

Court File No. 08-CL-7503

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

SUPPLEMENT TO THE MONITOR'S FIFTH REPORT TO COURT

September 12, 2008

- APPENDIX "A"** The August 26, 2008 Order
- APPENDIX "B"** Endorsement of the Court on August 29, 2008 in relation to timetable.
- APPENDIX "C"** The Companies' Calculation of the Union Claim
- APPENDIX "D"** The Trust Fund Reconciliation for the Thorold Project dated July 8, 2008
- APPENDIX "E"** The Thorold Order
- APPENDIX "F"** Affidavit of Harrison Pensa regarding Legal Fees and Disbursements
- Appendix "G"** Affidavit of Uwe Manski of BDO Dunwoody Limited regarding the Monitor's Fees and Disbursements

**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")

**SUPPLEMENT TO THE FIFTH REPORT TO THE COURT
SUBMITTED BY BDO DUNWOODY LIMITED
IN ITS CAPACITY AS MONITOR**

INTRODUCTION:

1. This follows the Monitor's Fifth Report to the Court dated August 21, 2008 (the "Fifth Report").
2. The Fifth Report and the Monitor's activities and conduct as detailed therein was approved by the order of the Court dated August 26, 2008 (the "August 26 Order"). Attached at Appendix "A" to this report is a copy of the August 26 Order.
3. Pursuant to the August 26 Order:
 - a. The Stay Period was extended to September 23, 2008;
 - b. All other relief sought in all other motions and applications originally returnable August 26, 2008 was adjourned to September 23, 2008;
 - c. No expenditures were to be incurred by the Companies from August 26, 2008 to September 23, 2008 unless approved by the Monitor, GE and CFSL;
 - d. All funds in the Companies' bank account and any future cheques payable to the Companies were to be forthwith transferred and/or

- delivered to the Monitor to be held in separate accounts pending further order from the Court;
- e. The Unions, IVOE Local 793 and LIUMA Local 857, were permitted to register and/or file a lien and commence lien actions under the *Construction Lien Act*, for the purposes of complying with limitation periods under the *Construction Lien Act*, regarding any of the Companies' project they worked on. These actions were stayed immediately after they were issued.
4. On August 29, 2008 a timetable was endorsed by the Court with respect to the hearing scheduled for September 23, 2008 and a copy of the endorsement is attached as Appendix "B" to this report.
 5. The Monitor is in receipt of Motion Records from the following creditors of the Companies:
 - a. McLennan Financing Limited;
 - b. Shell Energy North America (Canada) Inc.;
 - c. Fowler Construction Company Limited;
 - d. The "Unions".
 6. Further, the Monitor is in receipt of a Motion Record from The Guarantee Company of North America ("GCNA") as the provider of Performance Bonds to the Companies.
 7. The Monitor has received all funds from the Companies' bank account(s) and holds these funds in separate accounts pending further order of the Court.
 8. The Monitor has reached an arrangement with Brennan Paving Limited pursuant to the Receivables Collection Agreement dated July 21, 2008 (the "Collection

Agreement”) whereby Brennan is depositing account collections directly to an account held by the Monitor.

9. Prior to the transfer of the Companies' accounts to the Monitor, the Monitor has learned and has confirmed that the Companies did pay the sum of \$75,901.90 from the proceeds of accounts collected to the Receiver General towards the Companies' obligations for Goods and Services Tax. This payment was not approved by the Monitor, GE nor CFSL.

THE UNION CLAIM

10. The Monitor has received from the Companies a statement of the Companies' calculation of obligations due to the Unions under the Collective Agreements (the "Union Claim") for the month of July 2008. This obligation totals \$86,049.22. Attached to this report as Appendix "C" is a copy of the Companies' calculation of the Union claim, as summarized by the Monitor.
11. The calculation of the Union Claim was prepared by the Companies payroll clerk. The Monitor has not audited the Companies' payroll records; however, the sum calculated as the Unions Claim appears reasonable when compared with similar payments made in prior months by the Companies to the Unions.

THE COMPANIES TRUST DEPOSIT ACCOUNT

12. As indicated above, the Monitor is in receipt of the Notice of Motion from a creditor, Fowler Construction Company Limited ("Fowler") wherein Fowler seeks an order requiring the payment of \$450,787.14 to the credit of Ontario Superior Court of Justice File No. CV-08-00358161-0000.

