

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE *MR*) TUESDAY, THE 10th
)
JUSTICE WILTON-SIEGEL) DAY OF JUNE, 2008

AMS

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

ON READING the Affidavit of David R. Semley sworn June 9, 2008, and the exhibits thereto and the Monitor's Second Report dated June 6, 2008 (the "**Report**") and on hearing the submissions of counsel for the Applicants, Caterpillar Financial Services Limited ("**CFSL**"), GE Canada Equipment Financing G.P. ("**GE**") BDO Dunwoody Limited (the

“Monitor”), and counsel for the Labourers International Union and the International Union of Operating Engineers, no one else appearing.

SERVICE

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.

EXTENSION OF THE STAY OF PROCEEDINGS

2. **THIS COURT ORDERS** that the Stay Period, as defined in the Amended and Restated Order of Justice Spence dated May 12, 2008 (the “Amended Order”), is hereby extended to ~~September~~ ^{July} 10, 2008. *HWS*

FURTHER DIP LOAN

3. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility ~~from~~ ^{to be approved by the Court!} *HWS* ~~[insert]~~ in order to finance the Applicants’ working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility, excluding such borrowings as were authorized under the Amended Order, shall not exceed \$1,000,000 unless permitted by further Order of this Court or upon the prior written consent of each of GE, CSFL and the Monitor.

- ~~4. **THIS COURT ORDERS** that the terms of the credit facility shall be on substantially the same terms and subject to the same conditions as~~ *HWS*

~~set forth in the commitment letter between the Applicants and CSFL dated as of May 7th, 2008, as was appended as Exhibit "K" to the Affidavit of William Scarlett sworn May 12th, 2008, filed.~~

5. **THIS COURT ORDERS** that the DIP Lender's Charge created pursuant to the Amended Order shall also apply to the additional amount of authorized to be borrowed by the Applicants pursuant to paragraph 4 of this Order and that such advances shall rank *pari passu* with such amounts previously advanced pursuant to the Amended Order.

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Changes to Initial Order

6. **THIS COURT ORDERS** that, except for where expressly amended herein, all other terms of the Amended Order remain in full force and effect.

- ~~7. **THIS COURT ORDERS** that the weekly reporting obligations placed on the Applicants pursuant to the Amended Order are hereby amended such that all references to "weekly" are hereby replaced with "monthly".~~

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8. **THIS COURT ORDERS** that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan") between, *inter alia*, the Applicants and one or more classes of its secured and/or unsecured creditors as it deems appropriate.

~~9. THIS COURT ORDERS~~ that the Applicants shall, subject to such covenants as may be contained in the Definitive Documents (as defined in the Amended Order), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations and to dispose of redundant or non-material assets not exceeding \$● in any one transaction or \$● in the aggregate, subject to paragraph 9 (c) hereof, if applicable;
- (b) to sell, convey, transfer, lease or assign any of its property, assets or undertaking (the "**Property**") or any part or parts thereof out of the ordinary course of business, with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out 9(a), and in each case the Ontario *Bulk Sales Act* shall not apply;
- (c) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (d) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate on such terms as may be agreed upon between the

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~~Applicant and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;~~

(e) repudiate such of its arrangements or agreements of any nature whatsoever, whether oral or written, as the Applicant deems appropriate on such terms as may be agreed upon between the Applicant and such counter-parties, or failing such agreement, to deal with the consequences thereof in the Plan; and

(f) pursue all avenues of refinancing and offers for material parts of its business or the Property, in whole or in part, subject to prior approval of this Court being obtained before any material refinancing or any sale (except as permitted by subparagraph (a), above),

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all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the business (the "Restructuring").

10. **THIS COURT ORDERS** that the the Monitor, in addition to its prescribed rights and obligations under the CCAA and in the Amended Order, is hereby directed and empowered to:

(a) advise the Applicants in their development of the Plan and any amendments to the Plan;

- ~~(b) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan; and~~
- (c) consider, and if deemed advisable by the Monitor, prepare a report and assessment on the Plan.

11. **THIS COURT ORDERS** that, the Applicants may enter into agreements with key employees or management of the Applicants, on terms satisfactory to Caterpillar Financial Services Limited, GE Capital and the Monitor, in order to provide for the payment to such persons of such stay on and performance bonuses as the Applicants deem reasonable, provided that no such bonuses or payments shall be paid until the earlier of the sale of all or substantially all of the Property, the termination of the Stay Period, or the receipt of the written consent of CFSL, GE and the Monitor to pay same.

12. **THIS COURT ORDERS** that the amount due in respect of any stay on or performance bonus approved in accordance with paragraph 11 shall form a first charge on the assets of the Applicant, payable in priority to all other security interests, trusts or charges, including, without limitation, the charges created in the Amended Order.

BONDING PROTOCOL

13. **THIS COURT ORDERS** that the Bonding Protocol attached hereto as **Schedule "B"** is hereby approved and Hard Rock Construction Inc. ~~is hereby directed to act in accordance with same.~~

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APPROVAL OF CONDUCT

14. **THIS COURT ORDERS** that the conduct of the Monitor as described in the Report be and the same is hereby approved.

*Let the order come in
accordance with its terms
"C. Don - M. J."*

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

Court File No. 08-CL-7503 Applicants

<p>ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST</p> <p>Proceeding commenced at TORONTO</p> <p>ORDER</p>	<p>MINDEN GROSS LLP Barristers and Solicitors 145 King Street West, Suite 2200 Toronto ON M5H 4G2</p> <p>Raymond M. Slattery (LSUC #20479L) 416-369-4149 416-864-9223 fax rslattery@mindengross.com</p> <p>David T. Ullmann (LSUC #423571) 416-369-4148 416-864-9223 fax dullmann@mindengross.com</p> <p>Solicitors for the applicants</p>
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