

**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 THE HARD-ROCK PAVING COMPANY LIMITED
AND THE COMPANIES LISTED ON SCHEDULE "A"
(collectively the "Applicants")

**AFFIDAVIT OF TARA WISHART
(Sworn the 20th day of July, 2008)**

I, Tara Wishart, of the Town of Markham, in the Province of Ontario, **MAKE OATH
AND SAY:**

Overview

1. I am a Senior Surety Claims Adjuster at The Guarantee Company of North America ("GCNA") and as such, I have knowledge of the matters to which I hereafter depose, except where I expressly indicate that I have obtained information from others, in which case I believe such information to be true.
2. This Affidavit is made in connection with the hearing scheduled for Monday July 21, 2008 (the "**Hearing**") in the proceedings commenced by the Applicants in the Ontario Superior Court of Justice (Commercial List) (the "**Court**") pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA Proceedings**").
3. I am advised by Mr. Sam Rappos of Borden Ladner Gervais LLP , counsel for GCNA ("**BLG**"), that at the Hearing the Applicants are requesting, among other things, that the Court grant vesting orders in favour of Waterford Sand and Gravel Limited ("**Waterford**") and Brennan Paving Limited ("**Brennan**") with respect to the sale of the assets of the Applicants to

Waterford and Brennan as previously approved by the Court on July 9, 2008 (the “**Asset Sale Transaction**”).

4. It is GCNA’s position that a portion of the sale proceeds with respect to the Asset Sale Transaction (the “**Sale Proceeds**”) should be held in trust by the Monitor (as defined below) until such time as a motion can be brought before the Court to resolve the dispute between the Applicants and GCNA with respect to the Applicants’ compliance with the terms of the Undertaking to Comply with the *Construction Lien Trust* Fund Obligations on The Guarantee Company of North America Bonded Projects (the “**Undertaking**”), as approved by the Court pursuant to an Order granted in the CCAA Proceedings on June 12, 2008 (the “**June 12 Order**”). It is also GCNA’s position that, in the event that the Court grants the vesting orders sought by Waterford and Brennan, the vesting orders should explicitly provide that certain amounts currently being held in trust by the Applicants pursuant to the terms of the Undertaking do not form part of the purchased assets subject to the vesting orders, and that such amounts shall continue to be held in trust by the Applicants pursuant to the terms of the Undertaking until such time as a motion can be brought before the Court to determine the proper distribution of such amounts.

Court-Approved Undertaking

5. During the period of May 6, 2008 to June 12, 2008, extensive negotiations took place between GCNA, the Applicants, BDO Dunwoody Limited, the Court-appointed monitor of the Applicants in the CCAA Proceedings (the “**Monitor**”) and Caterpillar Financial Services Limited, a senior secured creditor of the Applicants, in connection with the terms of an undertaking to be provided by the Applicants with respect to compliance by the Applicants with the trust provisions of the *Construction Lien Act* (Ontario) (the “**CLA**”) during the CCAA Proceedings.

6. On June 12, 2008, the Undertaking was approved by the Court in the CCAA Proceedings pursuant to the June 12 Order. Attached hereto as Exhibit “A” is a copy of the June 12 Order and the Undertaking.

The Applicants' Failure to Comply with the Requests for Information

7. Pursuant to paragraph (viii) of the Undertaking, the Applicants were required to make available, on reasonable notice, all of its Project (as defined in the Undertaking) list of payments and Bank Account (as defined in the Undertaking) records to GCNA, or its consultant, for inspections in order to verify the proper payment by the Applicants of the Trust Funds (as defined in the Undertaking).

8. During the period of June 17, 2008 to July 10, 2008, GCNA, through BLG and its consultant, made repeated requests to the Applicants and the Monitor pursuant to paragraph (viii) of the Undertaking for detailed information with respect to payments made by the Applicants in connection with two (2) GCNA bonded projects, the Thorold project (the "**Thorold Project**") and the Fort Erie project (the "**Fort Erie Project**").

9. It was not until July 10, 2008 that counsel to the Monitor ("**Harrison Pensa**") forwarded to BLG by e-mail a list of payments made by the Applicants with respect to the Thorold Project (the "**July 10 E-mail**"). On July 14, 2008, Harrison Pensa sent an e-mail to BLG and counsel to the Applicants, among others, which included, among other things, a summary of payments made by the Applicants on the Fort Erie Project (the "**July 14 E-Mail**").

10. The Trust Fund Reconciliation with respect to the Thorold Project appended to the July 10 E-mail indicated that the trust fund balance as of July 8, 2008 was \$75,219.17 (the "**Thorold Trust Fund Balance**"). The Trust Fund Reconciliation with respect to the Fort Erie Project appended to the July 14 E-mail indicated that the trust fund balance as of July 10, 2008 was \$223,536.84 (the "**Fort Erie Trust Fund Balance**"). Attached as Exhibit "B" hereto are copies of the July 10 E-Mail and the July 14 E-Mail.

Breach of the Undertaking by the Applicants

11. The Trust Fund Reconciliation with respect to the Thorold Project appended to the July 10 E-mail indicated that the Applicants repaid themselves \$299,447.59 for disbursements incurred by the Applicants during the CCAA Proceedings (the "**Thorold Repayment**"). It is the position of GCNA that such repayment was in violation of paragraph (vi) of the Undertaking and that the Thorold Repayment does not fall within the exception provided in paragraph (vi).

12. As a result of the repeated refusals by the Applicants to disclose information to GCNA, as requested by GCNA in accordance with the Undertaking with respect to the Thorold Project and the Fort Erie Project, GCNA was unable to take action at an earlier time to prevent the Thorold Repayment from occurring. Neither the Applicants or the Monitor advised GCNA that the Thorold Repayment was going to be made.

Sale of the Assets of the Applicants

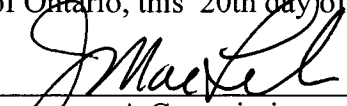
13. I am advised by Mr. Rappos that the draft vesting orders filed by the Applicants with respect to the Asset Sale Transaction do not indicate whether the Thorold Trust Fund Balance and the Fort Erie Trust Balance will be transferred to Waterford and Brennan in connection with the Asset Sale Transaction.

Relief Sought by GCNA


14. GCNA requests:

- (a) that a portion of the Sale Proceeds equal to the Thorold Repayment be held in trust by the Monitor until such time as a motion can be brought before the Court to determine if the Applicants have complied with the Undertaking or whether (as asserted by GCNA) the Thorold Repayment was a breach of the Undertaking; and
- (b) that, in the event that the Court grants the vesting orders sought by Waterford and Brennan, the vesting orders explicitly provide that the Thorold Trust Fund Balance and the Fort Erie Trust Fund Balance do not form part of the purchased assets being vested by the Applicants to Waterford and Brennan and that the Applicant shall continue to hold the Thorold Trust Fund Balance and the Fort Erie Trust Fund Balance in trust until such time as a motion can be brought before the Court to determine the proper distribution of such amounts.

SWORN BEFORE ME at the City)
of Toronto, in the Province)
of Ontario, this 20th day of July, 2008.)



A Commissioner, etc.
James MacLellan



Tara Wishart

THIS IS EXHIBIT "A"
TO THE AFFIDAVIT OF TARA WISHART
SWORN JULY 20, 2008


A Commissioner, etc.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) THURSDAY, THE 12th
)
JUSTICE WILTON-SIEGEL) DAY OF JUNE, 2008



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 HARD-ROCK PAVING COMPANY
LIMITED AND THE COMPANIES LISTED ON SCHEDULE "A"
(collectively, the "Applicants")

ORDER

THIS MOTION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavits of David R. Semley sworn June 9 and June 10, 2008, and the exhibits thereto, the Affidavits of William Scarlett sworn June 9 and June 10, 2008, and the exhibits thereto, the Monitor's Second Report dated June 6, 2008 and the Supplement to the Report (the "**Report**") and on hearing the submissions of counsel for the Applicants, Caterpillar Financial Services Limited ("**CFSL**"), GE Canada Equipment Financing G.P. ("**GE**") BDO Dunwoody Limited (the "**Monitor**"), counsel for the Labourers International Union, ^{local 837} and the International Union of

local 793,

WMS

Operating Engineers, ^Acounsel for The Guarantee Company of North America in its capacity as the Applicants' bonding company, counsel for The Guarantee Company of North America as directors and officers insurer of Hard Rock Paving and its directors and officers, no one else appearing.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged so that this Motion is properly returnable today and hereby dispenses with further service thereof.

