

**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 12TH DAY OF MAY, 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 May 12, 2008 (the "**May 12 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**"). I am advised by Mr. Sam Rappos of Borden

Ladner Gervais LLP (“**BLG**”), counsel for GCNA, that the May 12 Hearing is for the purpose of approving debtor-in-possession (“**DIP**”) financing for the Applicants.

3. This Affidavit is sworn in support of GCNA’s position that the administration of the CCAA Proceedings must be in accordance with the *Construction Lien Act* (Ontario) (the “**CLA**”) and that the provisions of the draft undertaking to comply with the CLA on Bonded Projects (as defined below) circulated by BLG to counsel to the Applicants, among others, on May 7, 2008 (as such draft undertaking may be amended and revised, the “**Undertaking**”) be incorporated into any amended initial order to be granted by the Court in the CCAA Proceedings. It is also sworn in opposition to the issuance by the Court of an amended initial order in the CCAA Proceedings which does not require the Applicants to abide by the terms of the Undertaking and/or which grants a blanket DIP lender charge on payments received by the Applicants from an Obligee (as defined below) or on an Obligee’s behalf on account of any one of the Bonded Projects.

Relationship Between GCNA and Hard Rock

4. GCNA established a surety bonding facility for Hard-Rock Paving Company Limited (“**Hard-Rock**”) to issue Performance Bonds and Labour and Material Payment Bonds (collectively referred to as “**Bonds**”). As security for the payment and performance of the obligations owed by Hard-Rock and each of the other Applicants to GCNA under the surety bonding facility, each of the Applicants granted security interests in all of their present and after-acquired personal property to, and executed indemnity agreement in favour of GCNA (the “**Indemnity Agreement**”).

5. In general, a Performance Bond guarantees to the owner of a project (called the “Obligee” in the Performance Bond) that the contractor (called the “Principal” in the Performance Bond) will perform the contract. The Performance Bond further provides that if the Principal defaults in the performance of the contract, the surety will arrange for completion so long as the Obligee has performed its obligations under the contract and complied with the terms and conditions of the Performance Bond.

6. In general, a Labour and Material Payment Bond guarantees to the Obligee that the suppliers of material and services to the Principal on the bonded project will be paid their outstanding accounts in accordance with the terms and conditions of the Labour and Material Payment Bond.

7. Over the years, GCNA has issued numerous Bonds to Hard-Rock. Attached hereto and marked as Exhibit “A” is a partial and preliminary list of issued Bonds. The contracts referred to in Exhibit “A” under the heading Contract Description are herein referred to collectively as the “**Bonded Projects**”.

Claims on the Bonds

8. Beginning in late April 2008, GCNA began to receive claims from subcontractors and suppliers on Bonded Projects under the Labour and Material Payment Bonds. As of May 9, 2008, GCNA has received claims in the approximate amount of \$700,000 under the Labour and Material Payment Bonds issued by GCNA as a result of Hard-Rock’s alleged failure to pay its subcontractors and suppliers on bonded projects. GCNA expects to receive further claims under the Labour and Material Payment Bonds as the Hard-Rock subcontractors and suppliers learn of the CCAA Proceedings.

Commencement of CCAA Proceedings

9. On Monday April 28, 2008, the Applicants filed materials with the Court seeking protection from their creditors pursuant to the CCAA. I understand that the application record filed with the Court contained an unissued Notice of Application dated April 28, 2008 (the “**Notice of Application**”), a draft Initial Order (the “**Draft Initial Order**”) and an Affidavit of David R. Semley sworn April 28, 2008 (the “**Semley April 28 Affidavit**”).

10. I am advised by Mr. Rappos that the Notice of Application requested that the Court grant an initial order pursuant to the CCAA in the form of the Draft Initial Order. Pursuant to Paragraph 4 of the Draft Initial Order, the Applicants were to:

... remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof including, without limitation, all receivables received as of the date hereof, subject only to the rights of trust claimants under the *Construction Lien Act*...

Attached hereto and marked as Exhibit “B” is a partial and preliminary list of issued Bonds.

11. The Applicants acknowledged in the Draft Initial Order that payments received by the Applicants are subject to the rights of trust claimants under the CLA. However, I am advised by Mr. Rappos that the Initial Order granted by the Court on May 2, 2008 (the “**Initial Order**”) does not contain any reference to the rights of trust claimants under the CLA. Attached and marked as Exhibit “C” hereto is a copy of the issued and entered Initial Order.

12. Notwithstanding that claims had been received under the GCNA Labour and Material Payment Bonds prior to April 28, 2008, the Applicants did not notify GCNA of its intention to commence proceedings pursuant to the CCAA. GCNA was only made aware of the hearing of the CCAA application late in the day on Friday, May 2, 2008.

13. The Initial Order currently provides that the Applicants shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof including, without limitation, all receivables received as of the date hereof (the “**Property**”). I am advised by Mr. Rappos that the definition of Property under the Initial Order is sufficiently broad to capture all payments received by the Applicants from Obligees on Bonded Projects that are properly subject to the trust provisions of the CLA.

14. As GCNA was not notified by the Applicants that it had filed the Notice of Application or that there was a hearing scheduled for May 2, 2008 in respect of such application, I am not aware of the impetus behind not including in the Initial Order the reference to the rights of trust claimants under the CLA that was contained in the Draft Initial Order.

Trust Funds

15. I have been advised by Mr. James MacLellan of BLG that the CLA provides that all amounts received by a contractor (such as Hard-Rock) on account of the contract price of an “improvement” under the CLA constitute a trust fund for the benefit of the subcontractors and other persons who have supplied services or materials to the improvement who are owed amounts by a contractor (such as Hard-Rock). I am also advised by Mr. MacLellan that the CLA provides that the contractor cannot appropriate or convert any part of the funds to the contractor’s own use or to any use inconsistent with the trust until all subcontractors are paid all amounts relating to the improvement in full.

16. Accordingly, I understand that the CLA does not permit the Applicants to use any amounts received in respect of the Bonded Projects until all of the subcontractors on the projects are paid in full.

