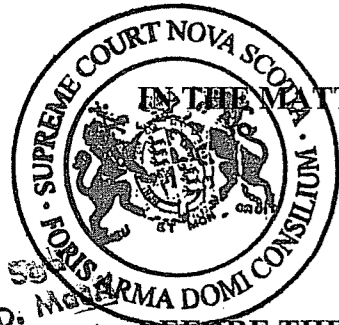


**IN THE SUPREME COURT OF NOVA SCOTIA****IN THE MATTER OF:**The ~~Companies' Creditors Arrangement Act~~ R.S.C.  
1985, c. C-36 as amended ~~Court Administration~~

- and -

A Plan of Compromise or Arrangement of the Applicant,  
Federal Gypsum Company

SEP 27 2007

**IN THE MATTER OF:****ORDER****BEFORE THE HONOURABLE JUSTICE A. DAVID MACADAM**

**UPON READING** the Affidavit of Michael Simpson sworn September 20, 2007 and the First Report of BDO Dunwoody Goodman Rosen Inc., as Monitor of Federal Gypsum Company (the "Company") dated September 20, 2007 (the "Monitor's First Report"); and

**UPON HEARING** Maurice P. Chiasson, counsel for the Company

**AND UPON HEARING:**

- Carl Holm, Q.C., counsel to BDO Dunwoody Goodman Rosen Inc.
- Thomas Boyne, Q.C., counsel to Royal Bank of Canada
- Robert Sampson, counsel to Enterprise Cape Breton Corporation and Cape Breton Growth Fund Corporation
- Stephen McGrath, counsel to Her Majesty in Right of the Province of Nova Scotia (Nova Scotia Economic Development) and Nova Scotia Business Incorporated
- Michael Schweiger, counsel to Black & McDonald Limited

**IT IS HEREBY ORDERED THAT:**

1. The Company not be required to serve notice of this application on any of its creditors except for the secured creditors listed in paragraph 4.6 of the Monitor's First Report filed with this application.
2. The Monitor's First Report and the activities of the Monitor described therein are hereby approved.
3. The Company is hereby authorized and empowered to enter into an arrangement to obtain a non-revolving credit facility (the "DIP Facility") from Rhyne Simpson Jr. (the "DIP Lender") in the maximum total principal amount of \$350,000 Cdn., on the terms and conditions set forth in the September 20, 2007 term sheet between the DIP Lender and

the Company, as such agreement may from time to time thereafter be amended by the parties, thereto with the consent of the Monitor and approved by the Court (the "DIP Term Sheet"), to fund the ongoing, ordinary course activities of the Company and to permit the Company to pay such amounts as may be permitted by the terms of this Order, the Initial Order and the DIP Term Sheet.

4. The Company shall be authorized to borrow and otherwise obtain credit from the DIP Lender in accordance with the DIP Term Sheet, provided that the total outstanding principal amount thereunder does not at any time exceed \$350,000 Cdn. and the Company is hereby authorized and directed to perform all of its obligations under the DIP Term Sheet and the DIP Credit Documentation (as defined below), and the Company shall pay when due all principal and interest under the DIP Facility, provided that nothing in this Order shall oblige the DIP Lender to make any advance to the Company.
5. Any and all present and future rights, property, assets and undertakings of the Company, whether real or personal, wherever located, and whether held in whole or in part, directly or indirectly, as principal or nominee, beneficially or otherwise including, without limitation, any or all real property, personal property or intellectual property of the Company or any and all securities, instruments, debentures, notes or bonds issued to or held by or on behalf of the Company (collectively, the Property), is hereby charged by:
  - (a) a fixed and floating charge, mortgage, hypothec, lien and security interest; and
  - (b) any charge, mortgage, hypothec, lien or security interest included in or contemplated by the DIP Credit Documentation (as defined below),  
  
(the charges, mortgages, hypothecs, liens and security interests referred to in the foregoing paragraphs (a) and (b) being collectively referred to as the "DIP Charge") in favour of the DIP Lender, as security for payment of all present and future indebtedness, obligations and liabilities of the Company to the DIP Lender under the DIP Term Sheet, the DIP Credit Documentation and this Order (and any of them) together with all interest, fees, charges and other amounts payable in respect thereof (the "DIP Liabilities").
6. Notwithstanding any other provision of this Order, the Company is hereby authorized and empowered to execute and deliver such mortgages, charges, hypothecs, security agreements, debentures (collectively, the "DIP Security") and such other agreements and documents (together with the DIP Security, the "DIP Credit Documentation") as are contemplated by the DIP Term Sheet or the DIP Charge or as may be reasonably required by the DIP Lender from time to time in respect of the borrowings under the DIP Facility.
7. The DIP Security and the DIP Charge shall attach, as of 12:01 a.m. (Halifax time) on the date of this Order, to all Property of the Company.
8. The Company shall pay the DIP Lender when due all amounts owing, and shall perform all other obligations of the Company to the DIP Lender pursuant to the DIP Term Sheet, the DIP Credit Documentation and this Order (and any of them).