FURTHER DIP LOAN

2. **THIS COURT ORDERS** that in addition to the DIP Loan authorized under the Restated and Amended Initial Order of Justice Spence dated May 12, 2008, ^(the "Amended Order") the Applicants are hereby authorized and empowered to obtain and borrow under a further credit facility from CSFL (the "Second DIP Loan") in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under the Second DIP Loan, excluding such borrowings as were authorized under the Amended Order, shall not exceed \$1,000,000 unless permitted by further Order of this Court or upon the prior written consent of each of GE, CSFL and the Monitor. *WMS*

3. **THIS COURT ORDERS** that the terms of the Second DIP Loan shall be on terms and subject to the same conditions as set forth in the commitment letter between the Applicants and CSFL dated June 11, 2008, attached hereto as Schedule "B" to this Order.

4. **THIS COURT ORDERS** that the provisions of the Amended Order establishing the DIP Lender's Charge and governing its operations shall also

apply to the additional amount authorized to be borrowed by the Applicants under the Second DIP Loan pursuant to paragraph 3 of this Order and that such advances shall rank pari passu with such amounts previously advanced pursuant to the Amended Order.

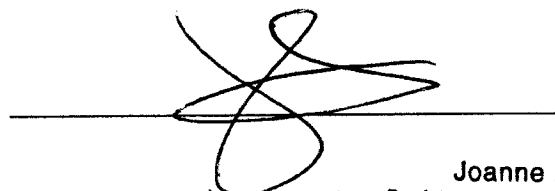
Changes to Initial Order

5. **THIS COURT ORDERS** that, except for where expressly amended herein, all other terms of the Amended Order remain in full force and effect.

BONDING PROTOCOL

6. **THIS COURT ORDERS AND DECLARES** that the Undertaking to Comply with the *Construction Lien Act* Trust Fund Obligations on The Guarantee Company of North America Bonded Projects (the "**Undertaking**") executed by Hard Rock Construction Inc. and the Monitor dated June 11, 2008, ^{as attached,} is hereby approved. Hard Rock Construction Inc. is hereby authorized and directed to pay and perform all of its indebtedness, liabilities and obligations under and pursuant to the Undertaking as and when the same become due and are to be performed. Hard Rock Construction Inc. is authorized and directed to take such additional steps and execute such additional documents as are contemplated by the Undertaking or as may be reasonably required by Guarantee Company of North America pursuant to the terms thereof.

AWJ



Joanne Nicoara
Registrar, Superior Court of Justice

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JUN 13 2008

PER/PAR: JSN

SCHEDULE "A"

DIAMOND STONEBRIDGE CONTRACTING INC.

HARD-ROCK HIGHWAY MAINTENANCE INC.

HARD-ROCK CONSTRUCTION INC.

942355 ONTARIO LIMITED

942356 ONTARIO LIMITED

#1355400 | 4064915

CAT SCHEDULE B

June 11, 2008

Hard-Rock Paving Company Limited
198 Welland St
Port Colborne, Ontario
L3K 5V8

Attn: David R. Semley, President

Dear Sirs:

We confirm that Hard-Rock Paving Company Limited ("**Hard-Rock**") and the entities listed in Schedule "A" (collectively, the "**Borrowers**") received protection under the *Companies' Creditors Arrangement Act (Canada)* ("**CCAA**") pursuant to the order of the Honourable Mr. Justice Spence dated May 2, 2008 (the "**Initial Order**").

The Borrowers have requested that **Caterpillar Financial Services Limited** (the "**DIP Lender**") make available to the Borrowers a credit facility in the maximum principal amount of CAD \$1,000,000.00 for working capital purposes during the CCAA proceeding. The DIP Lender is pleased to do so on the terms outlined below. The DIP Lender will deposit \$1,000,000 of the DIP Loan (as defined below) forthwith into the Designated Account (as defined below) upon the execution and delivery of this Agreement by the Borrowers and the approval authorizing the borrowings on the terms and conditions outlined in this Term Sheet by the Superior Court of Justice for Ontario (the "**Court**").

LOAN FACILITIES

1. **BORROWERS:** Hard-Rock Paving Company Ltd. and those entities listed in Schedule "A"

2. **TYPE OF FACILITIES/AMOUNT:** The DIP Lender shall make the following credit facility (the "**DIP Loan**") available to the Borrowers subject to the terms and conditions set out herein:

a non-revolving loan in the maximum amount of CAD \$1,000,000.00 for the purpose of the Borrowers' working capital requirements. The balance of the Loan in its entirety will be deposited into a specially designated separate account of BDO Dunwoody Limited in its capacity as court appointed monitor (the "**Monitor**") for the benefit of Hard-Rock Paving Company Ltd. (the "**Designated Account**"), upon the execution and delivery of this agreement and the expiry of any right to appeal or seek leave to appeal from the Order of approval authorizing the borrowings on the terms and conditions outlined in this Term Sheet, by the Court.

No further funds beyond the \$1,000,000.00 set out herein shall be borrowed from the DIP Lender by the Borrowers without the prior approval of the Court.

3. **INTEREST RATE:** 7.10% per annum on the daily balance outstanding under the DIP Loan. Interest shall be calculated monthly in arrears as well after and before maturity, default and judgment, with interest on overdue interest at the same rate as on principal, computed on the daily balance outstanding at the aforementioned rates based on the actual number of days lapsed divided by 365, and shall be payable as herein set forth.

Interest shall be payable monthly, due on the last business day of each calendar month on the balance outstanding under the DIP Loan and on any other monies due and payable hereunder, both before and after maturity, default or judgment at the interest rate set forth herein. The first payment on account of interest shall be on the last business day of the month of the first advance under the DIP Loan.

4. **TERM AND REPAYMENT:** The DIP Loan, interest, fees and all other amounts payable hereunder that are still outstanding at any time, shall be due and payable on the earlier of the occurrence of an Event of Default (as hereinafter defined) or December 31, 2008.

5. **ADVANCES AND AVAILABILITY:** A signed request by Hard-Rock Paving Company Ltd. and the consent of the Monitor (in form and substance satisfactory to the DIP Lender) shall be delivered to the DIP Lender in order to make a withdrawal from the Designated Account. The DIP Loan shall be drawn from and the Monitor is authorized to release funds from the Designated Account at the beginning of each week based on the Borrowers' borrowing needs for that week as outlined in an updated weekly cash flow ~~to be provided by the Borrowers and approved by the DIP Lender acting reasonably~~ (the "Projections"), or as may have been amended on the written consent of the Monitor, the DIP Lender and the Borrowers, and subject to:

*attached
hereto as
Schedule "B"*

DS

- a. the terms contained in this Term Sheet; and
- b. upon the satisfaction of the Conditions Precedent (as hereinafter defined).

The Monitor shall report to the DIP Lender on a weekly basis as to the use of the DIP Loan by the Borrowers.

6. **DOCUMENTATION AND SECURITY:** All present and future liabilities and obligations of each of the Borrowers to the DIP Lender including, without limitation, all present and future obligations arising hereunder shall be secured and evidenced, as the case may be, by the following documents completed in form and substance satisfactory to the DIP Lender and its counsel (collectively, the "DIP Lender Security"):

- a. the security provided under the Amended and Restated Initial Order dated May 12, 2008 (the "Amended and Restated Initial Order");
- b. General Security Agreements from each of the Borrowers;
- c. Mortgage/charge of land over all of the real property in respect of which any of the Borrowers have an interest;
- d. all supporting authorizations, certificates, acknowledgements and legal opinions as the DIP Lender may reasonably require; and
- e. such further documentation that the DIP Lender and its counsel may reasonably require.

