Monitor has reviewed WeirFoulds LLP's accounts. The Monitor believes the accounts to be reasonable, and is of the view that WeirFoulds' hourly rates are consistent with the hourly rates charged by other major Toronto law firms providing insolvency and restructuring advice.

53. The Monitor respectfully requests that this Honourable Court approve the fees and disbursements of the Monitor and WeirFoulds LLP.

MONITOR'S RECOMMENDATION

54. Since the date of the Initial Order, Sertapak and its advisors have worked diligently in stabilizing Sertapak's operations and advancing the restructuring for the benefit of stakeholders. It is the Monitor's view that Sertapak has acted and continues to act in good faith and with due diligence.
55. In addition, based on the information currently available, including the cash flow results and projections discussed above, the Monitor believes that creditors would not be materially prejudiced by an extension of the Stay Period.
56. Therefore, the Monitor recommends that this Honourable Court:
 - (a) approve the sale of the Purchased Assets to the Purchaser;
 - (b) approve Sertapak's request for an extension of the Stay Period until July 16, 2009;
 - (c) approve the activities of the Monitor to date, as disclosed in this Third Report;
 - (d) approve the fees of the Monitor and its legal counsel, as presented in this Third Report; and
 - (e) grant an order substantially in the form of the draft order contained in the Motion Record filed by the Company in support of the motion returnable May 28, 2009.