

**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")

NOTICE OF MOTION

BDO Dunwoody Limited as Monitor, will make a Motion to a Judge of the Commercial List on Tuesday, August 26, 2008 at 10:00 a.m. or as soon after that time as the Motion can be heard at the Court House, 330 University Avenue, 8th Floor, Toronto, Ontario.

THE MOTION IS FOR:

1. An Order substantially in the form attached hereto, including without limitation an Order, *inter alia*:
 - a. An Order approving the Fifth Report of the Monitor dated August 21, 2008 (the "Fifth Report") and the Monitor's activities and conduct as detailed therein;
 - b. An Order approving the fees and disbursements of the Monitor and the Monitor's counsel;

- c. An Order discharging BDO Dunwoody Limited (“BDO”) as the Monitor of the Applicants effective immediately and that BDO shall have no further duties as Monitor, subject to BDO carrying out such functions and duties as Monitor as may be incidental to the termination of the CCAA proceedings with the benefit of all protections in favour of BDO as Monitor as provided for in this Order and all Orders issued in this proceeding;
- d. An order that notwithstanding its discharge, BDO shall continue to have the protection provided to it by paragraphs 25, 26 and 27 of the the Amended and Re-Stated Order of Justice Spence dated May 12, 2008 (the “Amended Initial Order”), and these paragraphs shall continue to apply, *mutatis mutandis*;
- e. An Order that no action or other proceeding shall be commenced against BDO in any way arising from or related to its capacity or conduct as Monitor except with prior leave of this court on notice to BDO;
- f. An Order, notwithstanding the issuance of a Bankruptcy Order as against the Applicants, continuing the Administration Charge as defined in the Amended Initial Order over all of the property of the Applicants until the accounts of the beneficiaries under the Administration Charge have been paid in full;
- g. An Order that notwithstanding the issuance of a Bankruptcy Order as

against the Applicants, the balance of the proceeds from the Transactions (as defined in the Fifth Report) shall continue to be held in trust by BDO in its capacity as Receiver and Interim Receiver pending further order of the Court;

h. An Order further to the Order of this Court dated July 21, 2008 and notwithstanding the issuance of a Bankruptcy Order as against the Applicants, that the Monitor is hereby authorized and directed to pay to Caterpillar Financial Services Limited ("CFSL") from the proceeds from the Transactions (as defined in the Fifth Report) the sum due on account of interest and costs in respect of the Debtor-in-Possession financing provided by CFSL to the Applicants;

i. An Order that notwithstanding the issuance of a Bankruptcy Order as against the Applicants, the Monitor is hereby authorized and directed to pay from the proceeds of receivables collected by the Applicants the sum due by the Applicants for amounts outstanding and payable in respect of salary directly due to employees for services performed and source deductions due to crown agencies for employees of the Applicants for the period of August 16, 2006 to August 26, 2008.

2. Such further and other relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

1. On May 2, 2008 the Applicants applied for and were granted protection from their creditors under the *Companies' Creditors Arrangement Act* R.S.C. 1985, c.C-36,

as amended (the "CCAA") (the "Initial Order"). Pursuant to the Initial Order, this Honourable Court appointed BDO as the Court-Appointed Monitor of the Applicants;

2. On May 12, 2008 the Initial Order was amended and re-stated (the "Amended and Re-Styled Initial Order");
3. BDO has satisfied all of its obligations as Monitor in these Proceedings pursuant to the CCAA;
4. The Administration Charge was granted (at paragraph 30 of the Amended and Re-Styled Initial Order) to secure the fees of BDO, KPMG, counsel to the Monitor (Harrison Pensa LLP) and counsel to the Applicants and was amended to be an aggregate sum of \$500,000 by way of court order dated July 9, 2008;
5. Pursuant to the Amended and Re-Styled Initial Order the Monitor and counsel to the Monitor shall be paid their reasonable fees and disbursements;
6. Pursuant to the Amended and Re-Styled Initial Order the Monitor and its legal counsel shall pass their accounts from time to time as referred to a Judge of this Honourable Court;
7. Pursuant to the Order of this Honourable Court dated July 21, 2008 any amount outstanding and payable to CFSL in respect of the DIP Loan on account of interest and costs shall be paid forthwith by the Applicants out of the proceeds from the Transactions on CFSL providing an accounting and as authorized by further order of this Court;