7. **CONDITIONS:**

The obligation of the DIP Lender to make available the DIP Loan is subject to and conditional upon each of the following conditions (the "**Conditions Precedent**") which is for the exclusive benefit of the DIP Lender and, unless waived in writing by the DIP Lender, shall be fulfilled, satisfied and performed prior to the first advance under the DIP Loan:

- a. acceptance by each of the Borrowers of this Term Sheet;
- b. DIP Lender shall have received the DIP Lender Security, in form and content acceptable to the DIP Lender in its sole discretion;
- c. Each of the Borrowers obtaining an Order of the Superior Court of Justice of Ontario in form and content satisfactory to the DIP Lender on or by June 12th, 2008 (the "DIP Order") increasing, by the amount of the DIP Loan provided for herein, the amount of the court ordered first in priority charge (the "**DIP Charge**") provided for by the Amended and Restated Initial Order in favour of the DIP Lender over all present and future assets, property and undertaking of each of the Borrowers, subject only to an administration charge not to exceed \$125,000.00 without the written consent of the DIP Lender and approval of the Court, as security for all present and future liabilities and obligations of the Borrowers to the DIP Lender (whether direct or indirect, joint or several, absolute or contingent) including, without limitation, all present and future obligations arising hereunder, and otherwise providing that all terms of the Amended and Restated Initial Order as described below continue to apply without amendment to the DIP Loan provided for therein:
 - 1) authorizing the borrowings on the terms and conditions outlined in this Term Sheet and

approving same;

- 2) prohibiting the granting of any additional liens, charges, security interests or any other encumbrances upon any of the assets, property or undertaking of any of the Borrowers without the prior written consent of the DIP Lender;
- 3) granting the DIP Lender the right, upon the earlier of December 31, 2008 or the occurrence of an Event of Default (as defined below), to enforce the rights and remedies available to it, upon 3 days written notice to the Borrowers by email to their solicitors Minden Gross, attention David Ullmann dullmann@mindengross.com and to the Borrowers at dsemley@hardrockgroup.com and to the Monitor at umanski@bdo.ca, pursuant to the Amended and Restated Initial Order, this Term Sheet, the DIP Lender Security, and any additional rights and remedies available to it, at law or in equity;
- 4) prohibiting any further borrowing by any of the Borrowers, without the prior written consent of the DIP Lender;
- 5) authorizing (but not obligating) the DIP Lender to effect such registrations, filings and recordings wherever the DIP Lender in its discretion deems appropriate regarding the DIP Lender Security, and the DIP Charge, including registration of the Amended and Restated Initial Order on title to any of the assets of the Borrowers;
- 6) declaring that the granting of the security by each of the Borrowers provided for in the DIP Lender Security (including the DIP Charge) and the execution and delivery of all other documents and instruments contemplated herein, the payment of all amounts by the Borrower to the DIP Lender, including any and all fees and interest, and the actions taken to perfect and record the DIP Lender Security do not constitute settlements, reviewable transactions, fraudulent preferences, fraudulent conveyances, conduct meriting an oppression remedy, or other transactions which might be challenged or reviewed under applicable federal

or provincial legislation;

- 7) declaring the Amended and Restated Initial Order, and the DIP Charge granted thereunder, binding upon a trustee in bankruptcy of any of the Borrowers, monitor, receiver, interim-receiver, receiver-manager or any other officer of the Court;
 - 8) staying any other secured or unsecured creditor from exercising any rights against each of the Borrowers, without further order of the Court;
 - 9) declaring the DIP Lender to be an "unaffected creditor" under any plan of arrangement or compromise made by all or any of the Borrowers and that the indebtedness owed to the DIP Lender under the DIP Loan shall not be compromised or arranged under any such plan; and
 - 10) such other terms and conditions as the DIP Lender may reasonably deem necessary or appropriate;
- d. Subject to paragraph c. above, the Amended and Restated Initial Order shall be in full force and effect and shall not have been reversed, stayed, modified, amended or varied, without the express written consent of the DIP Lender, and no application or motion (other than the existing bankruptcy applications and motion to appoint an interim receiver already filed as of the date hereof by Caterpillar Financial Services Limited) shall have been made to the Court for any stay, modification or amendment of the Initial Order or the Amended and Restated Initial Order and no stay, appeal or leave to appeal with respect to same shall be pending;
- e. no Event of Default (as defined below) shall have occurred.

8. **ONGOING COVENANTS:**

In addition to those covenants set out in the DIP Lender Security, and other documentation executed or to be executed by each of the Borrowers in favour of the DIP Lender, each of the Borrowers covenant as follows:

- a. none of the Borrowers shall request, obtain or consent to any reversal, stay, modification, amendment or any variation, of the Initial Order, or the Amended and Restated Initial Order that adversely effects the DIP Loan.

without the prior written consent of the DIP Lender;

- b. each of the Borrowers shall provide the DIP Lender with at least two business days advance notice of all court filings made by it, together with copies of all related court materials, and shall provide the DIP Lender with notice of all court filings that any other person intends to make, as indicated in any way to any of the Borrowers by such person, as soon as reasonably practicable after obtaining knowledge of such intended filings;
- c. each of the Borrowers shall maintain the current insurance coverage over the Borrowers' assets and property and designate the DIP Lender as loss payee as its interest may appear;
- d. each of the Borrowers shall forthwith provide the DIP Lender with written notice of the occurrence of an Event of Default (as defined below);
- e. none of the Borrowers shall grant any liens, charges, security interests or any other encumbrances upon any of its assets, property or undertaking, without the DIP Lender's prior written consent;
- f. none of the Borrowers shall take any steps to sell, transfer, assign or deal in any way with any of their property, assets or undertaking out of the ordinary course of business, without the prior written consent of the DIP Lender;
- g. each of the Borrowers shall pay, when due, all statutory liens, trusts and other Crown claims including employee source deductions, GST, PST, EHT, and any payments required by any work place safety legislation, wages, vacation pay and insurance premiums;
- h. each of the Borrowers shall only use the DIP Loan for purposes set out in this Term Sheet, unless otherwise agreed to in writing by the DIP Lender;
- i. each of the Borrowers shall cause its property, assets and undertaking to be maintained and operated in good working condition in accordance with industry practice and to permit the DIP Lender to inspect each of its property, assets and undertaking as the DIP Lender may request;
- j. each of the Borrowers shall take all necessary steps to ensure all licenses used in connection with the operation of the businesses of the Borrowers are kept in good

standing;

- k. each of the Borrowers shall comply with the Projections, subject to an allowance for negative variations for total disbursements and withdrawals in the Projections (which must be satisfactory to the DIP Lender) not to exceed 5% of the Projections on a cumulative basis tested weekly; and
- l. any retainers by any of the Borrowers of a chief restructuring officer (or similar type of advisor) shall be on terms acceptable to the DIP Lender.

9. **DEFAULT:**

In addition to the events of default set out in the DIP Lender Security, the following events shall constitute events of default (each, an "Event of Default"):

- a. if any of the Borrowers fail to pay to the DIP Lender when due any amount of principal, interest, fees or other amounts under the DIP Loan or otherwise, whether by acceleration or otherwise;
- b. if any of the Borrowers default in the observance or performance of any term, covenant or condition in this Term Sheet, the DIP Lender Security or any other agreement between the DIP Lender and any of the Borrowers;
- c. if the DIP Lender determines, acting reasonably, that a material adverse change has occurred after the date hereof in respect of any of the businesses, affairs or financial condition of any of the Borrowers;
- d. if there occurs a direct or indirect change of control (as defined in the OBCA) with respect to any of the Borrowers; or
- e. if (i) the Amended and Restated Initial Order is varied without the written consent of the DIP Lender or any other order is made which is or may be prejudicial to the DIP Lender's interests; (ii) the Amended and Restated Initial Order is appealed or leave to appeal is granted; or (iii) the stay of proceedings contained in the Amended and Restated Initial Order is terminated or lifted.

