

**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"**

**AFFIDAVIT OF WILLIAM SCARLETT
(SWORN JUNE 10, 2008)**

I, **WILLIAM SCARLETT**, of the City of Burlington, in the Province of Ontario,
MAKE OATH AND SAY AS FOLLOWS:

1. I am Senior Territory Manager of Caterpillar Financial Services Limited ("CFSL"), and as such, I have knowledge of the matters hereinafter deposed to. Where my knowledge is based upon information provided to me by others, I have stated the source of the information and I believe it to be true.
2. I make this Affidavit in support of CFSL's position with respect to the motion by the Company returnable June 10, 2008 seeking, among other things, an extension of the CCAA Stay and in support of CFSL's outstanding bankruptcy and receivership applications pursuant to the May 2 Endorsement (all capitalized terms defined below).
3. This Affidavit is also supplementary to my affidavits sworn:
 - (i) April 28, 2008, in the related receivership proceedings commenced by CFSL against the Applicants;
 - (ii) April 30, 2008, which was filed in response to the within Application for the issuance of an Initial Order under the *Companies' Creditors Arrangement Act* (the "CCAA"); and

(iii) May 12, 2008, in these proceedings which outlines matters which took place between May 2 and May 10, 2008, (collectively, the "Previous Affidavits"), copies of which (without Exhibits) are attached hereto as Exhibits "A", "B" (unsworn version) and "C", respectively.

Overview

4. As noted in the Previous Affidavits, CFSL is a secured creditor of Hard-Rock Paving Company Limited ("Hard-Rock Paving", or the "Company") and is owed, as of April 23, 2008, approximately \$31,657,038.38.
5. The other Applicants are guarantors of the indebtedness of Hard-Rock Paving and have given security to CFSL over their assets in support of the guarantees.
6. CFSL has made demand upon Hard-Rock Paving and the other Applicants and has delivered Notices of Intention to Enforce Security (the "NOIs") pursuant to Section 244 of the *Bankruptcy and Insolvency Act* (the "BIA").
7. Pursuant to the Order of the Honourable Mr. Justice Spence dated May 2, 2008, (the "Initial Order"), a copy of which is attached hereto as Exhibit "D", this Court stayed all proceedings as against the Applicants (the "CCAA Stay").
8. The Initial Order was issued subject to an endorsement of the Court (the "May 2 Endorsement") which provides 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."

9. On May 12, 2008, this matter came back on before Justice Spence, wherein CFSL obtained an order amending the Initial Order (the "Amended and Restated Initial Order"), a copy of which is attached hereto as **Exhibit "E"**, which, among other things, authorized CFSL to provide certain debtor in possession financing to the Company (the "DIP Loan"), over the objection of McLennan Financing Limited, ("McLennan") who itself sought to provide the Company with DIP financing. Pursuant to the Amended and Restated Initial Order, the Applicants were authorized and empowered to obtain and borrow from CFSL an amount not to exceed \$1,250,000 on terms and conditions set out in a facility letter dated May 7, 2008 (the "Facility Letter"), a copy of which is attached hereto as **Exhibit "F"**.
10. The Amended and Restated Initial Order also extended the CCAA Stay until June 10, 2008, and authorized a sale process for the Company's assets (the "Sale Process").
11. As set out in the May 2 Endorsement, CFSL currently has bankruptcy and receivership applications outstanding in respect of each of the Applicants. CFSL has adjourned the return date for these bankruptcy and receivership applications to June 10, 2008, to coincide with the expiry of the CCAA Stay.
12. CFSL has been advised by the Company that on June 10, 2008, it will be seeking, among other things, an extension of the CCAA Stay in order to permit the Company to continue operating and to work on its plans for restructuring.
13. For the reasons described herein, it is CFSL's position that:
 - (a) the operations of the Company should be suspended immediately in order to stop the unnecessary expenditure of funds and the continued and ongoing erosion of CFSL's security;
 - (b) as there is no reasonable prospect of a successful restructuring, no further extensions of the CCAA Stay should be granted and one or both of a bankruptcy or receivership order should be granted with respect to the Company in order to facilitate an orderly sale of the Company's assets;

- (c) no further DIP financing should be advanced to the Company; and
- (d) the Sales Process should continue under the supervision of a Receiver and/or Trustee to determine if a purchaser or purchasers of the Company's assets can be secured for the benefit of all stakeholders.