9. Subject to the following, nothing in this Order shall apply to prevent, enjoin, restrain or stay:
- (a) any right of the DIP Lender to terminate the making of or refuse to make advances to the Company under the DIP Term Sheet and to make demands thereunder, or from issuing any notices of intention to enforce security, notices of powers of sale, notices of disposition or other such notices, and from exercising any acceleration rights or rights of set-off or combination of accounts, or any rights and remedies under the DIP Credit Documentation, the DIP Charge or the DIP Security;
  - (b) without limiting paragraph (a) above, prevent the DIP Lender from applying to this Court for the appointment of an interim receiver, receiver and manager and/or for the appointment of a trustee in bankruptcy in connection with the enforcement of the DIP Charge and the DIP Security or the payment of the DIP Liabilities or for other relief;
  - (c) the right of the DIP Lender to receive and apply all amounts received from the Company in accordance with the DIP Term Sheet, the DIP Credit Documentation and this Order, provided the leave of the Court is first obtained;
  - (d) the DIP Lender from exercising its rights and remedies as against the Company in respect of the DIP Charge or the DIP Credit Documentation; and
  - (e) the Company from paying amounts from time to time on account of the DIP Liabilities to the extent permitted by this Order in accordance with the DIP Term Sheet and the DIP Credit Documentation.

Notwithstanding any other provision of this Order, the DIP Lender shall not enforce any security (or exercise any right of set-off or combination of accounts) against the Company or its Property without the prior leave of this Court, provided that the DIP Lender may deliver to the Company demands and notices and exercise acceleration rights without the leave of the Court.

10. The DIP Lender, in such capacity, shall, unless it otherwise agrees, be treated in all respects as an unaffected creditor in these proceedings, in the reorganization plan filed by the Company or in any other plan filed by the Company (the "Plan") and, unless otherwise agreed by the DIP Lender, all indebtedness and liability owing by the Company to the DIP Lender with respect to the DIP Facility shall be paid to the DIP Lender in full no later than the date of implementation of the Plan.
11. The DIP Lender and its advisors shall be given clear and unfettered access to the books and records of the Company and such other information as the DIP Lender and its advisors deem necessary or appropriate.
12. No order shall be made varying, rescinding or otherwise affecting the provisions of this Order with respect to the DIP Facility, the DIP Credit Documentation, the DIP Charge and the DIP Security unless either:

- (a) notice of a motion for such order is served on the DIP Lender by the moving party within ten (10) days after such moving party is served with a copy of this Order; or
  - (b) the DIP Lender applies for or consents to such order.
- 13. The Company shall execute the documents and take the other actions necessary or appropriate to give effect to the DIP Charge.
- 14. The DIP Charge shall attach to all present and future Property of the Company, including any lease, sublease, offer to lease or other contract, except that the DIP Charge shall not attach to the last day of the term of any lease of real property or to any such lease, sublease, offer to lease, or other contract to the extent that such attachment would constitute a breach of its terms or permit a party to terminate such agreement. If the DIP Charge does not attach to any Property in accordance with this paragraph, the Company shall hold its interests in such lease, sublease, offer to lease or other contract or any proceeds therefrom in trust for the DIP Lender and shall assign such interests to the DIP Lender or its assignees upon obtaining the required consent or upon order of the Court.
- 15. Advances made under the DIP Facility shall be made to the Company as required for the operations of the Company, as determined by the Monitor and in accordance with the most recent cash-flow projections of the Company. The DIP Charge resulting from any such advance has priority over all mortgages, charges, security interests, liens and encumbrances of any kind or nature (collectively, the Encumbrances" and individually an "Encumbrance") in or against any and all of the Property of the Company, subject to applicable prior statutory liens, and provided that the amount owing under the DIP Facility for such advances shall only have priority over any Encumbrance in the same proportion as that Encumbrance was to all of the Encumbrances against the Property of the Company at the date of the Initial Order of September 18, 2007. The DIP Charge resulting from the advances drawn under the DIP Facility shall be prorated against the Encumbrances in accordance with the percentage allocations contained in the chart attached hereto as Schedule "A". The Monitor will provide a summary of advances made under the DIP Facility which summary shall include the amount and purpose of each draw and for which each draw was made (the "DIP Summary"). The Monitor will circulate the DIP Summary to secured creditors on a bi-weekly basis. The Monitor shall ensure that the Company maintains detailed and accurate records with respect to any advances made under the, DIP Facility which records shall reflect the purpose the advance was made. Such records may be inspected by secured creditors of the Company or their representatives upon request.
- 16. Except as otherwise expressly provided for herein, the Company shall not grant any Encumbrance of any Property that ranks in priority to, or *pari passu* with the DIP Charge unless the Company obtains the prior written consent of the DIP Lender and approval of the Court.
- 17. None of the DIP Charge, the obligations of the Company pursuant to the DIP Charge, or any of the documents delivered pursuant thereto, shall be illegal, invalid or nonbinding obligations of the Company or otherwise be rendered unenforceable against the Company

or any of the Property, nor shall they be void or voidable by creditors or shareholders of the Company, a trustee in bankruptcy of the Company or any other person, by reason of:

- (a) the pendency of these proceedings and the declarations of insolvency made herein;
- (b) the pendency of any petitions for any receiving order or any receiving orders issued under the *Bankruptcy and Insolvency Act* ("BIA") in respect of the Company, or any assignment under the BIA being made or deemed to have been made; or
- (c) the provisions of any federal or provincial law.

18. The DIP charge and the Administration Charge have relative priority as follows:

- (a) firstly, the Administration Charge; and
- (b) secondly, the DIP Charge.

19. The beneficiaries of the DIP Charge shall not be required to file, register, record or perfect the DIP Charge, notice thereof or any financing statement with respect thereto and the DIP Charge shall be valid and enforceable for all purposes against all existing and after-acquired Property for all purposes, with priority over any right, title or interest filed, registered, recorded or perfected prior or subsequent to the DIP Charge coming into existence, despite any failure to file, register, record or perfect the DIP Charge, notice thereof, or any financing statement with respect thereto. Despite anything in this Order, the beneficiaries of the DIP Charge may take such steps as they deem necessary or appropriate to register, record or perfect the DIP Charge, notice thereof or any financing statement with respect thereto, if they deem it advisable to do so.

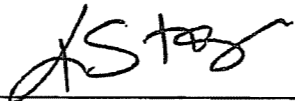
20. The creation of the DIP Charge and any payments made by the Company, and any agreements, instruments or other documents delivered pursuant to this Order do not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable or reviewable transactions under any applicable law.

21. None of the DIP Charge, the DIP Facility, the DIP Credit Documentation or the DIP Security shall be, or be deemed to be, invalid or ineffective by reason of any negative covenant, prohibition or other similar provision with respect to incurring debt or other obligations or the creation of any Encumbrance contained in any agreement to which the Company is a party and, despite any provision to the contrary in such agreements:

- (a) none of the DIP Charge, the obtaining of the DIP Facility, or the creation of any of the DIP Credit Documentation and none of the execution, delivery, perfection or registration of any agreements, instruments or other documents delivered pursuant thereto shall create or be deemed to constitute a breach by the Company of any agreement to which it is a party; and
- (b) no person shall have any liability to any other person whatsoever as a result of any breach of any agreement caused by or resulting from the DIP Charge, the

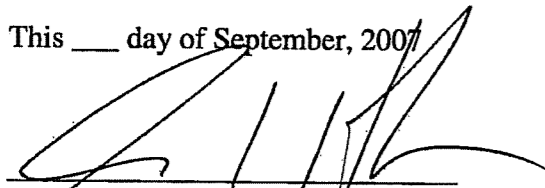
obtaining of the DIP Facility, the creation of any of the DT Credit Documentation or the execution, delivery or registration of any agreements, instruments or other documents delivered pursuant thereto.

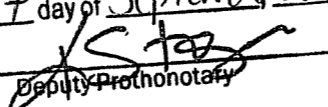
DATED at Halifax, Nova Scotia, this 27 day of September, 2007.

  
Deputy Prothonotary **KAREN STOYLES**  
Deputy Prothonotary

CONSENTED TO:

This \_\_\_ day of September, 2007

  
Carl Holm, Q.C., counsel to BDO  
Dunwoody Goodman Rosen Inc.

I hereby certify that the foregoing document  
is a true copy of the original.  
Dated 27 day of September 2007  
  
Deputy Prothonotary

This \_\_\_ day of September, 2007

Thomas Boyne, Q.C., counsel to  
Royal Bank of Canada

This \_\_\_ day of September, 2007

Robert Sampson, counsel to  
Enterprise Cape Breton Corporation  
and Cape Breton Growth Corporation

obtaining of the DIP Facility, the creation of any of the DT Credit Documentation or the execution, delivery or registration of any agreements, instruments or other documents delivered pursuant thereto.

**DATED** at Halifax, Nova Scotia, this \_\_\_ day of September, 2007.

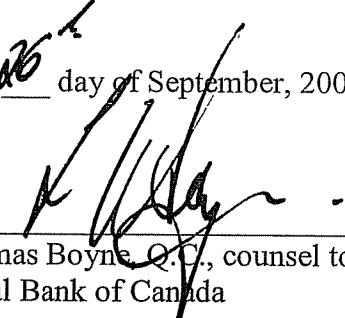
\_\_\_\_\_  
Deputy Prothonotary

**CONSENTED TO:**

This \_\_\_ day of September, 2007

\_\_\_\_\_  
Carl Holm, Q.C., counsel to BDO  
Dunwoody Goodman Rosen Inc.

