

Court File No. 08-CL-7503

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

MONITOR'S FOURTH REPORT TO COURT

July 17, 2008

APPENDIX "A" Amended and Restated Initial Order dated May 12, 2008

APPENDIX "B" The July 9 Approval Order

**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")

**FOURTH 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".
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 (unofficial transcript):

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 12, 2008 the court made an Endorsement in the CCAA proceedings that ordered:
 - a) That CFSL was the Debtor In Possession Lender up to an amount of \$1,250,000;
 - b) That the Initial Order was amended at paragraph 7 to reflect rights of trust claimants under the *Construction Lien Act*;
 - c) At paragraph 37 of the Initial Order (now paragraph 42 of the Amended and Re-stated Initial Order) to have the Sale Process completed by June 10, 2008;
 - d) To amend paragraph 12 of the Initial Order to extend the Stay Period to June 10, 2008.

5. Attached at Appendix A to this report is a copy of the amended and re-stated Initial Order incorporating the above-noted changes as endorsed dated May 12, 2008 (the "Amended Order").
6. The Stay Period was subsequently extended to July 10, 2008 in the CCAA Proceedings.
7. On July 9, 2008 the Companies moved for an order, among other things:
 - a. Extending the Stay Period to October 10, 2008;
 - b. Approving the sale transaction between the Companies and 2178550 Ontario Ltd. (the "Miller Sale Agreement") and the sale transaction between the Companies and Waterford Sand & Gravel Limited (the "Waterford Sale Agreement");
 - c. Approving the conduct of the Monitor as described in the Third Report;
 - d. Increasing the amount of the Administrative Charge in the Amended Order.
8. On July 9, 2008 the Court ordered:
 - a. The Stay Period was extended to July 23, 2008;
 - b. Transactions contemplated by the Miller Sale Agreement and the Waterford Sale Agreement were approved and the Companies were authorized and approved to take such steps necessary or desirable for the completion of such Transactions;
 - c. That subject to a standstill with respect to the payment of the fees of the Monitor and its counsel accrued up to July 4, 2008 (the "Fee Standstill") pending the hearing of a motion

to be brought by CFSL or the Monitor, the conduct of the Monitor as described in its Third Report was approved;

- d. That the Administrative Charge was increased to \$500,000.
9. Attached at Appendix B to this report is a copy of the order approving the Transactions contemplated by the Miller Sale Agreement and the Waterford Sale Agreement dated July 9, 2008 (the "Approval Order").
 10. The purpose of this, the Monitor's Fourth Report, is to inform the Court on the following:
 - i) the Companies' request for an extension of the Stay Period to allow for the completion of the Transactions contemplated by the Miller Sale Agreement and the Waterford Sale Agreement (the "Transactions") and the continued collection of account receivables and MTO Claims and the Monitor's recommendation thereon;
 - ii) the dealings with the Undertaking governing projects bonded by Guarantee Company of North America ("GCNA");
 - iii) that the Monitor and CFSL have agreed to lifting of the Fee Standstill;
 - iv) CFSL's request for repayment of the debtor in possession loan.
 11. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined are as defined in the Amended Order.

ACTIVITIES OF THE COMPANIES

12. The Companies and their counsel continue to work towards the completion of the Transactions.
13. Due to its lack of cash the Companies' operations have been scaled back, pending closing of the Transaction. The asphalt plant has temporarily ceased operation, and the Companies' have ceased work on a number of contracts including the Thorold Project. The Companies continue to work on the "Fort Erie Project" and the "405 Project".

UNDERTAKING TO COMPLY – CONSTRUCTION LIEN ACT ON GCNA BONDED PROJECTS

14. The Monitor continues to use its best efforts to ensure that the Undertaking attached to the June 12 DIP Order is followed by Hard Rock Construction Inc. (the "Undertaking").
15. The Undertaking governed the GCNA bonded projects attached to the Undertaking as a schedule. Hard Rock Construction Inc. has been in receipt of trust funds on two of the bonded projects known as "Fort Erie" and "Thorold".
16. Counsel for GCNA has advised the Monitor and the Companies that it takes the position that the Undertaking is not being complied with regarding the Thorold Project.
17. Specifically, GCNA takes the position that paragraph (vi) of the Undertaking is not being followed by Hard Rock Construction Inc. in relation to Hard Rock Construction Inc.'s reimbursement of monies expended by Hard Rock Construction Inc. on the Thorold Project for the

payment of direct labour and materials on such project pursuant to section 11 of the *Construction Lien Act*.