The DIP Loan

14. The provision of the DIP Loan by CFSL was predicated on the CCAA Stay continuing for a period of 30 days from May 12, 2008 to June 10, 2008, in order to permit the Company to commence the Sale Process. CFSL believed that this was the best way to determine the best value achievable and to determine if a purchaser could be secured. In the meantime, the DIP Loan would permit the Company to continue to operate during the Sale Process. As of June 5, 2008, the entire amount of the \$1.25 million under the DIP Loan has been advanced to the Company.
15. CFSL has explicitly and consistently advised this Court and the Company that the support of CFSL for any further extensions of the CCAA Stay is dependent on the outcome of the Sales Process.
16. For the reasons described herein, CFSL has been and continues to be gravely concerned that its security position will continue to erode and that the Company is incurring significant costs with no prospect of restructuring. Therefore, CFSL is concerned that costs be kept to a minimum and that protections be put in place to enable it to maintain a reasonable degree of control with respect to the funds advanced under the DIP Loan.
17. Pursuant to the terms of the Facility Letter:
 - (a) the Monitor is required to report to CFSL on a weekly basis as to the use of the DIP Loan by the Company;
 - (b) the Company is required to comply with its projections contained in its cash flow statements filed with the Court, subject to an allowance for negative variations for

total disbursements and withdrawals that is not to exceed 5% of the projections on a cumulative basis, tested weekly;

- (c) the Company is required to provide to CFSL such information as CFSL may reasonably request from time to time, including a copy of all reporting provided to the Company by the Monitor and KPMG Inc. ("KPMG"), CFSL's consultant, including 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
 - (d) the Company is required to provide CFSL with at least two business days advance notice of all court filings, together with copies of all related court materials.
18. Pursuant to paragraph 23 of the Amended and Restated Initial Order, KPMG:
- "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."
19. Since May 12, 2008, CFSL, directly and through KPMG, has made consistent and repeated efforts to obtain information from the Company in order to:
- (a) determine whether it can become financially viable through a downsizing or restructuring under the CCAA;
 - (b) assess the impact of the CCAA process on CFSL's security;
 - (c) monitor the use of the funds advanced under the DIP Loan;
 - (d) observe the progress of the Company under the Sale Process for the purposes of assessing the market value of the Company's assets and assessing the viability of

a sale of some or all of the Company's assets, as a going-concern or otherwise;
and

- (e) determine whether CFSL is prepared to continue to support an extension of the CCAA Stay beyond June 10, 2008, and determine whether CFSL is prepared to extend additional DIP financing if requested to do so.
20. However, as described herein, CFSL, KPMG and the Monitor have encountered significant difficulties in obtaining the requested information from the Company in a meaningful or timely way. The information, or lack of information, that has been provided by the Company, in addition to the Company's deteriorating financial situation described herein, leads CFSL to conclude that:
- (a) the Company does not have the ability to put forward a viable restructuring plan;
 - (b) there is insufficient interest in the Company's assets on a going concern basis to justify maintaining the Company's operations through an extension of the CCAA Stay; and
 - (c) CFSL's position in respect of its security is eroding and will continue to erode if the CCAA Stay is extended, to the substantial prejudice of CFSL.

Chronology of Various Events

Advertisement of Sale of Assets

- 21. On May 8, 2008, the Monitor circulated draft language for a proposed newspaper advertisement of a sale of the assets of the Company.
- 22. The Company and GE Commercial Finance Corporation ("GE") objected to the placing of an advertisement for the sale of the Company's assets.
- 23. Subsequent to the motion before Justice Spence on May 12, 2008 (at which the parties discussed the concept of and the content of an advertisement to facilitate the Sale

Process), the parties agreed that the Monitor would proceed with the placing of an advertisement.