Discussions with the Applicants following the commencement of the CCAA Proceedings

17. As a result of the commencement of the CCAA Proceedings, GCNA had concerns regarding the ability of the Applicants to continue to perform their obligations under the Bonded Projects. Additionally, GCNA had received claims from subcontractors and suppliers on Bonded Projects under the Labour and Material Payment Bonds and was concerned that, if appropriate measures were not put in place to ensure compliance with the provisions of the CLA, GCNA would be prejudiced under the Labour and Material Payment Bonds. Accordingly, GCNA scheduled a conference call with the Applicants and BDO Dunwoody Limited, the Court-appointed Monitor of the Applicants, on May 6, 2008 (the "**Call**"). During the Call, the Applicants and the Monitor provided their assurances that the provisions of the CLA would be strictly followed during the CCAA Proceedings.

18. Also during the Call, the Applicants and the Monitor indicated that they would forward for consideration to counsel for GCNA, prior to the hearing scheduled on Wednesday May 7, 2008 (the "**May 7 Hearing**"), a protocol to satisfy GCNA that the payments received by the Applicants from the Obligees on each of the Bonded Projects would be received and dispersed by the Applicants in accordance with the trust provisions of the CLA.

19. Having not received any correspondence from the Applicants or the Monitor prior to the May 7 Hearing, GCNA circulated the Undertaking to counsel to the Applicants, among others, at the hearing. Attached hereto and marked as Exhibit "D" is a copy of the Undertaking.

20. I am advised by Mr. Rappos that the Undertaking was subsequently forwarded on May 7, 2008 by e-mail to, among others, counsel to the Applicants, the Monitor, Caterpillar Financial Services Limited (the principal secured lender to the Applicants, "CSFL") and McLennan Financial Limited (a proposed DIP lender, "McLennan"). I am advised by Mr. Rappos that he requested in the e-mail that comments or concerns on the Undertaking be forwarded as soon as possible.

21. I am advised by Mr. Rappos that counsel to the Applicants have not provided comments on the Undertaking as of May 11, 2008.

Request for DIP Financing at the May 12 Hearing

22. As noted above, I understand that the purpose of the May 12 Hearing is to consider potential DIP financing arrangements for the Applicants. I have been advised by Mr. Rappos that CSFL and McLennan have each offered to provide DIP financing to the Applicants. I have also been advised by Mr. Rappos that counsel to the Applicants have not circulated a revised Initial Order but have confirmed that the revised Initial Order will contain the standard DIP financing provisions contained in the Model CCAA Initial Order that is used in CCAA proceedings in the Court.

23. I am advised by Mr. Rappos that the standard DIP financing provisions provide a DIP lender with a charge (the "DIP Charge") on the Property (which includes payments made by Obligees to the Applicants) of the Applicants in the aggregate amount of the funds provided by the DIP lender to the Applicants. I am further advised by Mr. Rappos that the DIP Charge is a charge on the Property of the Applicants which ranks in priority to all other security interests,

trusts, liens, charges and encumbrances, statutory or otherwise, which includes the trust provisions of the CLA.

Material Prejudice faced by GCNA if blanket DIP Charge granted

24. If appropriate measures are not put in place to ensure compliance with the provisions of the CLA by the Applicants and the Monitor, GCNA will be prejudiced under the Labour and Material Payment Bonds, as the Applicants will be using the trust funds paid by the Obligees, which should properly be paid to its subcontractors and suppliers, for purposes which are inconsistent with the trust provisions of the CLA. This will have the effect of increasing claims by subcontractors and suppliers against GCNA's Labour and Material Payment Bond.

25. Additionally, GCNA will be materially prejudiced in the event that a blanket DIP Charge is granted without any consideration of the trust which is imposed on the payments received by the Applicants in respect of Bonded Projects. A significant amount of claims have already been made against the GCNA on the Bonded Projects and GCNA is faced with the potential for significant additional claims in the event that the CLA trust payments received by the Applicants from Obligees on the Bonded Projects are used for operating expenses and/or to pay the DIP lender in priority to the payment of the subcontractors on the Bonded Projects.

26. I am advised by Mr. Rappos that there is no cogent evidence that the ability of the Applicants to use its Property in contravention of the trust provisions of the CLA and to have blanket DIP financing free of any restrictions clearly outweighs the potential prejudice to be faced by GCNA and the Hard Rock subcontractors and suppliers or that it is justified in these circumstances.

Balanced Approach: Incorporation of the Terms of the Undertaking into the CCAA Proceedings

27. The incorporation of the terms of the Undertaking into the CCAA Proceedings is a reasonable approach which balances the interest of the Applicants in their stated desire to comply with the trust provision of the CLA and their attempt to restructure and the material prejudice that would be faced by GCNA and the Hard-Rock subcontractors and suppliers if the Undertaking is not approved and a blanket DIP Charge is granted by the Court.

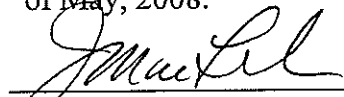
28. As noted above, I am advised by Mr. Rappos that counsel to the Applicants have not provided comments to BLG on the Undertaking, nor has counsel to CSFL and McLennan, the competing DIP lenders. Counsel to the Monitor has provided comments on the Undertaking. I have reviewed these comments and can confirm that GCNA is prepared to accept the Monitor's comments to the Undertaking. Attached and marked as Exhibit "E" hereto is a copy of the comments of counsel to the Monitor in respect of the Undertaking.

29. Additionally, in the Monitor's First Report to the Court dated May 9, 2008 (a copy of which is attached hereto (without exhibits) and marked as Exhibit "F", is an excerpt from the "**First Report**"), the Monitor confirmed its position that the trust provisions of the CLA must be honoured during the CCAA Proceedings, noting that:

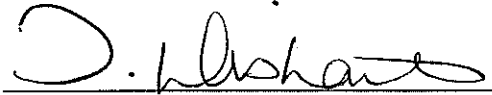
...GCNA has expressed to the Companies and the Monitor a concern that trust monies (as defined in section 8 of the *Ontario Construction Lien Act*) ("CLA") retain the impression of trust and not be the subject of any security granted by the Initial Order. Further GCNA wishes to ensure that such trust monies be disbursed by the Companies only pursuant to the terms of a protocol in place to ensure the trust provisions under the CLA are adhered to. It is the Monitor's position that the trust provisions of the CLA must be honoured and continued to work with counsel to insure this is the case. [Emphasis added]

30. This affidavit is made in support of GCNA's position that provisions of the Undertaking be incorporated in any amended Initial Order.

SWORN BEFORE ME at the City)
of Toronto, in the Province)
of Ontario, this 12th day)
of May, 2008.)



A Commissioner, etc.
James MacLellan



Tara Wishart

GUARANTEE COMPANY OF NORTH AMERICA

Preliminary Chart of Bonded Projects for:

Hard-Rock Construction Inc.