This <sup>26<sup>th</sup></sup> day of September, 2007

  
\_\_\_\_\_  
Thomas Boyne, Q.C., counsel to  
Royal Bank of Canada

This \_\_\_ day of September, 2007

\_\_\_\_\_  
Robert Sampson, counsel to  
Enterprise Cape Breton Corporation  
and Cape Breton Growth Corporation

obtaining of the DIP Facility, the creation of any of the DT Credit Documentation or the execution, delivery or registration of any agreements, instruments or other documents delivered pursuant thereto.

**DATED** at Halifax, Nova Scotia, this \_\_\_ day of September, 2007.

\_\_\_\_\_  
Deputy Prothonotary

**CONSENTED TO:**

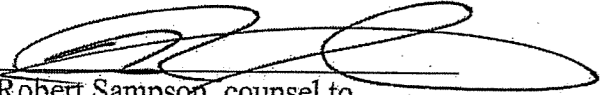
This \_\_\_ day of September, 2007

\_\_\_\_\_  
Carl Holm, Q.C., counsel to BDO  
Dunwoody Goodman Rosen Inc.

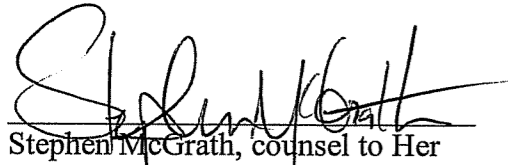
This \_\_\_ day of September, 2007

\_\_\_\_\_  
Thomas Boyne, Q.C., counsel to  
Royal Bank of Canada

This \_\_\_ day of September, 2007

  
\_\_\_\_\_  
Robert Sampson, counsel to  
Enterprise Cape Breton Corporation  
and Cape Breton Growth Fund Corporation

This 20<sup>th</sup> day of September, 2007



Stephen McGrath, counsel to Her Majesty in Right of the Province of Nova Scotia (Nova Scotia Economic Development) and Nova Scotia Business Incorporated

This \_\_\_ day of September, 2007


\_\_\_\_\_  
Michael Schweiger, counsel to Black & McDonald Limited

This \_\_\_ day of September, 2007

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Stephen McGrath, counsel to Her Majesty in Right of the Province of Nova Scotia (Nova Scotia Economic Development) and Nova Scotia Business Incorporated

This 26<sup>th</sup> day of September, 2007



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Michael Schweiger, counsel to Black & McDonald Limited

**SCHEDULE "A"**

**FEDERAL GYPSUM COMPANY**  
**CCAA – INITIAL ORDER - SEPTEMBER 18, 2007**  
**PRELIMINARY CALCULATION OF SECURED CREDITOR PERCENTAGES**

	<u>Amount O/S</u> <u>Sept 18/07</u> <u>(Note 1)</u>	<u>Creditor %</u>
Royal Bank of Canada		
Loan	\$ 530,000	
Lease	414,613	
	<u>944,613</u>	5.53
Cape Breton Growth Corporation	5,000,000	29.31
Enterprise Cape Breton Corporation	1,750,000	10.25
Nova Scotia Business Inc.	6,451,747	37.81
Nova Scotia - Office of Economic Development	2,845,232	16.67
Ford Credit Canada Limited		
Re Taurus	12,634	
Re F150	16,380	
Re F500	36,445	
	<u>65,459</u>	0.38
National Leasing Group Inc.	9,172	0.05
Black and MacDonald Ltd. (\$1,123,364)	N/A	N/A
<b>TOTALS</b>	<u>\$ 17,066,223</u>	<u>100%</u>

**Note 1:**

Amounts of secured creditor claims are estimated as at September 18, 2007 for the purpose of reflecting the allocation of DIP advances to the respective secured creditor interests.

**Note 2:**

The secured creditor interests reflected herein are subject to change in quantum which is to be confirmed as owed to each secured creditor as at September 18, 2007.

**Note 3:**

The secured creditor interests reflected herein are subject to confirmation of validity and priority ranking by Monitor's legal counsel.

**Note 4:**

No DIP allocation has been made to Black and MacDonald Ltd. at this time as the Monitor believes they have a subordinate ranking, subject to review.

**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 the Applicant, Federal Gypsum  
Company

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**ORDER**

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**STEWART McKELVEY**  
1959 Upper Water Street  
Purdy's Wharf Tower One  
P. O. Box 997  
Halifax, Nova Scotia  
B3J 2X2  
MPC: NS33381-6