24. By email message dated May 13, 2008, a copy of which is attached hereto as **Exhibit "G"**, counsel for the Monitor wrote to the parties, proposing a process for the marketing of the assets as authorized by the Amended and Restated Initial Order, and suggesting again the placement of an advertisement in the newspaper inviting potential purchasers to make an offer in respect of some or all of the Company's assets.
25. GE objected to the use of an advertisement in the newspaper, as it was of the view that it would have the effect of prejudicing the value of the Company and its assets. While CFSL believed that the advertisement would potentially attract more interested parties, CFSL also believed that, given the Company's ongoing financial difficulties and substantial expenses, it was more important to commence the Sale Process immediately and finalize the form and content of the advertisement later.
26. By email dated May 21, 2008, the Monitor forwarded to CFSL a copy of a revised draft advertisement, setting the deadline for offers as June 4, 2008, for its consideration. That same day, CFSL and GE both provided their approval of the form of advertisement.
27. By email message dated May 23, 2008, the Company advised CFSL and GE that it wished to amend the form of the advertisement again, to describe the sale of assets as a "surplus" sale, and to delete from the list of assets accounts receivable, contracts, and intangibles, in order to remove from the advertisement any perception that the Company might be shutting down operations.
28. The advertisement was finally run on or about May 26, 2008.

Financial Reporting

29. In the interim, on May 14, 2008, CFSL advanced the funds under the DIP Loan to the Monitor to be held in trust for distribution to the Company under the terms of the Facility Letter. CFSL authorized the release of \$350,000 of those funds to the Company for that

- week, to be used by the Company in accordance with the cash flow statement that had been filed with the Court.
30. On May 15, 2008, the Company circulated to CFSL and GE its first weekly report regarding the status of its cash flow, comparing budgeted numbers to actual numbers for the week ending May 9, 2008. Attached hereto as **Exhibit "H"** is a copy of the report (the "First Weekly Report") in a sealed envelope which, due to the confidential nature of the information contained therein, will be the subject of a sealing order request.
 31. By email dated May 21, 2008, a copy of which is attached hereto as **Exhibit "I"**, Brad Newton of KPMG made inquiries of the Monitor to clarify certain matters contained in the First Weekly Report. In particular, Mr. Newton questioned why there was no analysis of the fact that the Company was more than \$320,000 below its forecast receipts after the first two weeks of the CCAA proceedings. Mr. Newton also questioned whether the fact that the Company was still in negotiations with respect to bonding implied that all bonded projects were suspended. Further, Mr Newton questioned the absence of any analysis and detail regarding: i. the effect of any delay or potential cancellation of the Dufferin Construction job; ii. the expected revenue from other jobs which would off-set the loss of certain jobs; and iii. the status of bidding on other jobs which were required to make the cash flows viable.
 32. On May 26, 2008, the Company circulated to CFSL and GE its second weekly report regarding the status of its cash flow, a copy of which is attached hereto as **Exhibit "J"** (the "Second Weekly Report") in a sealed envelope which, due to the confidential nature of the information contained therein, will be the subject of a sealing order request.
 33. By email dated May 27, 2008, a copy of which is attached hereto as **Exhibit "K"**, Kevin Williamson of CFSL asked the Company to provide a summary of the "verbal and written expressions of interest" in various assets of the Company that had been described in the Second Weekly Report, and asked for confirmation of whether eight (8) jobs that had been scheduled to start between May 12, 2008 and May 20, 2008 had in fact commenced.