Bond No.	Date of Issuance	Contract Description	Obligee	Type of Bonds	Contract Price	Bond Amount
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	100% Perf/ 100% L&M	823,938.00	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	50% Perf/ 50% L&M	612,981.00	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	50% Perf/ 50% L&M	870,515.00	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	50% Perf/ 50% L&M	1,249,000.00	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	100% Perf/ 100% L&M	4,298,270.00	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	100% Perf/ 50% L&M		524,900.00

This is Exhibit "A" referred to in the affidavit of TARA WISHTART sworn before me, this 12TH day of MAY 20⁰⁸

J. Maxwell

A COMMISSIONER FOR TAKING AFFIDAVIT

TS 5049558	19-Apr-07	Job No. 26A, 29A, 30A - 2006 - Cold In Place Recycling Asphalt Concrete Pavement on Various Roads In the County of Essex	The Corporation of the County of Essex	100% Perf/ 100% L&M	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	100% Perf/ 100% L&M	386,219.00
TS5049556	24-Apr-06	Rehabilitation of Niagara Parkway and Rec Trail at Beck 2 - Niagra-on-the-Lake	Niagara Parks Commission	100% Perf/ 100% L&M	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	100% Perf/ 100% L&M	285,564.00
TS5049550	3-Oct-05	Contract No. IS.05EAGL - Eagle Street Reconstruction	The Corporation of the Town of Fort Erie	100% Perf/ 100% L&M	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	100% Perf/ 100% L&M	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	100% Perf/ 100% L&M	84,986.00
TS5070482	7-Aug-07	Contract No. 2007-400 - Combined Sewer Separation - Relief Structures - Syndham St./Sullivan Ave.:Delaware Ave./Sullivan Ave. : Lawrence Drive/Collier Road	The Corporation of the City of Thorold	100% Perf/ 100% L&M	4,298,270.00
TS5070481	15-Aug-07	Ref.No. 07-105 - Roadway Resurfacing Program 2007	The Corporation of the City of Welland	100% Perf/ 100% L&M	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	100% Perf/ 100% L&M	561,835.00
TS5070477	24-Jul-07	Contract No. LNA-223 - Harvest Road Bridge Removal and Road Reconstruction	Lafarge North America	100% Perf	104,198.00
TS5070476	22-Jun-07	Contract No.: N4/080-31/021 - Lock 6 West - Reface Center Wall Monolith	The St. Lawrence Seaway Management Corporation	50% Perf/ 50% L&M	624,500.00
TS5070473	21-Jun-07	Contract No. PW-07-33 (H) - Bridge 4, Concession Road 8W and Bridge 20, Concession Road 5W	The Corporation of the City of Hamilton	50% Perf/ 50% L&M	435,258.00
TS5070471	21-Jun-07	Contract No. PW-07-35 (H) - Bridge Replacement on: Mud Street East (Hildreth), between Tapleytown Road and Fifth Road East (Bridge No. 362)	The Corporation of the City of Hamilton	50% Perf/ 50% L&M	306,491.00
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 Transportation of Ontario	100% Perf	200,000.00
TS5058032	10-Nov-06	Queenston Plaza, Phase 1 Reconstruction Enabling Contract	Niagara Falls Bridge Commission	100% Perf/ 50% L&M	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	50% Perf/ 50% L&M	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	100% Perf/ 100% L&M		39,114.00
TS5049559	9-May-06	Contract No. CW2006-025 - Replacement of the Glen Allan Bridge over Constosop River Wellington Road 45	The Corporation of the Town of Wellington	100% Perf/ 50% L&M		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	0% Perf/ 0% L&M		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	50% Perf/ 50% L&M		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	100% Perf/ 100% L&M		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	100% Perf		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	0% Perf/ 0% L&M		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	50% Perf/ 50% L&M		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	100% Perf/ 100% L&M		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	100% Perf/ 100% L&M		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	100% Perf/ 100% L&M		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	100% Perf/ 100% L&M		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	100% Perf/ 100% L&M		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	100% Perf/ 100% L&M		802,299.00
TS5049565	20-Jun-06	RDT 6-06 - Cold In-Place Recycle Mix	The Corporation of the County of Brant	100% Perf		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	100% Perf/ 100% L&M		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	100% Perf/ 100% L&M		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	100% Perf/ 100% L&M	590,120.00
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* Chart is prepared based on current information currently and may change as additional information becomes available.

This is Exhibit "B" referred to in the affidavit of TARA WISHART sworn before me, this 12th day of MAY 2008. J. Mayell A COMMISSIONER FOR TAKING AFFIDAVITS

SCHEDULE "B"

Court File No. _____

**ONTARIO
SUPREME COURT OF ONTARIO
(Commercial List)
COMMERCIAL LIST**

THE HONOURABLE) _____ DAYMONDAY, THE
28th)
JUSTICE SPENCE) DAY OF _____
2008 APRIL, 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 [APPLICANT'S NAME] (the "Applicant") THE HARD-ROCK PAVING COMPANY LIMITED AND THE COMPANIES LISTED ON SCHEDULE "A" (collectively, the "Applicants")

APPLICANTS

INITIAL ORDER

THIS APPLICATION, made by the Applicant Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 393330 University Avenue, Toronto, Ontario.

This is Exhibit "C" referred to in the
affidavit of TARA WISHART
sworn before me, this 12th
day of MAY 20⁰⁸
Court File No. 7305
A COMMISSIONER FOR TAKING AFFIDAVITS

ONTARIO
SUPREME COURT OF ONTARIO
COMMERCIAL LIST

THE HONOURABLE) FRIDAY, THE 2ND
)
JUSTICE SPENCE) DAY OF MAY, 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")

INITIAL ORDER

THIS APPLICATION, made by the Applicants, pursuant to the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of David R. Semley sworn April 28, 2008, and the Exhibits thereto and on hearing the submissions of counsel for the Applicants, Caterpillar Financial Services Limited ("CFSL"), GE Canada Equipment Financing G.P. ("GE") and counsel for the Labourers International Union and the International Union of Operating Engineers, no one else appearing and on reading the consent of BDO Dunwoody Limited to act as the monitor.

SERVICE

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

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies.