10. **REMEDIES:**

Upon the earlier of the occurrence of an Event of Default or December 31, 2008, the DIP Lender may immediately terminate the DIP Facilities, require repayment to it of any funds held by the Monitor at that time and enforce, upon 3 days written notice, as referred to in paragraph 7.c.4) herein, all of its rights and remedies against each of the Borrowers

and their property, assets and undertaking including, without limitation, the enforcement of the DIP Lender Security; and all amounts outstanding under the DIP Loan shall immediately become due and payable without further notice, demand or delay.

11. REPORTING:

Each of the Borrowers shall provide to the DIP Lender such information that the DIP Lender may reasonably request from time to time including, without limitation:

- a. a copy of all reporting provided to the Borrowers by the Monitor and KPMG Inc. including, with respect to the cash flow variance analysis describing and explaining any changes between actual performance and budget from the most recently delivered cash flow budget and projections to the cash flow budget and projections delivered in the previous week; and
- b. regular progress reports relating to all claims by the Borrowers against the MTO.

Joint and Several

The Borrowers shall be jointly and severally liable for all obligations arising under this Term Sheet, the DIP Lender Security and the DIP Loan (and all documents related thereto).

Governing Law

This Term Sheet shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

Costs and Expenses

The Borrowers shall be responsible for all reasonable costs, fees and expenses on a full indemnity basis (including, without limitation, all legal, financial and other advisory fees, disbursements and out of pocket expenses) incurred by the DIP Lender in connection with:

- (a) the transaction contemplated herein including, without limitation, all fees, costs, expenses and disbursements incurred by the DIP Lender in connection with the negotiation, preparation, registration and administration of this Term Sheet, the DIP Lender Security, the DIP Loan (and all documents related thereto);
- (b) the enforcement of all rights and remedies under this Term Sheet, the DIP Lender Security, the DIP Loan (and all documents related thereto); and
- (c) all matters related to the CCAA proceedings including, without limitation, all court attendances in Canada or elsewhere in connection therewith.

All such fees and expenses shall be secured by the DIP Lender Security, whether or not any additional funds are advanced.

No Assignment

Neither party to this Term Sheet may assign their interest hereunder or in any of the DIP Lender Security without the express written consent of the other party.

Notice

Notices required to be sent to the Borrowers, their counsel or the Monitor may be sent via e-mail to the e-mail addresses set out in 7.c.4) herein or to such other address or contact information as the parties may direct in writing. Notices required to be sent to the DIP Lender will be sent to such contact information and addresses as the DIP Lender may direct in writing.

Facsimile or PDF

Facsimile or PDF documents pertaining to this transaction are to be considered and treated the same as original documents.

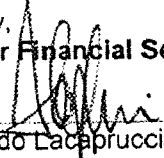
Disclosure

The Borrowers agree not to disclose this Term Sheet (or the terms contained herein) to any other person, without the prior written consent of the DIP Lender, except in connection with the Borrower's motion for court approval of the borrowings on the terms and conditions outlined in this Term Sheet.

Acceptance

If these terms and conditions are acceptable, each of the Borrowers must sign and return this Term Sheet before 12:00 Noon E.S.T. on June 12th, 2008 (as such other time as the DIP Lender may agree), failing which this Term Sheet is of no force and effect.

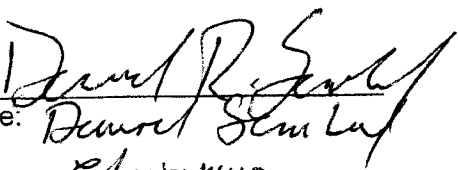
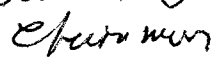
Yours truly,
Caterpillar Financial Services Limited

By: 
Name: Aldo Lacapruccia
Title: Area Manager, Eastern Canada

The undersigned hereby accept the terms and conditions of this Term Sheet and agree to be bound thereby.

Dated at Toronto, Ontario this day of June, 2008.

HARD-ROCK PAVING COMPANY LTD.

By: 
Name: Daniel R. Smith
Title: 

DIAMOND STONEBRIDGE CONTRACTING INC.

By: David R. Semler
Name: David Semler
Title: Chairman.

HARD-ROCK HIGHWAY MAINTENANCE INC.

By: David R. Semler
Name: David Semler
Title: Chairman.

HARD-ROCK CONSTRUCTION INC.

By: David R. Semler
Name: David Semler
Title: Chairman.

942355 ONTARIO LIMITED

By: David R. Semler
Name: David Semler
Title: Chairman.

942356 ONTARIO LIMITED

By: David R. Semler
Name: David Semler
Title: Chairman.

Acknowledged and Consented To:

BDO DUNDWOODY LTD.

By: Wolfgang Manski
Name: Wol Manski
Title: President.

SCHEDULE "A"

DIAMOND STONEBRIDGE CONTRACTING INC.

HARD-ROCK HIGHWAY MAINTENANCE INC.

HARD-ROCK CONSTRUCTION INC.

942355 ONTARIO LIMITED

942356 ONTARIO LIMITED

SCHEDULE "B"
Cash Flow Projections

The Hard Rock Group
2002/09 Budget
Cash Budget

Date	30 May		6 Jun		13 Jun		20 Jun		27 Jun		4 Jul	
	actual	variance	plan	actual	variance	plan	actual	variance	plan	actual	variance	plan
1	215,370	215,370	328,977	327,192	(1,785)	68,667	119,769	(102,348)	4,656	119,769	(2,945)	655
Opening Cash Balance												
Cash Receipts												
March '01, 2008 A/R	300,000	176,422	1,032,250	205,807	1,069,999	1,396,057	168,939	(168,939)	143,939	143,939	(143,939)	50,000
less: Trust Payments	169,000	149,352	(19,648)	205,056	152,873	357,929	0	0	0	0	0	22,878
Available Cash Receipts	131,000	27,070	(103,930)	887,194	940,128	1,686,939	0	(168,939)	143,939	143,939	0	22,878
Receipts from Current Year's Sales												
30 days	100,000	3,620	(96,380)	87,105	(120,131)	87,105	50,000	(50,000)	70,000	70,000	(70,000)	300,000
60 days	0	0	0	0	0	0	0	0	0	0	0	0
other receipts	0	24,875	24,875	86,569	0	86,569	0	0	0	0	0	0
Inventory Reduction	0	56,930	56,930	164,353	0	164,353	0	0	0	0	0	0
Loan Advances	417,675	599,980	182,415	949,980	(47,471)	1,219,470	225,000	(225,000)	390,000	390,000	(390,000)	75,000
Total Cash Receipts	648,575	712,485	6,990	2,175,201	(213,476)	2,497,625	443,939	(443,939)	593,939	593,939	0	397,878
Cash Disbursements												
Employee Costs	232,136	179,490	52,646	730,341	114,601	871,100	223,000	223,000	323,000	323,000	203,000	197,440
Fuel	34,195	0	34,195	60,065	(49,600)	122,065	12,400	12,400	12,400	12,400	12,400	12,400
Utilities, taxes and insurance	52,073	0	52,073	0	4,000	0	119,000	4,000	4,000	4,000	4,000	4,000
Production Costs	275,426	310,319	(34,893)	904,961	19,159	1,227,802	252,000	227,140	162,000	162,000	152,360	152,360
Office Expenses	23,968	3,751	20,157	39,204	4,886	39,318	5,000	5,000	5,000	5,000	5,000	5,000
Professional Fees	30,038	107,104	(76,286)	182,104	24,000	182,104	50,000	50,000	30,000	30,000	15,000	15,000
DIP Financing Charges	0	0	0	0	(4,134)	4,134	0	0	0	0	0	7,622
Loan Repayments	0	0	0	0	0	0	0	0	0	0	0	0
Total Cash Disbursements	648,574	600,663	47,911	1,916,675	112,912	2,446,523	661,400	661,400	801,540	801,540	386,400	395,022
Closing Cash Balance	1	327,192	174,439	327,192	(328,173)	119,769	4,656	(1,207,687)	(2,945)	119,769	(653,685)	3,511

Total Cash Disbursements

Undertaking to Comply with the *Construction Lien Act* Trust Fund Obligations
on
Guarantee Company of North America Bonded Projects

May 2, 2008

Hard-Rock Construction Inc. (the "Applicant"), pursuant to the Initial Order of Justice Spence dated May 2, 2008, will continue to perform work on certain construction projects, including but not limited to the Guarantee Company of North America bonded construction projects list on the attached Schedule "A" (the bonded projects on Schedule "A" are hereinafter collectively the "Projects" or singularly the "Project").

