



Court File No. 08-CL-7503

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) TUESDAY, THE 23rd DAY
JUSTICE WILTON-SIEGEL) OF SEPTEMBER, 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 Supplement to the Fifth Report of the Monitor dated September 12, 2008 (the "Supplement to 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 that BDO is hereby released and discharged from any and all liability that BDO now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of BDO while acting in its capacity as Monitor herein. Without limiting the generality of the

foregoing, BDO is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within proceedings;

- (h) 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;
- (i) 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 of the Monitor dated August 21, 2008 (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;
- (j) 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;
- (k) 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.

(l) 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 and the Supplement to the Fifth Report, 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 Supplement to 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 \$28,334.06, inclusive of GST, as disclosed in the Affidavit of Uwe Manski sworn September 11, 2008, be and are hereby approved.
4. **THIS COURT ORDERS** that the fees and disbursements of counsel to the Monitor, in the amount of \$23,659.93 inclusive of GST, as disclosed in the Affidavit of Melinda Vine sworn September 12, 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 AND DECLARES** that BDO is hereby released and discharged from any and all liability that BDO now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of BDO while acting in its capacity as Monitor herein except for gross negligence, and wilfull misconduct. Without limiting the generality of the foregoing, BDO is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within proceedings.
10. **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.

11. **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 of \$10,504.08 due on account of interest only in respect of the Debtor-in-Possession financing provided by CFSL to the Applicants.
12. **THIS COURT ORDERS** that the Monitor is hereby authorized and directed to pay from the funds in its hands from funds collected from accounts receivables the sum of \$12,153.18 to the Minister of Finance (Ontario) on account of Retail Sales Tax owing by the Applicants.
13. **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 for services rendered to today's date have been paid in full. Such accounts are to be subject to taxation.


Justice – Ontario Superior Court of Justice-
Commercial List

Joanne Nicoara
Registrar, Superior Court of Justice

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

SEP 25 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

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ORDER

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