FURTHER HEARING

3. **THIS COURT ORDERS** that a further hearing in this Application shall be held on May 7th, 2008, or such alternate date as this Court may fix, for the purpose of approving debtor in possession financing for the Applicants, at which time this Order may be supplemented or otherwise varied, including a motion and the Stay Period as hereinafter defined extended or terminated.
4. **THIS COURT ORDERS** that the Applicants shall, provide a report on a weekly basis to CFSL and KPMG Inc. ("KPMG") reporting on the location of all equipment that is the subject matter of the CFSL Security (the "Equipment") and forthwith transfer any and all Equipment that is not currently being utilized by the Applicants and bring it to a location on the Applicants' premises as specified by CFSL for purposes of safely securing and storing it. The Applicants are hereby directed to maintain the Equipment with all appropriate and necessary security, including such security staff as reasonable to ensure that there is no loss or damage. The Applicants are furthermore hereby directed to forthwith provide to CFSL evidence that the Equipment is satisfactorily insured against any loss or damage, and confirm that CFSL is named as a loss payee in respect of such insurance.
5. **THIS COURT ORDERS** that the Applicants are hereby directed to give CFSL and/or its consultant, KPMG full and complete access to the Property of the Applicants (as defined below).
6. **THIS COURT ORDERS** that the Applicants be and are hereby directed to provide evidence to CFSL and GE within 30 days of the date of this Order that it has used best efforts to obtain satisfactory bonding coverage for new construction contracts.

POSSESSION OF PROPERTY AND OPERATIONS

7. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof including, without limitation, all receivables received as of the date hereof (the "Property"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "Business") and Property. These Applicants shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.
8. **THIS COURT ORDERS** that Toronto-Dominion Bank will release any claim it may have made to any funds currently deposited by the Applicants at CIBC and to provide such letter or other assurance as CIBC may require so that the funds in such accounts shall be made immediately available to the Applicants.
9. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:
 - (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay, bonuses and expenses (including as was payable in respect of the payroll as was due on April 24, 2008 or May 1, 2008), and as may fall due on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
 - (b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

10. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:
- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
 - (b) payment for goods and services actually supplied to the Applicants following the date of this Order.
11. **THIS COURT ORDERS** that the Applicants shall remit, in accordance with legal requirements, or pay:
- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
 - (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
 - (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be

paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

12. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

13. **THIS COURT ORDERS** that subject to paragraph 3 of this Order until and including June 2, 2008, or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court subject to paragraph 3 of this Order.

NO EXERCISE OF RIGHTS OR REMEDIES

14. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (ii) exempt the Applicants from compliance with statutory or regulatory provisions relating to

health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

15. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

16. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

17. **THIS COURT ORDERS** that, notwithstanding anything else contained herein, no creditor of the Applicants shall be under any obligation after the making of this Order to advance or re-advance any monies or otherwise extend any credit to the

Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

18. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.5(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.
19. **THIS COURT ORDERS** that the Applicants shall indemnify its directors and officers from all claims, costs, charges and expenses relating to the failure of the Applicants, after the date hereof, to make payments of the nature referred to in subparagraphs 9(a), 11(a), 11(b) and 11(c) of this Order which they sustain or incur by reason of or in relation to their respective capacities as directors and/or officers of the Applicants except to the extent that, with respect to any officer or director, such officer or director has actively participated in the breach of any related fiduciary duties or has been grossly negligent or guilty of willful misconduct.
20. **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property, which charge shall not exceed an aggregate amount of \$250,000, as security for the indemnity provided in paragraph 19 of this Order. The Directors' Charge shall have the priority set out in paragraphs 32 and 34 herein.
21. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated

to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance

APPOINTMENT OF MONITOR

22. **THIS COURT ORDERS** that BDO Dunwoody Limited is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property and the Applicants' conduct of the Business with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall cooperate fully with the Monitor in the exercise of its powers and discharge of its obligations.
23. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:
- (a) monitor the Applicants' 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) assist the Applicants, to the extent required by the Applicants, in its dissemination, to CFSL and to GE and their counsel on a weekly basis such financial and other information as agreed to between the Applicants and CFSL and between the Applicants and GE, respectively which may be used in these proceedings including reporting on a basis to be agreed with CFSL and GE, including, but not limited to, a weekly comparison of actual cash flow to projected cash flow, a reporting of the status of all jobs or contracts on which the Applicants have bid or which have been

awarded to the Applicants, a reporting on the status of all claims filed with the Ministry of Transportation;

- (d) advise the Applicants in its preparation of the Applicants' cash flow statements and reporting required by CFSL and GE, which information shall be reviewed with the Monitor and delivered to CFSL and GE and its counsel on a periodic basis, but not less than a bi-weekly basis or as otherwise agreed to by CFSL and GE;
- (e) have full and complete access to the books, records and management, employees and advisors of the Applicants and to the Business and the Property to the extent required to perform its duties arising under this Order;
- (f) 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;
- (g) to oversee the disbursement of funds received by the Applicants from the Ministry of Transportation of Ontario to the Applicants and such third parties as the Monitor in consultation with the Applicants and GE deems appropriate; and,
- (h) supervise the Sale Process (as defined below), and otherwise assist the Applicant in carrying out the Sale Process, and any transaction arising therefrom including without limitation taking such steps in consultation with the Applicant, CFSL and GE as it considers necessary or desirable with respect thereto;
- (i) perform such other duties as are required by this Order or by this Court from time to time.

24. **THIS COURT ORDERS** that KPMG Inc. ("KPMG"), as consultant to CFSL, be and is hereby authorized to monitor the activities and books and records of the Company and provide reports, as and when required or deemed appropriate to

CFSL, and the Applicants be and are hereby directed to provide full and complete access to the books, records and management, employees and advisors of the Applicants and to the Business and the Property to KPMG for this purpose and the Applicants and their management, employees and advisors, shall provide their cooperation in this regard.

25. **THIS COURT ORDERS** that the Applicants and/or the Monitor shall immediately report to KPMG and CFSL and GE any material change in the status of the Applicants, including, but not limited to, any contract, job or project lost by the Applicants, any failure of the Applicants to complete a contract, job, or project, any denial of any claim filed with the Ministry of Transportation, any damage or loss to equipment or machinery, and any further loss of employees or management.
26. **THIS COURT ORDERS** that the Monitor and KPMG shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.
27. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor or KPMG to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the Canadian Environmental Protection Act, the Ontario Environmental Protection Act, the Ontario Water Resources Act, or the Ontario Occupational Health and Safety Act and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the

Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

28. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of the Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or willful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

✓ and KPMG ✓

29. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, KPMG and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a ~~bi~~ weekly basis.