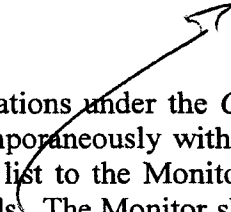
The Applicant and the Monitor acknowledge and agree that the administration of the CCAA proceedings is to be in accordance with the *Construction Lien Act* ("CLA"). For example, any payment received by the Applicant from an Owner or on the Owner's behalf, on account of any one of the Projects are trust funds (the "Trust Funds") as defined in section 8 of the *CLA* for the benefit of the subcontractors and other persons (the "Trust Claimants") who supplied services or materials to the specific Project for which the payment was received, and the Trust Funds will be administered in accordance with the *CLA*. The Applicant agrees that no directions with respect to payments from any Owner on a Project will be given without the express written consent of the Guarantee Company of North America.

The Applicant confirms that the Trust Funds related to each particular Project are not subject to any security granted by the Initial Order, including the Administration Charge, the D&O Charge and the DIP Lender's charge, unless and until all Trust Claimants are paid in full at the completion of that particular Project.

The Applicant undertakes to only disburse the Trust Funds on each Project to pay the Trust Claimants (both past, current and future) on each Project, unless and until all Trust Claimants are paid in full at the completion of that particular Project.

The Applicant agrees to receive and disburse the Trust Funds in accordance with the following:

- (i) The Applicant will deposit any and all payments received from the Owners on all of the Projects into the bank account (the "Bank Account") established by the Applicant to administer Trust Funds for the duration of the Projects and will hold all such payments deposited subject to this Undertaking.
- (ii) The Applicant will establish an accounting system for the Bank Account to permit it to keep separate records for all amounts deposited to or disbursed from the Bank Account on a Project by Project basis.
- (iii) The Applicant will provide to the Owner of each of the Projects the Bank Account information and a direction that all cheques issued with respect to the Project shall be marked as follows: "For deposit only to [Insert Bank Account No.] related to [Insert name of Project]."

- 
- (iv) The Applicant, in order to satisfy its trust obligations under the *CLA*, will on a Project by Project month by month basis contemporaneously with submitting an application for payment to the Owner submit a list to the Monitor of the Trust Claimants entitled to be paid from the Trust Funds. The Monitor shall review the list of payments from the Trust Funds, using its best efforts to determine, in consultation with the Applicant, the Trust Claimants to be paid.
- (v) Upon completion of the review by the Monitor of the list of payments to be made for each Project each month, and the Monitor being satisfied based on its best effort review that the proposed list of payments relates only to Trust Claimants for the particular Project, the Applicant shall make payments from the particular Project Trust Funds to the particular Project Trust Claimants.
- (vi) The Applicant acknowledges and agrees that no amount will be paid from the Trust Funds received with respect to any particular project for any use inconsistent with the trust provisions of the *CLA*, including but not limited to any amount for profit, overhead, loan repayment, project management fees, professional fees, Monitor fees, Monitor counsel fees or Applicant counsel fees, until such time as all of the Applicants' trust obligations under the *CLA* with respect to that particular Project have been fully satisfied. For greater certainty, the Applicant acknowledges that it will not use any of the Trust Funds to fund the Applicant's operation or the cost of the *CCAA* proceedings. However, where the Applicant pays, in whole or in part for the supply of services or materials related to a specific Project, out of money that is loaned to the Applicant, or out to money that is not subject to a trust subject to review by the Monitor of any such payments as contemplated in paragraphs (iv) and (v), Trust Funds generated for that particular Project as a result of services or material paid for by the loan or moneys not subject to a trust, may be applied to discharge the loan or reimburse the Applicant for money not subject to a trust to the extent of the payment made for the subject supply of services or materials related to the particular Project consistent with section 11 of the *CLA*.
- (vii) Prior to the release of any surplus balance of the Trust Funds to the Applicant at the end of any particular Project after all of the trust obligations have been fully satisfied with respect to that Project, the Applicant shall deliver a sworn statutory declaration to the Monitor confirming that all of the Trust Claimants relating to that particular Project have been paid in full.
- (viii) The Applicant shall make available, on reasonable notice, all of its Project list of payments referred to in paragraph (iv) above and Bank Account records to the Guarantee Company of North America, or its consultant, for inspections in order to verify the proper payment of the Trust Funds.
- (ix) After the date of the Initial Order, in the event of a default by the Applicant in performing the work on any of the Projects that is not cured by the Applicant, or if the Applicant determines that it will not proceed with any of the Projects, the Applicant shall immediately freeze the balance of any funds in the Bank Account

related to the particular Project. [Any such balance of Trust Funds in the Bank Account related to the particular Project be maintained in the Bank Account subject to further Order of the Court on notice to all parties.]

The Undertaking shall be interpreted so that any Trust Funds received by the Applicant with respect to a particular Project are used exclusively to satisfy the Applicants obligations to pay the Trust Claimants related to that Project and to offset any extra costs of completion of that Project in the event that the Applicant defaults on the Project, consistent with the *CLA*. Only after these obligations are fully satisfied shall the Applicant be entitled to use the surplus funds (the funds remaining after all *CLA* obligations have been complied with) to pay other obligations such as profit, overhead and management fees.

GUARANTEE COMPANY OF NORTH AMERICA

Hard-Rock Construction Bonded Projects

to be attached to Trust Fund Undertaking

May 2, 2008

Bond No.	Date of Issuance	Contract Description	Obligee	Bond Amount
TS5077465	2-Apr-08	Contract No.: RN IS.07BERN - Thunder Bay Area Drainage Improvements	Corporation of the Town of Fort Erie	\$909,435.24
TS5070469	22-May-07	Contract No.: PWC07-02-320006 - PWC07-06-440015-Baker Road Reconstruction and Watermain Replacement	The Corporation of the Town of Grimsby	\$823,938.00
TS5070471	21-Jun-07	Contract No.: PW-07-35(H) Bridge Replacement on Mud Street East (Hildreth), between Tapleystown Road and Fifth Road East (Bridge No. 362)	The City of Hamilton	\$306,491.00
TS5070473	21-Jun-07	Contract No.:PW-07-33(H) Bridge Replacement: Bridge 4, Connection Road 8W and Bridge 20, Concession Road 5W	The City of Hamilton	\$435,258.00
TS5070476	22-Jun-07	N4/080-31/021 - Lock 6 West - Reface Center Wall Monolith 1C (2007/2008)	St. Lawrence Seaway Authority	\$624,500.00
TS5070482	7-Aug-07	Contract No.:2007-400 - Combined Sewer Separation - Relief Structures - Sydenham St./Sullivan Ave.: Delaware Ave./Sullivan Ave.: Lawrence Drive/Collier Road	The Corporation of the City of Thorold	\$4,298,270.00
TS5070483	28-Aug-07	Project No. Wp-07-03 - Whirlpool Rapids Bridge Skewback and Tie Beam Repair Project - Canadian Side - 2 year Maintenance Bond Included	Niagara Falls Bridge Commission	\$524,900.00
TS 5049558	19-Apr-07	Job No. 26A, 29A, 30A - 2006 - Cold In Place Recycling Ashphalt Concrete Pavement on Various Roads In the County of Essex	The Corporation of the County of Essex	\$565,789.00
TS 5049557	19-Apr-06	Job No. 31A & 32A - 2006 - Full Depth with Expanded Asphalt Stabilization (Paver Laid) on County Roads #18 & #31	The Corporation of the County of Essex	\$386,219.00
TS5049556	24-Apr-06	Rehabilitation of Niagara Parkway and Rec Trail at Beck 2 - Niagra-on-the-Lake	Niagara Parks Commission	\$237,357.00