34. By email dated May 27, 2008, a copy of which is attached hereto as **Exhibit "L"**, Brad Newton of KPMG, on behalf of CFSL, made a further detailed request for clarification of certain issues in the Second Weekly Report. For example, Mr. Newton requested an explanation of why the Second Weekly Report disclosed a 41% negative variance in accounts receivable collections from a projected \$1.5 million to an actual \$619,698. Mr. Newton also noted that the Company had made payments of over \$1 million during the two week period of operations since May 12, 2008, requesting that the Company identify any revenues generated by the expenditures incurred. Mr. Newton also followed up on his questions regarding the First Weekly Report, which were still unanswered.
35. On May 28, 2008, as required by the Facility Letter, the Monitor delivered a report to CFSL with respect to the Company's use of the DIP Loan for the period ending May 23, 2008 (the "First DIP Report"), a copy of which is attached hereto as **Exhibit "M"** in a sealed envelope which, due to the confidential nature of the information contained therein, will be the subject of a sealing order request.
36. On May 29, 2008, the Company circulated its Third Weekly Report for the week ended May 23, 2008, a copy of which is attached hereto as **Exhibit "N"** in a sealed envelope which, due to the confidential nature of the information contained therein, will be the subject of a sealing order request.
37. By email dated May 29, 2008, a copy of which is attached hereto as **Exhibit "O"**, the Company sent a DIP funding request to CFSL, together with an attached cash flow statement as of May 23, 2008.
38. By email dated May 29, 2008, a copy of which is attached hereto as **Exhibit "P"**, Kevin Williamson of CFSL noted that the cash flow statement accompanying the DIP request showed an increase in the need for DIP financing from \$417,000 to \$600,000, and asked for an explanation of the difference. The email also made other inquiries regarding certain provisions that appeared to be missing from the cash flow statement.

39. By email dated May 29, 2008, a copy of which is attached hereto as **Exhibit "Q"**, the Company provided certain answers to these inquiries.
40. By email dated May 29, 2008, a copy of which is attached hereto as **Exhibit "R"**, Kevin Williamson of CFSL sought further clarification of these answers.
41. By further email dated May 29, 2008, a copy of which is attached hereto as **Exhibit "S"**, CFSL sought confirmation from the Monitor that the funds sought by the Company from the DIP Loan were in fact required by the Company, and that the Monitor had reviewed and signed off on the cash flow statements delivered.
42. By email dated May 29, 2008, a copy of which is attached hereto as **Exhibit "T"**, the Monitor advised that it had met with the Company and reviewed its cash flow statements, and was content that the funds requested were required by the Company.
43. By further email dated May 29, 2008, a copy of which is attached hereto as **Exhibit "U"**, Brad Newton of KPMG sought answers to several questions relating to the various reports that had been circulated by the Company and the Monitor to CFSL. Among other things, Mr. Newton:
 - (a) sought to understand the difference between actual accounts receivable collections of \$915,828 as opposed to a projection of \$1.8 million;
 - (b) sought clarification of amounts owing on construction trust claims in respect of these receivables;
 - (c) sought an identification of revenues generated by the overhead and operating costs incurred by the Company which totalled in excess of \$1.3 million;
 - (d) sought a listing of jobs that the Company had in progress, noting that 11 of 17 jobs had been delayed indefinitely or until the first week of June;
 - (e) inquired as to whether the asphalt plant, which was to be repaired with the DIP Loan, was now operational;

- (f) asked if the Monitor had reviewed the Company's cash flow and was in a position to provide comments on its reasonableness;
 - (g) asked if the Company had a specific restructuring plan; and
 - (h) asked for details regarding projected receipts in the amount of \$500,000 which the Company did not collect.
44. By email dated May 30, 2008, a copy of which is attached hereto as **Exhibit "V"**, Jim Bethune of the Company provided some answers to the questions asked by Mr. Newton. Among other things, the Company confirmed that it would exhaust the existing DIP Loan by June 6, 2008, and would require additional financing. Further, the Company confirmed that BDO had determined that an amended cash flow statement was needed, and that the Company was in the process of preparing this in anticipation of an extension hearing on June 10, 2008. The Company advised, in respect of a restructuring plan, that it "is continuing to review its options and as more information comes available a more detailed thought process could be available. Therefore at this time, it is still early to provide more detailed information."
45. By further email dated May 30, 2008, a copy of which is attached hereto as **Exhibit "W"**, on receipt of the Company's responses, Mr. Newton made certain follow-up inquiries of the Company, including a request for clarification of actual results compared to the cash flow projections filed with the Court in the CCAA process for the month of May, as well as a listing of all receipts of the Company for the month of May.
46. After receipt of the Company's responses, by email dated May 30, 2008, a copy of which is attached hereto as **Exhibit "X"**, Brad Newton also made certain inquiries of the Monitor. Mr. Newton asked, among other things, whether the Monitor would be commenting on the Company's cash flow figures and operating results for the month of May. He also asked the Monitor if it perceived the fact that the Company was under its collection projections by approximately \$750,000, a 36% material adverse change.