✓

30. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

31. **THIS COURT ORDERS** that the Monitor, KPMG, counsel to the Monitor, if any, and the Applicants' counsel shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate of \$125,000 as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 32 and 34 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

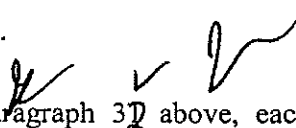
32. **THIS COURT ORDERS** that the priority of the Administration Charge, and the debt properly due and owing by the Applicants to their secured creditors which is secured by the security held by such secured creditors (the "Secured Debt"), as among them, shall be as follows:

First — Administration Charge (to the maximum amount of \$125,000);

Second – the Secured Debt; and

Third - Directors' Charge (to the maximum amount of \$250,000).

33. **THIS COURT ORDERS** that the filing, registration or perfection of the Directors' Charge or, the Administration Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

34. **THIS COURT ORDERS** that, subject to  paragraph 32 above, each of the Directors' Charge and the Administration Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, "Encumbrances") in favour of any Person.

35. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge or the Administration Charge unless the Applicants also obtain the prior written consent of the Monitor, CFSL and GE and the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

36. **THIS COURT ORDERS** that the Directors' Charge and the Administration Charge, shall not be rendered invalid or unenforceable and the rights and

remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by the Applicants of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the Applicants pursuant to this Order, and the granting of the Charges, do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law.

SALE PROCESS

37. **THIS COURT ORDERS** that the Monitor and the Applicants are hereby authorized and directed to conduct a process for the solicitation of offers for and sale of, the Property (the "Sale Process"), which Sale Process shall be completed within 30 days of the date of this Order, in accordance with such steps as the Monitor and the Applicants may reasonably determine is necessary to obtain the best realization for the Property, in consultation with and as approved by CFSL, and GE.

38. **THIS COURT ORDERS** that the Applicants may not sell any part of the Property that is the subject matter of the CFSL Security without the consent of CFSL.
39. **THIS COURT ORDERS** that the Applicants may not sell any part of the Property that is the subject matter of the GE Security without the consent of GE.
40. **THIS COURT ORDERS** that the Monitor may obtain advice and directions from the Court with respect to the Sale Process.
41. **THIS COURT ORDERS** that the Monitor and the Applicants shall, upon receipt, deliver to CFSL, KPMG and GE any offers or letters of intent received respecting all or any portion of the Property (other than regarding sales in the ordinary course of business) subject to reasonable confidentiality agreements.
42. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada Personal Information Protection and Electronic Documents Act, the Applicants and the Monitor shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Applicant or the Monitor, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Applicant, and shall return all other personal information to the Applicant or the Monitor, or ensure that all other personal information is destroyed.

SERVICE AND NOTICE

43. **THIS COURT ORDERS** that the Applicants shall, within ten (10) business days of the date of entry of this Order, send a copy of this Order to its known creditors,

other than employees and creditors to which the Applicants owes less than \$1,000, at their addresses as they appear on the Applicant's records, and shall promptly send a copy of this Order (a) to all parties filing a Notice of Appearance in respect of this Application, and (b) to any other interested Person requesting a copy of this Order, and the Monitor is relieved of its obligation under Section 11(5) of the CCAA to provide similar notice, other than to supervise this process.

44. **THIS COURT ORDERS** that the Applicants and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.
45. **THIS COURT ORDERS** that the Applicants, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, in accordance with the E-filing protocol of the Commercial List to the extent practicable, and the Monitor may post a copy of any or all such materials on its website at www.bdo.ca.

GENERAL

46. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
47. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

48. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.
49. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.
50. **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.
51. **THIS COURT ORDERS** that this Order is without prejudice to the right of CFSL to bring or continue any motion or application, on three days notice to the service list, or on such other notice as this Court may order or abridge, for such relief as CFSL may deem appropriate including a motion to lift the Stay granted herein.
52. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard Time on the date of this Order.

#1340263

*May 2/08
Order Togo
in this form.*

Doc#698237v2

Spencer J

SCHEDULE "A"

DIAMOND STONEBRIDGE CONTRACTING INC.

HARD-ROCK HIGHWAY MAINTENANCE INC.

HARD-ROCK CONSTRUCTION INC.

942355 ONTARIO LIMITED

942356 ONTARIO LIMITED

#1340263

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF THE
HARD ROCK PAVING COMPANY LIMITED INC.
Applicants

Court File No.

08-66-7503

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

ORDER

MINDEN GROSS LLP
145 King Street West
Suite 2200
Toronto, Ontario
M5H 4G2

David Ullmann (LSUC # 423571)
Direct Telephone: 416-369-4148
Facsimile: 416-864-9223
dullmann@mindengross.com

Solicitors for the Applicants

This is Exhibit....."D".....referred to in the
 affidavit of.....TARA WISHART.....
 sworn before me, this.....12TH.....
 day of.....MAY.....2008.....

MacLellan, James W.

From: Rappos, Sam
Sent: Wednesday, May 07, 2008 4:53 PM
To: David Ullmann; rslattery@mindengross.com; steven.weisz@blakes.com;
 thogan@harrisonpensa.com; ahatnay@kmlaw.ca; 'harvey@chaitons.com';
 chris_s@chaitons.com; msolmon@srglegal.com
Cc: Hill, Craig J.; MacLellan, James W.
Subject: Hard-Rock Paving Company Limited, et al, Court File No. 08-CL-7503
Attachments: TOR01-3806487-v2-Protocol.DOC

A COMMISSIONER FOR TAKING AFFIDAVITS

Gentlemen,

As you know, we act as counsel to Guarantee Company of North America ("GCNA"), a bonding company in respect of certain construction projects where Hard-Rock Paving Company Limited or one of its affiliates (collectively, "Hard Rock") is the contractor.

Further to today's conference before Justice Spence in the above-noted CCAA proceedings, please find attached for your review a draft undertaking/protocol with respect to compliance with the *Construction Lien Act*, which was circulated to some counsel prior to today's conference. Please forward any comments or concerns you may have with respect to the attached to us in writing as soon as possible so that we may consider these concerns and work with all stakeholders in incorporating the terms of the undertaking/protocol in the debtor-in-possession ("DIP") financing process.

With respect to any DIP financing order that Hard-Rock intends to seek in the CCAA proceedings on Monday, GCNA will be requesting that the Court amend the Initial Order to respect the terms of the undertaking/protocol and exclude any receivables received in respect of GCNA bonded projects from being subject to any DIP lender charge granted by the Court and any DIP lender security entered into in connection therewith, until such time as the trust fund claims for any trades with respect to GCNA bonded projects are resolved and no other claims may be made on the GCNA bonds in question.