TS5049555	24-Apr-06	Contract No. IS.06RSRF (H) - Road Resurfacing Hot Mix Asphalt	The Corporation of the Town of Fort Erie	\$285,564.00
TS5049550	3-Oct-05	Contract No. IS.05EAGL - Eagle Street Reconstruction	The Corporation of the Town of Fort Erie	\$611,286.00
TS5070488	19-Dec-07	Contract No. RN 07-11 (Tender 2007-T-111) - Decommissioning of Raw Water Intake Screen House just West of Lock 7 of the Welland Ship Canal in the City of Thorold	The Regional Municipality of Niagara	\$113,369.00
TS5070484	14-Sep-07	Contract no. RN 07-17 (2007-T-117) Dick's Creek Culvert Emergency Repair at Reguional Road 89 (Glendale Ave.)	The Regional Municipality of Niagara	\$84,986.00
TS5070481	15-Aug-07	Ref.No. 07-105 - Roadway Resurfacing Program 2007	The Corporation of the City of Welland	\$779,612.00
TS5070478	26-Jul-07	Proposal Number 2007-RFP-23 - Biggar Lagoons Wastewater Treatment Facility, Decommissioning Phase 2 - North Pond Remediation	The Regional Municipality of Niagara	\$561,835.00
TS5070477	24-Jul-07	Contract No. LNA-223 - Harvest Road Bridge Removal and Road Reconstruction	Lafarge North America	\$104,198.00
TS5070472	20-Jun-07	Contract no. MTO 2006-2020 - Grading, Drainage, Granular Base, Hot Mix Paving, Signals and Illumination at HWY Montrose /420 - Montrose Road - HWY 420 Intersection. Completion Date October 31, 2007	The Ministry of Treansportation of Ontario	\$200,000.00
TS5058032	10-Nov-06	Queenston Plaza, Phase 1 Reconstruction Enabling Contract	Niagara Falls Bridge Commission	\$806,167.00
TS5058034	15-Dec-07	Contract No. N4/069-18/021 - Construct a New Steel Sheet Pile Wall Complete with Concrete Coping, Concrete Struts, New Anchoring System, and Fendering at the Outer West Entrance Wall to Lock 4	The St. Lawrence Seaway Management Corporation	\$465,500.00
TS5058038	23-Apr-07	Contract No. IS.06MRCR - Michener Road Culvert Rehabilitation to Structure M100C	The Corporation of the Town of Fort Erie	\$39,114.00
TS5049559	9-May-06	Contract No. CW2006-025 - Replacement of the Glen Allan Bridge over Constsop River Wellington Road 45	The Corporation of the Town of Wellington	\$3,086,799.00
TS5049553	12-Apr-06	Contract No. 291043-2006 - Oxford Road 37 - Cold In-Place Recycling	The Municipality of the County of Oxford	\$50,000.00

TS5049551	25-Nov-05	Contract N4/045-23/021 - Weir 8, Channel Bank Repairs, (2005/06) Welland Canal, Seaway Niagara Region	The St. Lawrence Seaway Management Corporation	\$106,733.00
TS5070475	5-Jul-07	Contract No. RN 07-12 (2007-TY-112) reconstruction of Regional Road 27 (River Road) between Hewitt Road and Gents Road in the Township of Wainfleet	The Regional Municipality of Niagara	\$1,574,758.00
TS5058039	15-May-07	Tender No. RDT-06-07 - Cold In-Place Recycle Mix	The Corporation of the County of Brant	\$243,732.00
TS5058037	28-Mar-07	Contract No. 291067-CIP-2007 Cold-In-Place Recycling Oxford Road 12	The Municipality of the County of Oxford	\$200,000.00
TS5058033	15-Dec-06	Contract No. N4/069-19/021 - Lock 2, Upper West Wall, Fender Bench, Welland Canal, Seaway, Niagara Region	The St. Lawrence Seaway Management Corporation	\$90,438.00
TS5058029	16-Oct-06	Contract No. RN 06-28 - Regional Road 81 (King St.) Culvert Replacements between Bartlett Road and Vinehaven Trail in the Town of Lincoln	The Regional Municipality of Niagara	\$548,936.00
TS5058028	28-Sep-07	Contract no. RN 06-27 Reconstruction and Widening of Regional Road 50 (Niagara St.) - Phase 1	The Regional Municipality of Niagara	\$1,746,684.00
TS5048025	28-Aug-06	Road Improvements and Resurfacing, East/West Line - Highway 55 to Four Mile Creek Road East/West Line - Four Mile Creek Road to Lakeshore Road, Concession 6 Road - York Road to Line 8 Road in the Town of Niagara-on-the-Lake	The Town of Niagara-on-the-Lake	\$1,441,330.00
TS5058024	22-Aug-06	Ref. No. : 03-88 - Drapers Creek Culvert Replacement at Colbeck Dr.	The Corporation of the City of Welland	\$285,527.00
TS5058021	7-Jul-06	Contract No. 06 149 - Lakeshore Catholic High School Athletic Field Improvements, Port Colborne, Ontario	Niagara Catholic District School Board	\$393,736.00
TS5058020	21-Jun-06	Contract No. 6A; 7A; 9A; 12A; 13A; 14A - 2006 - Cold In-Place Recycling of Asphaltic Concrete Pavement and Full Depth Reclamation with Expanded Asphalt Stabilization (Paver Laid) on County Roads - 2006(Round 2)	The Corporation of the County of Essex	\$802,299.00
TS5049565	20-Jun-06	RDT 6-06 - Cold In-Place Recycle Mix	The Corporation of the County of Brant	\$259,450.00

TS5049563	23-May-06	Contract No. 06-09 - Sanitary, Storm & Watermain on Smith, Chippawa, McCormick & Duffering Streets & Site Improvements for Notre Dame College Catholic School & St. Kevin Catholic School	The Corporation of the City of Welland	\$2,057,970.00
TS5049562	29-May-06	Contract no. 2006-172-06 - Murray Street Cul-De-Sac Construction, Allendale Hydro Entrance Construction, Dorchester Road Boulevard Improvements	The Corporation of the City of Niagara Falls	\$122,864.00
TS5049560	5-May-06	Contract No. 06-007 - Cold In-Place Recycling with Expanded Asphalt Mix & Hot Mix Asphalt Overlay Contract - The Niagara Parkway from Fort Erie to Niagara-on-the-Lake	The Niagara Parks Commission	\$590,120.00

3815691/1

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 HARD ROCK PAVING
COMPANY LIMITED AND THE COMPANIES LISTED ON SCHEDULE "A"

Applicants

Court File No. 08-CL-7503

<p>ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST</p> <p>Proceeding commenced at TORONTO</p> <p>ORDER</p>	<p>MINDEN GROSS LLP Barristers and Solicitors 145 King Street West, Suite 2200 Toronto ON M5H 4G2</p> <p>Raymond M. Slattery (LSUC #20479L) 416-369-4149 416-864-9223 fax rslattery@mindengross.com</p> <p>David T. Ullmann (LSUC #42357I) 416-369-4148 416-864-9223 fax dullmann@mindengross.com</p> <p>Solicitors for the Applicants</p>
--	--

THIS IS EXHIBIT "B"
TO THE AFFIDAVIT OF TARA WISHART
SWORN JULY 20, 2008


A Commissioner, etc.

MacLellan, James W.

From: Hogan, Tim [thogan@harrisonpensa.com]
Sent: July 10, 2008 6:57 AM
To: MacLellan, James W.; RSlattery@mindengross.com
Cc: dsemley@hardrockgroup.com; Ponting, Dave
Subject: RE: Hard-Rock
Attachments: CSO Thorold Summary - July 8.pdf

as requested

Timothy C. Hogan
Harrison Pensa LLP
450 Talbot Street
LONDON ON N6A 4K3

Direct: 519-661-6743
Facsimile: 519-667-3362
Email: thogan@harrisonpensa.com

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From: MacLellan, James W. [mailto:JMACLELLAN@blgcanada.com]
Sent: Wednesday, July 09, 2008 5:45 PM
To: RSlattery@mindengross.com; Hogan, Tim
Cc: dsemley@hardrockgroup.com
Subject: Re: Hard-Rock

Ray,
Given the result of the hearing today, could you please send the requested information asap.