8. Salary and source deductions are owing for employees of the Applicants for the period of August 16, 2008 to August 26, 2008;
9. Rules 2.03, 3.02 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990 reg 194 as amended; and
10. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. The Monitor's Fifth Report dated August 21, 2008;
2. Affidavits of representatives of BDO Dunwoody Limited as Monitor and Harrison Pensa LLP as Monitor's counsel with respect to fees;
3. Such further and other materials as counsel may advise and this Honourable Court may permit.

August 21, 2008

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Solicitors for the Monitor

TO: Service List

SCHEDULE "A"

Diamond Stonebridge Contracting Inc.

Hard-Rock Highway Maintenance Inc.

Hard-Rock Construction Inc.

942355 Ontario Limited

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**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) TUESDAY, THE 26th DAY
JUSTICE WILTON-SIEGEL) OF AUGUST, 2008

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF THE HARD ROCK PAVING COMPANY LIMITED
AND THE COMPANIES LISTED ON SCHEDULE "A"
(collectively, the "Applicants")

ORDER

THIS MOTION made by BDO Dunwoody Limited ("BDO"), in its capacity as Monitor of the Applicants, (the "Monitor") for an Order:

- (a) if necessary, abridging the time for service of the Notice of Motion and Motion Record herein, validating the service of such motion material and dispensing with the service of such motion material on interested parties not served;
- (b) An Order approving the Fifth Report of the Monitor dated August 21, 2008 (the "Fifth Report") and the Monitor's activities and conduct as detailed therein;

- (c) An Order approving the fees and disbursements of the Monitor and the Monitor's counsel;
- (d) An Order discharging BDO Dunwoody Limited ("BDO") as the Monitor of the Applicants effective immediately and that BDO shall have no further duties as Monitor, subject to BDO carrying out such functions and duties as Monitor as may be incidental to the termination of the CCAA proceedings with the benefit of all protections in favour of BDO as Monitor as provided for in this Order and all Orders issued in this proceeding;
- (e) An order that notwithstanding its discharge, BDO shall continue to have the protection provided to it by paragraphs 25, 26 and 27 of the Amended and Re-Styled Order of Justice Spence dated May 12, 2008 (the "Amended Initial Order"), and these paragraphs shall continue to apply, *mutatis mutandis*;
- (f) An Order that no action or other proceeding shall be commenced against BDO in any way arising from or related to its capacity or conduct as Monitor except with prior leave of this court on notice to BDO;
- (g) An Order, notwithstanding the issuance of a Bankruptcy Order as against the Applicants, continuing the Administration Charge as defined in the Amended Initial Order over all of the property of the Applicants until the accounts of the beneficiaries under the

Administration Charge have been paid in full;

- (h) An Order that notwithstanding the issuance of a Bankruptcy Order as against the Applicants, the balance of the proceeds from the Transactions (as defined in the Fifth Report) shall continue to be held in trust by BDO in its capacity as Receiver and Interim Receiver pending further order of the Court;
- (i) An Order further to the Order of this Court dated July 21, 2008 and notwithstanding the issuance of a Bankruptcy Order as against the Applicants, that the Monitor is hereby authorized and directed to pay to Caterpillar Financial Services Limited ("CFSL") from the proceeds from the Transactions (as defined in the Fifth Report) the sum due on account of interest and costs in respect of the Debtor-in-Possession financing provided by CFSL to the Applicants;
- (j) An Order that notwithstanding the issuance of a Bankruptcy Order as against the Applicants, the Monitor is hereby authorized and directed to pay from the proceeds of receivables collected by the Applicants the sum due by the Applicants for amounts outstanding and payable in respect of salary directly due to employees for services performed and source deductions due to crown agencies for employees of the Applicants for the period of August 16, 2006 to August 26, 2008.
- (k) Such further and other relief as this Honourable Court may deem just.