We are available to discuss at your convenience.

Best regards,
 Sam

Sam P. Rappos
 Associate, Insolvency and Restructuring
 Borden Ladner Gervais LLP
srappos@blgcanada.com
 Direct Tel: (416) 367-6033
 Direct Fax: (416) 361-7306

Borden Ladner Gervais LLP
 Scotia Plaza, 40 King Street West
 Toronto, Ontario, Canada M5H 3Y4
 Tel: 416-367-6000
 Fax: 416-367-6749
www.blgcanada.com

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5/12/2008

Undertaking to Comply with the *Construction Lien Act* Trust Funds
on Bonded Projects
May 7, 2008

The Applicant pursuant to the Order of Justice Spence dated May 2, 2008, will continue to perform work on certain construction projects, including but not limited to the following projects:

- (i) Contract 2007-400 – Combined Sewer Separation, Relief Structures, Sydenham Street- Sullivan Avenue for the Corporation of the Town of Thorold; and
- (ii) Thunder Bay Area Drainage Improvements for the Corporation of the Town of Fort Erie; and
- (iii) Any other Guarantee Company of North America bonded project.

(the specified projects above 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, all of the payments received by the Applicant from the Owners on account of the Projects are trust funds for the Project (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 each Project, and the Trust Funds will be administered in accordance with the CLA. The Applicant and Monitor agree that no directions with respect to payments from any Owner will be given without the express written consent of the Guarantee Company of North America.

The Applicant and Monitor confirm that the Trust Funds 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.

The Applicant and Monitor undertake to only disburse the Trust Funds on each Project to pay the Trust Claimants (both past, current and future) on each Project.


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

- (i) The Applicant will establish specific bank accounts for each Project into which all payments received from the Owner of each of the Projects will be deposited for the duration of the Project and held subject to this Undertaking.
- (ii) Each bank account will be separately identified with the financial institution as follows [Insert Project Name] Trust Account.

- (iii) The Applicant will provide the Owner of each of the Projects with the account information related to its Project and an irrevocable direction to the wire transfer any payments on account of the Project, to the Project specific account.
- (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 will submit a list to the Monitor of the Trust Claimants entitled to be paid from the Trust Funds. The Monitor shall review and approve the list of payments from the Trust Funds.
- (v) Upon receipt of the approval of the Monitor of the list of payments to be made for each Project, the Applicant shall make payments from the Trust Funds to the proper Trust Claimants.
- (vi) The Applicant and the Monitor acknowledge and agree that no amount will be paid from the Trust Funds 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 obligation under the *CLA* have been fully satisfied. For greater certainty, the Applicant and Monitor acknowledge that they will not use the any of the Trust Funds to fund the Applicant's operation or the cost of the *CCAA* proceedings.
- (vii) Prior to the release of any surplus balance of the Trust Funds to the Applicant at the end of each of the Projects and after all of the trust obligations have been fully satisfied, the Applicant shall deliver a sworn statutory declaration to the Monitor confirming that all of the Trust Claimants have been paid in full.
- (viii) The Applicant shall make available, on reasonable notice, all of its Project 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) In the event of a default by the Applicant in performing the work on any of the Projects, the Applicant and the Monitor shall immediately freeze the balance of any funds in the project specific bank account. Any such balance of Trust Fund at the time of the default shall be made available to the Guarantee Company of North America for the purpose of paying any claimants under the Project Labour and Material Payment Bond and to offset the cost of completing the Project.

The Undertaking shall be interpreted so that any Trust Funds received by the Applicant are used exclusively to satisfy the Applicants obligations to pay the Trust Claimants and to offset any extra costs of completion in the event that the Applicant defaults on any Project, consistent with the *CLA*. Only after these obligations are fully satisfied and at the total completion of the Project 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.

This is Exhibit "E" referred to in affidavit of TARA WSHART sworn before me, this 12th day of MAY 2008



COMMISSIONER FOR TAKING AFFIDAVIT

MacLellan, James W.

From: Hogan, Tim [thogan@harrisonpensa.com]
Sent: Friday, May 09, 2008 1:24 PM
To: Rappos, Sam; David Ullmann; rslattery@mindengross.com; steven.weisz@blakes.com; ahatnay@kmlaw.ca; harvey@chaitons.com; chris_s@chaitons.com; msolmon@srglegal.com
Cc: Hill, Craig J.; MacLellan, James W.
Subject: RE: Hard-Rock Paving Company Limited, et al, Court File No. 08-CL-7503
Attachments: Payment Protocol Undertaking with HP changes tracked - May 9_08.DOC

Sam

I have not talked with any other counsel regarding your draft protocol.

I attach for counsel's review an amended protocol for discussion.

I require instructions from BDO on the protocol in general and any amendments to the Initial Order.

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: Rappos, Sam [mailto:SRappos@blgcanada.com]
Sent: Wednesday, May 07, 2008 4:53 PM
To: David Ullmann; rslattery@mindengross.com; steven.weisz@blakes.com; Hogan, Tim; ahatnay@kmlaw.ca; harvey@chaitons.com; chris_s@chaitons.com; msolmon@srglegal.com
Cc: Hill, Craig J.; MacLellan, James W.
Subject: Hard-Rock Paving Company Limited, et al, Court File No. 08-CL-7503

Gentlemen,

As you know, we act as counsel to Guarantee Company of North America ("GCNA"), a bonding company in respect of certain construction projects where Hard-Rock Paving Company Limited or one of its affiliates (collectively, "Hard Rock") is the contractor.

Further to today's conference before Justice Spence in the above-noted CCAA proceedings, please find attached for your review a draft undertaking/protocol with respect to compliance with the *Construction Lien Act*, which was

5/12/2008

circulated to some counsel prior to today's conference. Please forward any comments or concerns you may have with respect to the attached to us in writing as soon as possible so that we may consider these concerns and work with all stakeholders in incorporating the terms of the undertaking/protocol in the debtor-in-possession ("DIP") financing process.

With respect to any DIP financing order that Hard-Rock intends to seek in the CCAA proceedings on Monday, GCNA will be requesting that the Court amend the Initial Order to respect the terms of the undertaking/protocol and exclude any receivables received in respect of GCNA bonded projects from being subject to any DIP lender charge granted by the Court and any DIP lender security entered into in connection therewith, until such time as the trust fund claims for any trades with respect to GCNA bonded projects are resolved and no other claims may be made on the GCNA bonds in question.