Also could you please send us a copy of the offer by the purchaser so that we can understand the impact of the sale process on the GCNA projects.

James MacLellan -----
Sent from my BlackBerry Wireless Handheld

----- Original Message -----
From: Raymond M. Slattery <RSlattery@mindengross.com>
To: 'Hogan, Tim' <thogan@harrisonpensa.com>
Cc: 'David Semley' <dsemley@hardrockgroup.com>; MacLellan, James W.
Sent: Tue Jul 08 18:12:55 2008
Subject: FW: Hard-Rock

Tim
Para (viii) of the undertaking provides that Gtee Co is to receive the "project list" of payments so good ahead and have David

20/07/2008

forward the list on to James and Chasse

Thanks

Ray

From: MacLellan, James W. [mailto:JMACLELLAN@blgcanada.com]
Sent: Tuesday, July 08, 2008 5:50 PM
To: Raymond M. Slattery; Hogan, Tim
Subject: FW: Hard-Rock

Below is the email from Mr. Chasse restating what GCNA has been requesting for some time.

James

James MacLellan
jmaclellan@blgcanada.com <blocked::mailto:jmaclellan@blgcanada.com>

Borden Ladner Gervais LLP
40 King Street West
Toronto ON M5H 3Y4
Direct (416) 367-6592
Fax (416) 361-7350

www.blgcanada.com <<http://www.blgcanada.com/>>

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From: Ed Chasse [mailto:echasse@bbcg.ca]
Sent: July 8, 2008 3:32 PM
To: Lon Mullin
Cc: MacLellan, James W.
Subject: RE: Hard-Rock

Lon , just to be clear what we need is a list of all cheques received by Hard-rock on the bonded projects since May 2/08 and a list of all payments made by Hard-Rock on those projects in the same time period .At this point we do not know which of the claims that have been made against the Labour and Material bonds may have been paid by Hard-Rock.This would be the same information that would go to the monitor so I would expect that it is readily available.Ed

E.G. (Ed) CHASSÉ B.A. AIIC

CLAIMS ADJUSTER

BBCG CLAIM SERVICES LIMITED

6-3660 HURONTARIO ST

MISSISSAUGA ON L5B 3C4

20/07/2008

Tel: (905) 279-8880 Ext. 232

Toll Free: (866) 714-0001 Ext. 232

Fax: (905) 279-5338

echasse@bbcg.ca <<mailto:echasse@bbcg.ca>>

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From: Lon Mullin [<mailto:lmullin@hardrockgroup.com>]
Sent: Tuesday, July 08, 2008 8:37 AM
To: Ed Chasse
Cc: MacLellan, James W.
Subject: RE: Hard-Rock

Hi Ed,

To the end of June there was only \$3000 in holdback to be paid. We will still have a few payables in July. Devron is an additional \$7k and if we do the surface treatment that is approximately \$12k. The trust account has over \$200k plus \$100k of holdback still to come. The job will be completed next week. I would like to discuss possibly releasing some additional money from the trust account. We will still have at least an additional \$100k of billing. this was a good job.

On CSO tank we do not have the final payment approved for June, hopefully today or tomorrow. We are still antipacating approx. \$400k. This money will not be recieved until the week of July 21-25. This money will be used to pay outstanding trust payables including prior May 2nd. We will get you the details once we know the amount to be recieved.

Lon Mullin

From: Ed Chasse [<mailto:echasse@bbcg.ca>]
Sent: Monday, July 07, 2008 2:08 PM
To: Lon Mullin
Cc: MacLellan, James W.
Subject: Hard-Rock

Lon , following up on our conversation from last Friday we understand that all of the payables on the Fort Erie job have been paid with the exception of some \$3000 in holdbacks. We still do not have a list of who has been paid on this or the Thorold job. On Thorold we understand that you hope to receive close to \$400,000 this week and that is to be used to pay off the pre-May 2/08 payables .Please confirm and indicate who is to be paid so that we can cross reference with the claims that have been made against the bonds. Also please provide a copy of progress certificate #8 for work completed on Thorold through

20/07/2008

the end of June .Thanks , Ed

E.G. (Ed) CHASSÉ B.A. AIIC

CLAIMS ADJUSTER

BBCG CLAIM SERVICES LIMITED

6-3660 HURONTARIO ST

MISSISSAUGA ON L5B 3C4

Tel: (905) 279-8880 Ext. 232

Toll Free: (866) 714-0001 Ext. 232

Fax: (905) 279-5338

echasse@bbcg.ca <<mailto:echasse@bbcg.ca>>

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The Corporation of the City of Thorold
 CSO Improvements
 Job #27107
 Trust Fund Reconciliation as of July 8, 2008

	Gross	Total
Receipts:		
23-May-08 Cert. No. 6	\$ 29,099.82	
19-Jun-08 Cert. No. 7	345,566.94	
Total receipts		\$ 374,666.76

	Explanation	
Disbursements paid by Hard-Rock:		
<i>Supported by documentation</i>		
30-May-08 Harris Rebar [chq # 6863]	Rebar supplied to job site per agreement	60,000.00
09-May-08 Roll Form [chq # 6139]	Piling supplied to job site - inv #48652	30,253.38
27-May-08 Roll Form [chq #6731]	Piling supplied to job site - inv #49061. Cheque issued for \$32,550 credit of \$2,296.62 being returned	30,253.38
21-May-08 Amherst Crane [chq #6607]	Pump concrete - inv #100034	5,000.00
14-May-08 Battelfield [chq #6164]	Compressor rental for job site - inv #2112406	2,153.55
21-May-08 Battelfield [chq #6609]	\$5,000 deposit placed with Battelfield. To date various invoices received total \$3,979.01 for Thorold City job.	3,979.01
14-May-08 Sam De Rose [chq # 6168]	Engineer shoring plans - inv #2008-21	2,625.00
23-May-08 Direct Equipment [chq #6696]	Trench boxes supplied to site - inv #46488	3,305.25
21-May-08 Lafarge [chq #6608]	Blanket fund of \$20,000 for concrete pours - \$19,106.89 confirmed to City of Thorold job. For the month of May and June	19,106.89
	Wage costs	142,771.13
		\$ 299,447.59

Not supported by documentation as of June 26, 2008		
14-May-08 Amherst Crane [chq #6590]	Supply concrete - inv to come	1,765.01
20-May-08 Direct Equipment [chq #6601]	Trench boxes supplied to site	1,271.25
		\$ 3,036.26

Total payments to date by Har-Rock		
		\$ 302,483.85
Funds repaid to Hard-Rock @ July 8, 2008		
299,447.59		

Balance of Trust Funds held as of July 8, 2008		
\$ 75,219.17		

MacLellan, James W.

From: Hogan, Tim [thogan@harrisonpensa.com]
Sent: July 14, 2008 11:41 AM
To: MacLellan, James W.; RSlattery@mindengross.com
Cc: dsemley@hardrockgroup.com; Ponting, Dave; Rappos, Sam; Hill, Craig J.; Mazur, Chris; Manski, Uwe
Subject: RE: Hard-Rock
Attachments: FE Job Summary 07 10.xls

James

Attached is the Fort Erie project summary.

Funds have not been received by Hard Rock on any bonded project other than Fort Erie and Thorold.

Ray Slattery will call you dealing with your question on the Thorold project and in particular the final sentence of paragraph (vi).

Specific to the Trust Fund Reconciliation as of July 8, 2008 for the Thorold Project we can advise that the sum of \$63,926.79 (out of the total of \$142,771.13) was re-paid to Hard Rock for June wage expenses out of the receipts received as reported.