18. Paragraph (vi) of the Undertaking provides:

The Applicant acknowledges and agrees that no amount will be paid from the Trust Funds received with respect to any particular project for any use inconsistent with the trust provisions of the *CLA*, including but not limited to any amount for profit, overhead, loan repayment, project management fees, professional fees, Monitor fees, Monitor counsel fees or Applicant counsel fees, until such time as all of the Applicants' trust obligations under the *CLA* with respect to that particular Project have been fully satisfied. For greater certainty, the Applicant acknowledges that it will not use any of the Trust Funds to fund the Applicant's operation or the cost of the *CCAA* proceedings. However, where the Applicant pays, in whole or in part for the supply of services or materials related to a specific Project, out of money that is loaned to the Applicant, or out to (sic) money that is not subject to a trust subject to review by the Monitor of any such payments as contemplated in paragraphs (iv) and (v), Trust Funds generated for that particular Project as a result of services or material paid for by the loan or moneys not subject to a trust, may be applied to discharge the loan or reimburse the Applicant for money not subject to a trust to the extent of the payment made for the subject supply of services or materials related to the particular Project consistent with section 11 of the *CLA*.

19. The Monitor has provided GCNA with reconciliations on each of the Thorold Project and the Fort Erie Project.

20. Hard Rock Construction Inc. has agreed to cooperate with GCNA regarding arranging for payments by the owner on the Thorold Project (the Municipality of Thorold) directly to the trades on the Thorold Project after the close of the Transactions.

THE FEE STANDSTILL

21. On July 11, 2008 CFSL informed the Monitor that it consented to the lifting of the Fee Standstill. The consent was provided on the basis that such fees remain subject to passing by the Court. The Monitor will be attending to the passing of its and its counsel's accounts in the normal course.

THE COMPANIES' REQUEST FOR AN EXTENSION OF THE STAY PERIOD

22. The Companies have requested in their motion materials that the Stay Period be extended to August 30, 2008.

23. The Monitor recommends that the Stay Period be extended to August 30, 2008.

24. It is the Monitor's position that such extension to August 30, 2008 will enhance the collectability of the Companies accounts receivable based on the following:

- i) that the collection will be undertaken by a company related to Miller Paving ("Miller") pursuant to a Receivables Collection Agreement between the Companies and Miller. It is the Monitor's position that Miller will be viewed in the industry as a successor to the Companies' business and as such the likelihood of payment of accounts due to the Companies is enhanced through the Stay Period;
- ii) that the management of the Companies will be available to assist Miller with the collections and provide information in relation to same;
- iii) that the extension of the Stay Period will allow the Companies to continue, while outside of a receivership or a bankruptcy,

thus avoiding the stigma of a receivership or bankruptcy and the corresponding negative effect on the collection of the accounts.

25. The Monitor further advises that the management of the Companies feel strongly that the collection of the Companies' accounts, and the MTO claims will be enhanced outside of a bankruptcy and a receivership and in the absence of the stigma of a bankruptcy or receivership.
26. The Monitor is further informed by counsel to Miller that it is Miller's position that its going concern purchase and its potential assumption of the Companies contracts is best completed in the absence of a receivership or bankruptcy.
27. In summary, the Monitor believes that the Companies have acted and are acting in good faith and with due diligence and that circumstances exist that make an extension of the Stay Period appropriate. The Monitor therefore respectfully recommends that the Company's request for an extension of the Stay Period to August 30, 2008 be granted, so as to allow for the maximization of the collection of the accounts of the Companies and the MTO Claims.

DISTRIBUTION ISSUES

28. The proceeds from the Transactions (the "Proceeds") are to be held by the Monitor for distribution.
29. CFSL has requested that it be repaid from Proceeds the monies advanced under the debtor in possession loans pursuant to facility letters dated May 7, 2008 and June 11, 2008. The Monitor recommends that the payment be made on its receipt of an accounting from CFSL to avoid further interest accruing on these loans.