We are available to discuss at your convenience.

Best regards,
Sam

Sam P. Rappos
Associate, Insolvency and Restructuring
Borden Ladner Gervais LLP
srappos@blgcanada.com
Direct Tel: (416) 367-6033
Direct Fax: (416) 361-7306

Borden Ladner Gervais LLP
Scotia Plaza, 40 King Street West
Toronto, Ontario, Canada M5H 3Y4
Tel: 416-367-6000
Fax: 416-367-6749
www.blgcanada.com

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5/12/2008

Undertaking to Comply with the *Construction Lien Act* Trust Funds
on Bonded Projects
May 7, 2008

The Applicant pursuant to the Order of Justice Spence dated May 2, 2008, will continue to perform work on certain construction projects, including but not limited to the following projects:

- (i) Contract 2007-400 – Combined Sewer Separation, Relief Structures, Sydenham Street- Sullivan Avenue for the Corporation of the Town of Thorold; and
- (ii) Thunder Bay Area Drainage Improvements for the Corporation of the Town of Fort Erie; and
- (iii) Any other Guarantee Company of North America bonded project.

(the specified projects above 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, all of the any payments received by the Applicant from the an Owners or on the Owner’s behalf, on account of the any one of the Projects are trust funds for the Project (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 each the specific Project for which the payment was received, and the Trust Funds will be administered in accordance with the CLA. The Applicant ~~and Monitor~~ agrees that no directions with respect to payments from any Owner will be given without the express written consent of the Guarantee Company of North America.

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

- (i) The Applicant will establish specific bank accounts for each Project into which all payments received from the Owner of each of the Projects will be deposited for the duration of the Project and held subject to this Undertaking.
- (ii) Each bank account will be separately identified with the financial institution as follows [Insert Project Name] Trust Account.

- (iii) The Applicant will provide the Owner of each of the Projects with the account information related to its Project and an irrevocable direction to ~~the~~ wire transfer any payments on account of the Project, to the Project specific account.
- (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 ~~will~~ submit a list to the Monitor of the Trust Claimants entitled to be paid from the Trust Funds. The Monitor shall review and approve the list of payments from the Trust Funds.
- (v) Upon receipt of the approval of the Monitor of the list of payments to be made for each Project, ~~the Applicant~~ the Applicant shall make payments from the Trust Funds to the ~~proper~~ approved Trust Claimants.
- (vi) The Applicant ~~and the Monitor~~ 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 and Monitor acknowledge that they will not use the any of the Trust Funds to fund the Applicant's operation or the cost of the *CCAA* proceedings.
- (vii) Prior to the release of any surplus balance of the Trust Funds to the Applicant at the end of ~~each of the any particular Projects~~ and 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 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) In the event of a default by the Applicant in performing the work on any of the Projects, the Applicant and the Monitor shall immediately freeze the balance of any funds in the project specific bank account. Any such balance of Trust Funds at the time of the default shall be made available to the Guarantee Company of North America for the purpose of paying any claimants under the Project Labour and Material Payment Bond and to offset the cost of completing the Project.

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 ~~any~~ the Project, consistent with the *CLA*. Only after these obligations are fully satisfied and at the total completion of the Project 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.

This is Exhibit "F" referred to in the
affidavit of TARA WISHART
sworn before me, this 12TH
day of MAY 2008

A COMMISSIONER FOR TAKING AFFIDAVITS

Court File No. 08-CL-7503

**HARD-ROCK PAVING COMPANY LIMITED
AND THE HARD-ROCK GROUP OF COMPANIES**

MONITOR'S FIRST REPORT TO COURT
May 9, 2008

APPENDIX "A"

Initial Order dated May 2, 2008;

APPENDIX "B"

Cash Flow results to May 9, 2008

**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")

**FIRST REPORT TO THE COURT
SUBMITTED BY BDO DUNWOODY LIMITED
IN ITS CAPACITY AS MONITOR**

INTRODUCTION:

1. On April 28, 2008 the Hard-Rock Paving Company Limited, Diamond Stonebridge Contracting Inc., Hard-Rock Highway Maintenance Inc., Hard-Rock Construction Inc., 942355 Ontario Limited and 942356 Ontario Limited (the "Companies") made an application under the *Companies' Creditors Arrangement Act* (the "CCAA") and on May 2, 2008 an initial order (the "Initial Order") was granted by the Honourable Mr. Justice Spence of the Ontario Superior Court of Justice (Commercial List) (the "Court") granting, *inter alia*, a stay of proceedings against the Companies until June 2, 2008 (the "Stay") and appointing BDO Dunwoody Limited as monitor (the "Monitor"). The proceedings commenced by the Companies under the CCAA will be referred to herein as the "CCAA Proceedings". Attached at Appendix "A" is a copy of the Initial Order.
2. Further, on April 28, 2008 Caterpillar Financial Services Limited ("CFSL") made an application under section 101 of the *Courts of Justice Act* RSO 1990, c.C .43 as amended, and section 47 (1) of the *Bankruptcy and Insolvency Act* RSC 1985

c.B-3, as amended for an order, *inter alia*, appointing KPMG Inc. ("KPMG") as interim receiver and receiver and manager (the "Receiver") over the assets, undertakings and properties of the Companies. Further, CFSL also made an application under the *Bankruptcy and Insolvency Act* for bankruptcy orders as against each of the Companies (the "CFSL Application").

3. On May 2, 2008 the Court endorsed terms in relation to the Initial Order and the CFSL Application as follows:

The issuance of this Order is not deemed to be consent to this Order or these proceedings by Caterpillar Financial Services Limited (CFSL) and subject to the stay contained in the Order, is without prejudice to the rights of CFSL in the bankruptcy and receivership applications that have been commenced by CFSL (the "CFSL Applications").

The CFSL Applications shall be returnable at the hearing of any motion by the Applicants to seek approval of debtor in possession financing or any extension of the stay. CFSL is at liberty and this Order is without prejudice to CFSL bringing on the CFSL Applications in response to any motion that is brought in these proceedings on notice to the service list in response to the service of any such motion.