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Fifth Report of BDO in its capacity as Monitor, on hearing the Applications for Bankruptcy Orders in respect of the Applicants in Court File Nos. 31-207546-T, 31-207545-T, 31-207544-T, 31-207543-T, and 31-207542-T, on making an Order in Court File No. CV-08-00007504-00CL this date appointing BDO as Receiver and Manager under section 101 of the Courts of Justice Act and Interim Receiver under section 47(1) of the Bankruptcy and Insolvency Act of all of the assets and undertaking of the Applicants, and on hearing the submissions of counsel for the Applicants, counsel for BDO, counsel for Caterpillar Financial Services Limited (“CFSL”), and counsel for GE Capital Canada (“GE”), and all other counsel in attendance;

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 that any requirement for service of the Motion and the Motion Record on any parties other than the parties actually served with the Notice of Motion and the Motion Record is hereby dispensed with.
2. **THIS COURT ORDERS** that the Fifth Report of the Monitor and the Monitor’s activities and conduct as detailed therein be and are hereby approved.

3. **THIS COURT ORDERS** that the fees and disbursements of the Monitor, in the amount of \$441,051.18, inclusive of GST, as disclosed in the Affidavit of Uwe Manske sworn August 20, 2008, be and are hereby approved.
4. **THIS COURT ORDERS** that the fees and disbursements of counsel to the Monitor, in the amount of \$114,268.57, inclusive of GST, as disclosed in the Affidavit of Melinda Vine sworn August 20, 2008, be and are hereby approved.
5. **THIS COURT ORDERS AND DECLARES** that BDO be discharged as the Monitor of the Applicants effective immediately and that BDO shall have no further duties as Monitor, subject to paragraph 6 of this Order.
6. **THIS COURT ORDERS** that notwithstanding the discharge of BDO as Monitor, BDO may carry out such functions and duties as Monitor as may be incidental to the termination of the CCAA proceedings. In carrying out such functions and duties, BDO shall continue to have the benefit of all of the protections in favour of them as Monitor as provided for in this Order and such other Orders as have been issued in these proceedings.
7. **THIS COURT ORDERS** that no action or other proceeding shall be commenced against BDO in any way arising from or related to its capacity or conduct as Monitor of the Applicants except with prior leave of this court on notice to BDO.

8. **THIS COURT ORDERS** that notwithstanding its discharge BDO shall continue to have the protection provided to it by paragraphs 25, 26 and 27 of the Amended Initial Order, and these paragraphs shall continue to apply, *mutatis mutandis*.
9. **THIS COURT ORDERS** that notwithstanding the issuance of the Bankruptcy Order, the balance of the proceeds from the Transactions (as defined in the Fifth Report) shall continue to be held in trust by BDO in its capacity as Receiver and Interim Receiver pending further order of the Court.
10. **THIS COURT ORDERS** that further to the Order of this Court dated July 21, 2008, and notwithstanding the issuance of the Bankruptcy Order, the Monitor is hereby authorized and directed to pay to CFSL from the proceeds from the Transactions (as defined in the Fifth Report) the sum due on account of interest and costs in respect of the Debtor-in-Possession financing provided by CFSL to the Applicants.
11. **THIS COURT ORDERS** that notwithstanding the issuance of the Bankruptcy Order, the Monitor is hereby authorized and directed to pay from the proceeds of receivables collected by the Applicants the sum due to the Applicants for amounts outstanding and payable in respect of salary directly due to employees for services performed and source deductions to Crown Agencies for employees of the Applicants for the period of August 16, 2008 to August 26, 2008.
12. **THIS COURT ORDERS AND DECLARES** that notwithstanding the Bankruptcy Order the Administration Charge as defined in the Amended Initial Order over all

of the Property of the Applicants shall continue until the accounts of the beneficiaries under the Administration Charge have been paid in full.

Justice – Ontario Superior Court of Justice-
Commercial List

SCHEDULE "A"

Diamond Stonebridge Contracting Inc.

Hard-Rock Highway Maintenance Inc.

Hard-Rock Construction Inc.

942355 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"
(collectively, the "Applicants")

Court File No. 08-CL-7503

ONTARIO
SUPERIOR COURT OF JUSTICE

ORDER

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**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

NOTICE OF MOTION

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