30. The Monitor also requests that the monies due to the Monitor and its counsel for fees be paid from the proceeds under the Administration Charge. The Monitor will pass its accounts before this court in the normal course. The Monitor's fees outstanding as of July 4, 2008 (and as detailed in the Third Report) were \$194,647.61. The Monitor's counsel fees outstanding as of July 4, 2008 (as detailed in the Third Report) total \$11,105.45. Further, fees have accrued since July 4, 2008.

Respectfully submitted,

Dated this 17th day of July 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

APPENDIX "A"

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies.
3. **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.
4. **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).
5. **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

6. **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, subject only to the rights of trust claimants under the *Construction Lien Act*, such

trust claimants' rights to be determined by this Court on a timetable to be agreed upon or fixed by this Court (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.

7. **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.
8. **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.
9. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay (in accordance with the terms of the Commitment Letter as defined below) 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.

10. **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.

11. **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

12. **THIS COURT ORDERS** that until and including June 10th, 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, the Monitor and the DIP Lender (as defined herein), 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.

NO EXERCISE OF RIGHTS OR REMEDIES

13. **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, the Monitor and the DIP Lender, 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

14. **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

15. **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

16. **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

17. **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.
18. **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.
19. **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 18 of this Order. The Directors' Charge shall have the priority set out in paragraphs 37 and 39 herein.

20. **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

21. **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.
22. **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.

23. **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.
24. **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.
25. **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.
26. **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.

27. **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 and KPMG 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.
28. **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 weekly basis,
29. **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.
30. **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 37 and 39 hereof.

31. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility from CFSL (sometimes referred to hereafter as, the "DIP Lender" when acting in such capacity) in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$1,250,000 unless permitted by further Order of this Court.
32. **THIS COURT ORDERS** that credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Applicants and the DIP Lender dated as of May 7th, 2008, as appended as Exhibit "K" to the Affidavit of William Scarlet sworn May 12th, 2008 (the "Commitment Letter"), filed.
33. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "Definitive Documents"), as are contemplated by the Commitment Letter or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.
34. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "DIP Lender's Charge") on the Property, which charge shall not exceed the aggregate amount owed to the DIP Lender

under the Definitive Documents. The DIP Lender's Charge shall have the priority set out in paragraphs 37 and 39 hereof.

35. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) without the requirement to seek further leave of the Court, upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, upon 5 days notice to the Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Definitive Documents and the DIP Lender's Charge, including without limitation, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants, and upon the occurrence of an event of default under the terms of the Definitive Documents, the DIP Lender shall immediately be entitled to cease making advances to the Applicants and set off and/or consolidate any amounts owing by the DIP Lender to the Applicants against the obligations of the Applicants to the DIP Lender under the Definitive Documents or the DIP Lenders Charge and to seize and retain proceeds from the sale of the Property and the cash flow of the Applicants to repay amounts owing to the DIP Lender in accordance with the Definitive Documents and the DIP Lender's Charge, but subject to the priorities as set out in paragraphs 37 and 39 of this Order; and

(c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

36. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

37. **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 DIP Lender's Charge,

Third – the Secured Debt; and

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

38. **THIS COURT ORDERS** that the filing, registration or perfection of the Directors' Charge, the DIP Lender's 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.
39. **THIS COURT ORDERS** that, subject to paragraph 37 above, each of the Directors' Charge, the DIP Lender's 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.

40. **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, the DIP Lender's 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, the DIP Lender's Charge and the Administration Charge, or further Order of this Court.

41. **THIS COURT ORDERS** that the Directors' Charge, the DIP Lender's 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

- 42. **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 by June 10th, 2008, 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.
- 43. **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.
- 44. **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.
- 45. **THIS COURT ORDERS** that the Monitor may obtain advice and directions from the Court with respect to the Sale Process.
- 46. **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.
- 47. **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

48. **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 Applicants' 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.

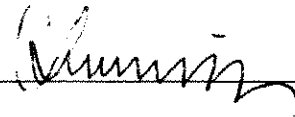
49. **THIS COURT ORDERS** that the Applicants and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission 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.

50. **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


51. **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.
52. **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.
53. **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.
54. **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.

55. **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.
56. **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.
57. **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.



RECEIVED

MAY 14 2008

PEH/PAP 

SCHEDULE "A"

DIAMOND STONEBRIDGE CONTRACTING INC.