47. By email dated June 2, 2008, a copy of which is attached hereto as **Exhibit "Y"**, Jim Bethune of the Company responded to the additional inquiries of KPMG delivered on May 30, 2008. Some of the responses simply objected to the questions asked, and others were only partially responsive or non-responsive.
48. By email dated June 2, 2008, a copy of which is attached hereto as **Exhibit "Z"**, Brad Newton of KPMG advised the Company that while he understood its time constraints, he advised the Company that the information requested was required in order that KPMG could provide reports to CFSL as to the financial status of the Company as authorized by the Amended and Restated Initial Order. Mr. Newton further noted the significant delay in receiving answers to questions posed by KPMG and requested certain documents and identified in great detail the information they were seeking with respect to each question posed.
49. By email dated June 2, 2008, a copy of which is attached hereto as **Exhibit "AA"**, the Monitor provided its response to the inquiries by KPMG dated May 30, 2008. The Monitor advised that it had not yet seen operating results for the Company for the month of May, and was not therefore in a position to know its cash position, operating losses, or otherwise.
50. By email dated June 2, 2008, a copy of which is attached hereto as **Exhibit "BB"**, Kevin Williamson of CFSL also asked that the Company provide the information requested by KPMG, so that CFSL, among other things, could assess the Company's financial situation and the reasonableness of the Company's cash flow projections. CFSL reminded the Company that this information was necessary in order to determine the viability of the Company and assess any request for an extension of the CCAA Stay.
51. On June 3, 2008, the Monitor delivered its Second Report to CFSL with respect to the Company's use of the DIP Loan for the period ended May 30, 2008, a copy of which is attached hereto as **Exhibit "CC"** in a sealed envelope which, due to the confidential nature of the information contained therein, will be the subject of a sealing order request.

52. By email dated June 3, 2008, a copy of which is attached hereto as **Exhibit "DD"**, the Monitor responded to the email of CFSL, advised that the Monitor has been pressing the Company relentlessly for information, and regretted the delay in compiling the information. The Monitor noted that the Company's human resources were limited and not fully able to put together the necessary information to assess the Company's performance. The Monitor advised that it was waiting for a release of the Company's actual numbers in order to determine whether the Company was operating to a reasonable degree.
53. By email dated June 3, 2008, a copy of which is attached hereto as **Exhibit "EE"**, Kevin Williamson of CFSL responded to the email from the Monitor dated June 2, 2008, with certain follow-up questions, including whether the Company:
- (i) intended to request an extension of the CCAA Stay;
 - (ii) was in negotiations for any further DIP financing; and
 - (iii) was putting together a restructuring plan, and whether the Monitor would be providing any assessment of the reasonableness of the new cash flow statements being prepared by the Company.
54. By email dated June 3, 2008, a copy of which is attached hereto as **Exhibit "FF"**, the Monitor responded to these further inquiries, and advised that the Company was expected to request an extension of the CCAA Stay for as long as possible (i.e.: 30 days), and that discussions were taking place with the same proposed lender as before to obtain further DIP financing, which CFSL assumes to be McLennan. With respect to the discussions for further DIP financing, the Facility Letter provides that any additional financing by the Company is subject to the consent of CFSL as DIP lender. To date, CFSL has not been approached for consent to the providing of any additional DIP financing to the Company by an alternate lender. With respect to a restructuring plan, the Monitor advised that it considered the preparation of a long term plan premature.
55. With respect to opining on the reasonableness of the Company's cash flow statements, the Monitor advised as follows:

“the Monitor is unable to provide such opinion at this time. This is the restructuring of a small family-owned company carrying too much debt. Its human and other resources are stretched to the limit as it attempts to restructure and maximize a recovery for its creditors. The Monitor intends to review the cash flows and operating forecasts once prepared by the Company, together with management, and report on any issues which come to the Monitor’s attention which are not already disclosed in the assumptions, and report on variances to the initial cash flow.”

