IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
SMURFIT-STONE CONTAINER CORPORATION, et al.,	)	Case No. 09-10235 (BLS)
	)	
	)	(Jointly Administered)
Debtors.	)	
	)	Docket Reference Nos. 1661

MEMORANDUM ORDER DENYING MOTION OF CASPIAN CAPITAL ADVISORS FOR AN ORDER APPOINTING AN OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS

Upon consideration of the Motion of Caspian Capital Advisors for an Order Appointing an Official Committee of Equity Security Holders (the "Motion") [Docket No. 1661]; and the Court having reviewed objections to the Motion filed by the Debtors [Docket No. 1983 and 2959], the Official Committee of Unsecured Creditors [Docket No. 1982] and the Office of the United States Trustee [Docket No. 2001]; and the Court having conducted an evidentiary hearing on the Motion on December 4, 2009; and upon due deliberation, the Court finds as follows:

1. The applicable standard is not in dispute. Appointment of an equity committee is appropriate only where (i) movants can establish that there is substantial likelihood that they will receive a meaningful distribution in the case, and (ii) equity holders are unable to adequately represent their interests in the case absent appointment of an official committee.[1]

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[1] Courts have articulated a variety of additional factors to be considered in evaluating requests for appointment of an equity committee, including:

a. Whether the shares are widely held and publicly traded;
b. The size and complexity of the Chapter 11 case;
c. The delay and additional cost that would result if the court grants the motion;
d. The likelihood of whether the debtors are insolvent;

2. In support of the Motion, Movants submitted the report of Moelis & Company. The Debtors submitted the Rebuttal Report of Lazard Freres & Co. LLC in opposition to the Motion. Representatives of each of Moelis & Lazard testified at the hearing on the Motion.

3. The record reflects that the aggregate secured and unsecured claims against the Debtors total at least $5.627 billion.[2]

4. The Moelis Report relies heavily on the industry pricing forecast of a single analyst. See Debtor's Exhibit 2. The record reflects that this forecast is 10-35% above the consensus estimates of other industry analysts. See Debtor's Exhibit 6 (RISI Paper Packaging Monitor, October 2009, at 14).

5. The record adduced at trial reflects that the valuation methodology employed by the Moelis Report is dependent upon projections of increased revenues in coming years as a result of the aggressive pricing forecast referenced above. The Moelis Report does not adequately consider or take into account likely cost increases in its projections.

6. Aside from pricing projections, the Moelis Report identifies certain potential additional sources of distributable value. See Movants' Exhibit 1 at 26-28. However, the record developed at trial reflects that the Black Liquor Tax Credit expires on December 31, 2009 and will not be an ongoing source of revenue for the Debtors. Similarly, the record reflects that the Debtors will not be able to obtain any material economic benefit under the Biomass Conversion

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e. The timing of the motion relative to the status of the Chapter 11 case; and
f. Other factors relevant to the adequate representation issue.

See Matter of Kalvar Microfilm, Inc., 195 B.R. 599, 600 (Bankr. D. Del. 1996).

[2] The Lazard Rebuttal Report posits a higher claims pool by adding in $216 million of post-petition interest owed to holders of unsecured claims, which presumably would have to be paid before a distribution could be made to equity.

Agricultural Program. As to the potential value to the Debtors of net operating loss carry-forwards, the evidence is sufficiently conflicting so as to preclude the Court from attributing material value to such tax attributes.

7. The Lazard Rebuttal Report reflects that, on both a "comparable company" analysis and a "precedent transaction" analysis[3], the range of estimated values falls (at best) between $700 million and $900 million short of the point at which distributable value is likely to be available for shareholders.

8. The record reflects that the Movants have engaged able and experienced professionals, have vigorously participated in these cases to date and have identified numerous grounds upon which to challenge the Debtors' recently filed Joint Plan [Docket No. 2914] and the accompanying Disclosure Statement [Docket No. 2915]. The Court concludes that appointment of an equity committee is not necessary to ensure adequate representation of the interests of shareholders.

Based upon the foregoing, it is hereby ORDERED that the Motion is DENIED.

Dated: Wilmington, Delaware
December 10, 2009

Brendan Linehan Shannon
United States Bankruptcy Judge

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[3] The Moelis Report did no include a discounted cash flow analysis and hence the Lazard Rebuttal Report does not address or cover that methodology.