4. On May 2, 2008 the Court made an endorsement in the CCAA Proceedings that counsel were permitted to appear before the Court on May 7, 2008 at 9:30 a.m. Further, the Initial Order provided that a hearing in the CCAA Proceedings was set for May 12, 2008 for the purpose of approving debtor in possession financing for the Companies, at which time the Initial Order may be supplemented or otherwise varied and the Stay Period extended or terminated.
5. The purpose of this, the Monitor's First Report, is to inform the Court on the following:
 - i) the Monitor's activities to date;
 - ii) the Companies activities since the commencement of the CCAA Proceedings;

- iii) the Monitor's initial and preliminary review of the cash flows proffered by the Companies, and the prospect of a successful restructuring.
6. All capitalized terms used in this report and not defined shall have the meaning as defined in the Initial Order.

ACTIVITIES OF THE MONITOR

7. To date the Companies have provided the Monitor with cooperation and access to its premises, books and records as commented on below. The Monitor has implemented procedures for the daily monitoring of receipts and disbursements and is obtaining a weekly comparison and variance analysis of actual results against the Companies' cash flow forecasts filed in connection with the Application under the CCAA.
8. The Monitor has established a web site at www.bdo.ca/hardrock (the "Monitor's Web Site") at which it is intended that all materials filed by the Companies or the Monitor or any interested party in the Court and all Orders granted in the CCAA Proceedings will be made available to creditors and other interested parties in an electronic form.
9. The Monitor has been contacted by Court Canada Ltd. ("Court Canada") regarding Court Canada's desire to provide services to the Monitor in relation to the Monitor's Web Site and Court Canada's desire to be selected for the role of "Web Host" as defined in the Court's E-Filing and E-Service Protocol (the "Protocol").
10. The Monitor is taking all steps to meet its obligations under the Initial Order and as is required under the Protocol.
11. In accordance with paragraph 4 of the Initial Order and the Companies reporting to CFSL and KPMG on the location of all equipment that is the subject matter of the CFSL Security the Monitor has been in communication with CFSL's counsel

and KPMG and has completed a review of the Equipment and the Equipment's location. The Applicant, the Monitor, CFSL and KPMG are working towards completing the provisions required under paragraph 4 of the Initial Order.

12. The Monitor has engaged Harrison Pensa LLP as its independent counsel as permitted in accordance with sub-paragraph 23 (c) of the Initial Order.
13. In accordance with paragraph 25 of the Initial Order the Monitor did report to KPMG, CFSL and GE on May 7, 2008 providing details with respect to the loss of a 1997 John Deere Backhoe which appears to have been stolen from the "Highway 405 Job Site" and further with respect to damage to a container at the "Ridgeway Job Site" and the theft from this work site of a "Pipe Laser".
14. In accordance with paragraph 43 of the Initial Order the Monitor is working with the Applicant to ensure that, within 10 business days of May 2, 2008 that a copy of the Initial Order is sent the known creditors of the Companies, other than employees and creditors to which the Companies owe less than \$1,000.
15. The Monitor has been providing ongoing assistance to the Companies in their dealings and discussions with suppliers, customers and various parties.

Sale Process

16. Regarding the Sale Process and in accordance with paragraph 37 of the Initial Order, the Monitor has sought the approval of the Companies, CFSL and GE to the placement of an advertisement soliciting offers for the sale of the Property by no later than May 23, 2008 and offering Confidential Information Packages regarding the Property to interested parties. The Monitor does not have the approval of GE nor the Companies to the placing of this advertisement.

Trust Monies under the Construction Lien Act

17. Counsel for the Companies and the Monitor have been in discussions with counsel for Guarantee Company of North America ("GCNA"), a bonding company in respect of certain construction projects where one or more of the

Companies is the contractor. GCNA has expressed to the Companies and the Monitor a concern that trust monies (as defined in section 8 of the *Ontario Construction Lien Act*) ("CLA") retain the impression of trust and not be the subject of any security granted by the Initial Order. Further GCNA wishes to ensure that such trust monies be disbursed by the Companies only pursuant to the terms of a protocol in place to ensure the trust provisions under the CLA are adhered to. It is the Monitor's position that the trust provisions of the CLA must be honoured and continues to work with counsel to insure this is the case.

ACTIVITIES OF THE COMPANIES

18. The principals of the Companies have been engaged in the Companies' dealings with its creditors and in attempting to secure debtor in possession financing, in addition to dealing with the requests of the Monitor.
19. The principals of the Companies, together with the Companies staff, have been engaged in the ongoing undertakings of the Companies, including corresponding with customers, planning and arranging for the completion of contracts and jobs, collection of accounts receivable and communicating with employees.
20. The principals of the Companies continue to correspond with the Ministry of Transportation (the "MTO") regarding various claims filed with the MTO with a view to resolving the claims in an expeditious manner.

THE CASH FLOWS AND THE PROSPECT OF SUCCESS FOR RESTRUCTURING

21. The Initial Order was entered the afternoon of Friday, May 2, 2008.
22. The Monitor has been on site at the Companies' place of business through the week commencing May 5, 2008. As a result of the short time frame in which the Monitor has been working under along with the demands on the Companies time in dealing with other issues it is difficult for the Monitor to provide any determination with respect to the impact of the proposed debtor in possession financing of \$1,250,000 on the Companies' viability.

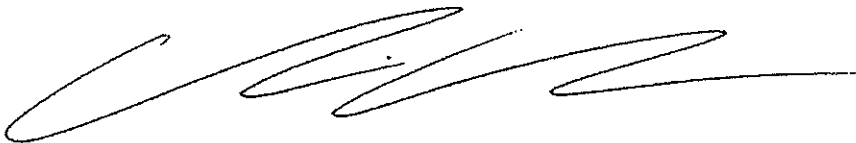
23. Further, the Monitor continues the process of reviewing the cash flows proffered by the Companies to the Court. At this time the Monitor is unable to confirm that the cash flows and the assumptions claimed therein are reasonable or are likely to be achievable.

24. A comparison of the Companies cash flow results to the 9th of May, 2008, versus the projected cash flow to the same date is attached as **Appendix "B"**.

25. It is the Monitor's position that at this early stage of the CCAA Proceedings, a successful restructuring of the Companies cannot be ruled out. The Monitor cannot conclude at this early stage that debtor in possession financing will simply "prolong the inevitable", but it is believed that without this financing the Company will not be able to meet its cash requirements on a go forward basis.

The Monitor respectfully submits to the Court this, its First Report.

Dated this 9th day of May 2008



BDO Dunwoody Limited

In its capacity as Monitor of The Hard-Rock Paving Company Limited
and the companies listed at schedule "A" to the Initial Order