56. On June 3, 2008, the Monitor circulated its fourth weekly report (the “Fourth Weekly Report”), a copy of which is attached hereto as **Exhibit “GG”** in a sealed envelope which, due to the confidential nature of the information contained therein, will be the subject of a sealing order request. In response to the Fourth Weekly Report, Brad Newton of KPMG sent an email message to the Company dated June 4, 2008, a copy of which is attached hereto as **Exhibit “HH”**, asking numerous follow-up questions, including confirmation of the amount of invoice sales for May and the amounts of accruals for future billings arising in May.
57. By letter dated June 4, 2008, a copy of which is attached hereto as **Exhibit “II”**, counsel for the Company advised the Service List that it would be bringing a motion returnable June 10, 2008 to, among other things, extend the CCAA Stay. Counsel advised that it did not anticipate serving its motion materials any earlier than the end of the day on Friday, June 6, 2008, or more likely, the morning of Monday, June 9, 2008.
58. By email message dated June 5, 2008, a copy of which is attached hereto as **Exhibit “JJ”**, Jim Bethune of the Company responded to Mr. Newton’s questions of June 4, 2008.
59. On the afternoon of June 5, 2008, representatives of the Company, the Monitor, GE and CFSL and their respective counsel met to discuss the Company’s financial status, the status of the Sale Process, the motion returnable June 10, 2008, and other issues moving forward. At that meeting, for the first time, the Company requested from CFSL \$980,000 in additional DIP financing in order to finance the Company’s operations until the end of June, 2008. In order to consider this request, the Company requested revised cash flow

statements from the Monitor. At that meeting, Lon Mullin of the Company confirmed that, prior to the commencement of the CCAA proceedings, Dufferin Construction notified the Company that they were in default.

60. By email message later on June 5, 2008, a copy of which is attached hereto as **Exhibit "KK"**, the Monitor circulated the revised cash flow statements. CFSL was particularly troubled to note that the Company is projecting a net cash deficiency of \$5,412,403 for the period from May to September, 2008, which confirms CFSL's ongoing concerns. Further, the revised cash flow statements are not supported by any restructuring or business plan and do not include an executive summary with any analysis, assumptions or basis for the cash flows or a current or projected balance sheet to assist in determining the continued effect of the CCAA proceedings on CFSL's security.
61. In order to determine the reasonableness of the cash flow statements and to ultimately make a determination on whether or not to advance additional DIP financing and/or consent to an extension of the CCAA Stay, CFSL also requested an opportunity to have KPMG attend at the Company's offices to review its books and records in order to conduct a thorough analysis of the cash flows. The Company advised that it would allow KPMG to access its offices as of 12:00 noon on Friday, June 6, 2008.
62. Upon attending at the Company's offices on Friday, June 6, 2008, Brad Newton of KPMG was provided with copies of letters from counsel for LIUNA Local 837 and the International Union of Operating Engineers Local 793, copies of which are attached hereto as **Exhibit "LL"** with respect to their claims against the Company's receivables under the *Construction Liens Act* (Ontario) in the amount of approximately \$657,000. CFSL is concerned that these claims could impact the expected timing of the Company's receipt of both pre and post CCAA receivables. CFSL understands that there may be other unions which may bring similar claims in the near future.
63. By email message dated June 6, 2008, a copy of which is attached hereto as **Exhibit "MM"**, counsel for the Monitor served the Monitor's Report with respect to the Company's motion returnable June 10, 2008.

64. By email message dated June 7, 2008, a copy of which is attached hereto as **Exhibit “NN”**, Kevin Williamson of CFSL requested confirmation from Jim Bethune of the Company regarding his concerns with respect to the alleged delays in obtaining advances under the DIP Loan. In his email message, Mr. Williams set out in detail the timing and details with respect to each of three (3) advances on the DIP Loan.
65. By email message to counsel for the Company dated June 8, 2008, a copy of which is attached hereto as **Exhibit “OO”**, Steven Weisz, counsel for CFSL, expressed concern that the Company had not yet delivered any court materials for the Company’s motion returnable June 10, 2008 and advised that this constituted a default under the Facility Letter. Mr. Weisz also advised that CFSL, with the assistance of KPMG, continued to review the amended cash flow statements provided on June 5, 2008 and was not in a position to respond to the Company’s motion until it had an opportunity to review the Company’s supporting court materials and had completed its review of the amended cash flow statements.
66. On June 8, 2008, KPMG circulated a Report, a copy of which is attached hereto as **Exhibit “PP”** in a sealed envelope which, due to the confidential nature of the information contained therein, will be the subject of a sealing order request. The Report provided KPMG’s analysis of, among other things, the Company’s cash flows, its request for additional DIP financing, CFSL’s security position and the offers received in the Sale Process.