Timothy C. Hogan
Harrison Pensa LLP
450 Talbot Street
LONDON ON N6A 4K3

Direct: 519-661-6743
Facsimile: 519-667-3362
Email: thogan@harrisonpensa.com

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From: MacLellan, James W. [mailto:JMACLELLAN@blgcanada.com]
Sent: Thursday, July 10, 2008 7:39 AM
To: Hogan, Tim; RSlattery@mindengross.com
Cc: dsemley@hardrockgroup.com; Ponting, Dave; Rappos, Sam; Hill, Craig J.
Subject: RE: Hard-Rock

Thank you for the information. We look forward to also receiving this information on the Ft Erie project and any other bonded projects where Hard-Rock has received Trust Funds since the Initial Order. In the meantime, could you have Hard-Rock or the Monitor provide an explanation as to why it is their view that the repayment to Hard-Rock of \$299,447.59 complies with the Undertaking (attached) and in particular the final sentence of paragraph

20/07/2008

(vi).

James

James MacLellan
jmaclellan@blgcanada.com
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From: Hogan, Tim [<mailto:thogan@harrisonpensa.com>]
Sent: July 10, 2008 6:57 AM
To: MacLellan, James W.; RSlattery@mindengross.com
Cc: dsemley@hardrockgroup.com; Ponting, Dave
Subject: RE: Hard-Rock

as requested

Timothy C. Hogan
Harrison Pensa LLP
450 Talbot Street
LONDON ON N6A 4K3

Direct: 519-661-6743
Facsimile: 519-667-3362
Email: thogan@harrisonpensa.com

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From: MacLellan, James W. [<mailto:JMACLELLAN@blgcanada.com>]
Sent: Wednesday, July 09, 2008 5:45 PM
To: RSlattery@mindengross.com; Hogan, Tim
Cc: dsemley@hardrockgroup.com
Subject: Re: Hard-Rock

Ray,
Given the result of the hearing today, could you please send the requested information asap.

20/07/2008

Also could you please send us a copy of the offer by the purchaser so that we can understand the impact of the sale process on the GCNA projects.

James MacLellan -----
Sent from my BlackBerry Wireless Handheld

----- Original Message -----

From: Raymond M. Slattery <RSlattery@mindengross.com>
To: 'Hogan, Tim' <thogan@harrisonpensa.com>
Cc: 'David Semley' <dsemley@hardrockgroup.com>; MacLellan, James W.
Sent: Tue Jul 08 18:12:55 2008
Subject: FW: Hard-Rock

Tim

Para (viii) of the undertaking provides that Gtee Co is to receive the "project list" of payments so good ahead and have David forward the list on to James and Chasse

Thanks

Ray

From: MacLellan, James W. [<mailto:JMACLELLAN@blgcanada.com>]
Sent: Tuesday, July 08, 2008 5:50 PM
To: Raymond M. Slattery; Hogan, Tim
Subject: FW: Hard-Rock

Below is the email from Mr. Chasse restating what GCNA has been requesting for some time.

James

James MacLellan
jmaclellan@blgcanada.com <blocked::<mailto:jmaclellan@blgcanada.com>>

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From: Ed Chasse [<mailto:echasse@bbcg.ca>]
Sent: July 8, 2008 3:32 PM
To: Lon Mullin
Cc: MacLellan, James W.
Subject: RE: Hard-Rock

Lon , just to be clear what we need is a list of all cheques received by Hard-rock on the bonded projects since May 2/08 and a list of all payments made by Hard-Rock on those projects in the same time period .At this point we do not know which of the claims that have been made against the Labour and Material bonds may have been paid by Hard-Rock.This would be the same information that would go to the monitor so I would expect that it is readily available.Ed

E.G. (Ed) CHASSÉ B.A. AIIC

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From: Lon Mullin [<mailto:lmullin@hardrockgroup.com>]
Sent: Tuesday, July 08, 2008 8:37 AM
To: Ed Chasse
Cc: MacLellan, James W.
Subject: RE: Hard-Rock

Hi Ed,

To the end of June there was only \$3000 in holdback to be paid. We will still have a few payables in July. Devron is an additional \$7k and if we do the surface treatment that is approximately \$12k. The trust account has over \$200k plus \$100k of holdback still to come. The job will be completed next week. I would like to discuss possibly releasing some additional money from the trust account. We will still have at least an additional \$100k of billing. this was a good job.

On CSO tank we do not have the final payment approved for June, hopefully today or tomorrow. We are still antipacating approx. \$400k. This money will not be recieved until the week of July 21-25. This money will be used to pay outstanding trust payables including prior May 2nd. We will get you the details once we know the amount to be recieved.

20/07/2008

Lon Mullin

From: Ed Chasse [<mailto:echasse@bbcg.ca>]
Sent: Monday, July 07, 2008 2:08 PM
To: Lon Mullin
Cc: MacLellan, James W.
Subject: Hard-Rock

Lon , following up on our conversation from last Friday we understand that all of the payables on the Fort Erie job have been paid with the exception of some \$3000 in holdbacks. We still do not have a list of who has been paid on this or the Thorold job. On Thorold we understand that you hope to receive close to \$400,000 this week and that is to be used to pay off the pre-May 2/08 payables .Please confirm and indicate who is to be paid so that we can cross reference with the claims that have been made against the bonds. Also please provide a copy of progress certificate #8 for work completed on Thorold through the end of June .Thanks , Ed

E.G. (Ed) CHASSÉ B.A. AIIC

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20/07/2008

The Corporation of the Town of Fort Erie
Thunder Bay Area Drainage Improvement
Job #18350

Trust Fund Reconciliation as of July 10, 2008

	Gross	Total	GST	Net
Receipts:				
27-May-08 Cert. No. 1	\$ 149,352.36		7,112.02	142,240.34
06-Jun-08 Cert. No. 2	152,873.26		7,279.68	145,593.58
03-Jul-08 Cert. No. 3	296,346.07		14,111.72	282,234.35
Total receipts	\$ 598,571.69		28,503.42	570,068.27
Disbursements paid by Hard-Rock:				
21-May-08 Con Cast Pipe	\$ 31,239.87		1,315.92	29,923.95
27-May-08 Con Cast Pipe	58,319.08		2,915.95	55,403.13
14-May-08 Con Cast Pipe	58,319.08		2,580.49	55,738.59
04-Jul-08 May and June Wage Cost	34,234.37		-	34,234.37
04-Jul-08 Cost of Granulars supplied by Hard Rock	44,303.86		-	44,303.86
	\$ 226,416.26		6,812.36	219,603.90
11-Jun-08 Reimbursed to Hard-Rock		142,527.82		
04-Jul-08 Reimbursed to Hard-Rock		78,538.23		

	Explanation		
Suppliers/Subs paid from Trust Funds			
Devron Pipe Sales			
- Invoice #25565	Materials	\$ 425.76	\$ 18.84 \$ 406.92
- Invoice #25610	Materials	133,469.35	5,905.72 127,563.63
Modern Corporation	Portable toilet at site	146.00	6.95 139.05
Oza Inspections	Condition survey	1,039.50	49.50 990.00
Russell Technical Services Inc.	Construction layout	525.00	25.00 500.00
A. Van Egmond Construction Ltd.			
- Payment certificate May 15, 2008	Sub-contractor	16,823.63	801.13 16,022.50
- Payment certificate June 9, 2008	Sub-contractor	1,539.56	73.31 1,466.25
		153,968.80	
		375,034.85	6,880.45 147,088.35
		\$ 223,536.84	

Payments made from Trust Funds as at July 10, 2008			
Trust Fund Balance			
Sub-contractor Hold Backs			
A. Van Egmond Construction Ltd.			
- Payment certificate May 15, 2008	\$ 2,827.50		
- Payment certificate June 9, 2008	258.75	\$ 3,086.25	

Expenses which do not qualify as "trust claims":			
McAvoy, Belan & Campbell		5,729.00	
Bonding insurance		-	5,729.00

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

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF THE HARD ROCK PAVING COMPANY LIMITED
AT AL.

Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceedings Commenced at Toronto

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(sworn July 20, 2008)

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