HARD-ROCK HIGHWAY MAINTENANCE INC.

HARD-ROCK CONSTRUCTION INC.

942355 ONTARIO LIMITED

942356 ONTARIO LIMITED

1344434

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF THE HARD ROCK PAVING
COMPANY LIMITED AND THE COMPANIES LISTED ON SCHEDULE "A"

Applicants

Court File No. 08-CL-7503

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at TORONTO

ORDER

MINDEN GROSS LLP

Barristers and Solicitors
145 King Street West, Suite 2200
Toronto ON M5H 4G2

Raymond M. Slattery (LSUC #20479L)

416-369-4149

416-864-9223 fax

rslattery@mindengross.com

David T. Ullmann (LSUC #42357I)

416-369-4148

416-864-9223 fax

dullmann@mindengross.com

Solicitors for the Applicants

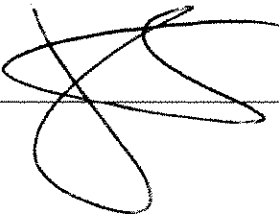
APPENDIX "B"

Limited (the "Monitor"), counsel for Caterpillar Financial Services Limited, counsel for GE Capital Canada ("GE"), counsel for the Labourers International Union Local 837 and The International Union of Operating Engineers Local 793, counsel for Miller Paving Limited, counsel for Waterford Sand & Gravel Limited and counsel for the Guarantee Company of North America, no one else appearing,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that the Stay Period, as originally defined in the Amended and Restated Order of Justice Spence dated May 12, 2008 (the "Initial Order"), is hereby extended to July 23, 2008.
3. **THIS COURT ORDERS AND DECLARES** that the Transactions are hereby approved, and that the Miller Sale Agreement and the Waterford Sale Agreement are each commercially reasonable and collectively in the best interests of the Applicants and its stakeholders (the "Miller Sale Agreement" and the "Waterford Sale Agreement" are sometimes referred to hereafter collectively as, the "Sale Agreements"). The execution of the Sale Agreements by the Applicants is hereby authorized and approved, and the Applicants are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transactions and for the conveyance of the purchased assets subject to the Sale Agreements to the respective Purchasers in accordance with their respective Sale Agreements.
4. **THIS COURT ORDERS** that subject to paragraph 5 of this Order the conduct of the Monitor as described in the Report be and the same is hereby approved.

5. **THIS COURT ORDERS** that the amount of the Administrative Charge, as described and defined in the Initial Order, is hereby increased to \$500,000 provided that there shall be a standstill with respect to the payment of the fees of the Monitor and its counsel accrued up to July 4, 2008, pending a hearing of a motion to be brought by CFSL or a motion by the Monitor.

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Joanne Nicoara
Registrar, Superior Court of Justice

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

JUL 10 2008

PER/PAR: JSN

SCHEDULE "A"

DIAMOND STONEBRIDGE CONTRACTING INC.

HARD-ROCK HIGHWAY MAINTENANCE INC.

HARD-ROCK CONSTRUCTION INC.

942355 ONTARIO LIMITED

942356 ONTARIO LIMITED

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF THE HARD ROCK PAVING
COMPANY LIMITED AND THE COMPANIES LISTED ON SCHEDULE "A"

Applicants

Court File No. 08-CL-7503

ONTARIO

**SUPERIOR COURT OF JUSTICE
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Proceeding commenced at TORONTO

ORDER

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145 King Street West, Suite 2200

Toronto ON M5H 4G2

Raymond M. Slattery (LSUC #20479L)

416-369-4149

416-864-9223 fax

rslattery@mindengross.com

David T. Ullmann (LSUC #42357I)

416-369-4148

416-864-9223 fax

dullmann@mindengross.com

Solicitors for the Applicants

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")

Court File No. 08-CL-7503

ONTARIO
SUPERIOR COURT OF JUSTICE

MONITOR'S FOURTH REPORT

Harrison Pensa ^{LLP}
Barristers and Solicitors
450 Talbot Street, 1st Floor
P.O. Box 3237
London, Ontario N6A 4K3

Timothy C. Hogan
LSUC #36553S
Tel: (519) 679-9660
Fax: (519) 667-3362

Solicitors for the MONITOR