Disclosure of Valuations

67. By email dated May 16, 2008, a copy of which is attached hereto as **Exhibit “QQ”**, it came to CFSL’s attention that certain potential purchasers of the Company’s assets received an asset valuation list from the Company which had been ordered sealed by the Court at the motion on May 12, 2008. The Company acknowledged that the circulation of the list was a mistake and advised that the list had been circulated to several potential offerors prior to the commencement of the CCAA proceedings.

68. By email dated May 20, 2008, a copy of which is attached hereto as **Exhibit "RR"**, Steven Weisz, counsel for CFSL, advised the Monitor that the Company had circulated a list of valuations to potential purchasers who had later expressed interest in the Sale Process. Mr. Weisz expressed concern about the impact this would have on the integrity of the Sale Process.

Status of Sale Process

69. By email dated May 27, 2008, a copy of which is attached hereto as **Exhibit "SS"** in a sealed envelope which, due to the confidential nature of the information contained therein, will be the subject of a sealing order request the Monitor provided to CFSL and GE a list of prospective purchasers. **Redacted**
70. By email message dated June 4, 2005, the Monitor provided a summary of the offers received for the Company's assets. A copy of the summary is attached hereto as **Exhibit "TT"** which, due to the confidential nature of the information contained therein, is in a sealed envelope and is the subject of a sealing order request. **Redacted**

Discussions regarding purchase of CFSL's debt and security

71. During the period since the motion on May 12, 2008, CFSL has received offers from interested parties to purchase its debt and security. These offers have been solely predicated on the basis that such a purchase will be at a significant discount to the amount outstanding and owing to CFSL.

72. It is clear from CFSL's discussions with these interested parties that they do not consider CFSL to be in a secure position and that they have concerns in respect of the value of its security and the value of the Company's assets.

Position of CFSL

73. The Company appears to have taken little to no steps towards viability as a going concern in the past 30 days. There has been no measurable improvement in the Company's prospects as a result of the steps it has taken in the past month. There is no suggestion that a plan is being considered, and no reasonable prospects that one could be made viable. The Company is unable to obtain bonding which is significantly inhibiting its ability to bid on and secure jobs. There has been no expression of interest in purchasing the Company as a going concern, which suggests that it is not perceived in the marketplace as a viable long-term business. If the CCAA Stay is extended, it will result in significant continued expenses by the Company with few realizations in return and no prospect of a successful Plan all at great prejudice to CFSL.
74. Accordingly, it is CFSL's position that there is no basis for extending the CCAA Stay given the resulting costs that will be incurred as evidenced by the projected negative cash flow of approximately \$5.4 million for May-September 2008 particularly given the fact that there is no reasonable prospect that a successful plan can be advanced. The only benefit to the Company's creditors is to liquidate the Company's assets, which can be undertaken by a Receiver and/or a Trustee in Bankruptcy.
75. CFSL therefore requests that:
- (a) the operations of the Company be suspended immediately;
 - (b) no further extensions of the CCAA Stay be granted;
 - (c) no further DIP financing be advanced; and
 - (d) the Sale Process continue under the supervision of a Receiver and/or a Trustee.

76. I swear this Affidavit in response to the Company's motion for, among other things, an extension of the CCAA Stay herein, and for no other or improper purpose.

SWORN before me at the)
City of Oakville, Ontario)
this 10th day of June, 2008)

WILLIAM SCARLETT

A Commissioner, etc.

Court File No:

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**AFFIDAVIT OF WILLIAM SCARLETT
(SWORN JUNE 10, 2008)**

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