13. The Monitor has reviewed the deposits in the Companies' trust account now with the Monitor (the "Trust Account"). The following projects have monies on deposit:

- a. Region of Niagara (contract 17358) - \$8,472.66;
 - b. Beamish (contract 17854) - \$34,320.74;
 - c. Fort Erie Asphalt pit sale - \$9,137.71;
 - d. Amico (contract 17543) - \$3,000.04;
 - e. Sona (contract 17361) - \$330.35;
 - f. New Alliance (contract 17528) - \$2,229.57;
 - g. Hall (contract 17353) - \$15,119.83;
 - h. Niagara Catholic School Board (contract 16360) - \$21,098.71;
 - i. Fort Erie Project - \$227,376.28;
 - j. Thorold Project - \$75,219.17.
- TOTAL OF TRUST FUNDS - \$396,305.06

14. No monies are held in trust by the Companies in relation to any of the contracts to which Fowler Construction Company Limited claims to have delivered materials as detailed in the Affidavit of Tom O'Callaghan sworn September 5, 2008.

THE UNDERTAKING

15. The Monitor participated in the negotiation of the Undertaking to Comply with the *Construction Lien Act* Trust Fund Obligations on GCNA Bonded Projects that was attached to the Order of this Court dated June 12, 2008 (the "Undertaking"). Throughout these negotiations the Monitor was concerned with respect to its proposed role and its proposed obligations under the Undertaking. The Monitor's

concern arose from the limits imposed by the Amended and Restated Initial Order on the Monitors' powers which were restricted to monitoring and reporting on the Companies' receipts and disbursements. The Monitor was unable to obtain accurate information from the Companies on a timely basis, and made clear these concerns in the Monitor's earlier Reports filed with the Court.

16. Throughout the negotiation of the Undertaking, the Monitor made it clear to GCNA that its role would be that of Monitor only and that compliance of the terms of Undertaking fell to the Companies. The Monitor could only use its best efforts to review receipts and disbursements in relation to the Undertaking and in reliance on the information provided by the Companies.

17. The Monitor's position was made clear to GCNA by way of the Monitor's counsel's email of June 2, 2008 wherein the Monitor provided:

"As we have communicated to you the Monitor is not an auditor. The Monitor is not involved in the management of the Hard-Rock business. The Monitor will use its best efforts to ensure the above is followed and the [Undertaking] honoured. The Monitor relies on the cooperation, information and systems of Hard-Rock in completing this process. The Monitor will follow the above process using its best efforts to review the receipts and disbursements in relation to the [Undertaking]. The Monitor makes no warranties to GCNA other than it will use its best efforts in this regard".

18. The Monitor has received correspondence from the Niagara Region to the Companies' care of the Monitor dated September 3, 2008 advising of the failure of the Companies to complete final works in the spring of 2008 on a bonded project consisting of landscaping, top course or asphalt and associated work along with deficiencies, the value of both totaling \$121,000. A copy of the letter was copied to GCNA as surety under a Performance Bond No. TS5070475.

19. The bonded projects that were ongoing by the Companies through the Stay Period were those known as the Fort Erie Project and the Thorold Project and these were the only active bonded projects subject to the Undertaking.

FORT ERIE PROJECT

20. The Monitor is advised by the Companies that all work required to complete the Fort Erie Project has been done.

21. A Completion Payment Certificate Number 5 was delivered by the Companies dated August 6, 2008 to Fort Erie for final payment in the amount of \$32,576.

22. The Completion Payment Certificate Number 5 has not been paid by Fort Erie, pending determination of trust claims against this account receivable. The Monitor is advised by the Companies that such trust claims will not exceed the amount of the account receivable.

23. The Companies advise the Monitor that the following has to be completed in relation to the Fort Erie Project:

- a. The Companies' publication in the appropriate newspaper and journals of the substantial completion and in compliance with the *Construction Lien Act*;
- b. The payment of all creditors;
- c. The completion of the statutory declaration by the Companies as prescribed under the *Construction Lien Act* and pursuant to the Undertaking.

24. The Monitor is unable to identify all outstanding monies due by the Companies to unpaid claimants on the Fort Erie Project due to the incomplete state of the Companies' accounts payable records and the fact that the Monitor was not involved with the management of the Companies' in general nor of the Fort Erie

Project. The Monitor is unable to confirm that all of the suppliers of labour and /or materials related to Fort Erie Project have been paid in full.

25. The Monitor currently holds the sum of \$227,376.28 in trust for the claimants on the Fort Erie Project. Based on the information provided to the Monitor by the Companies, it appears to the Monitor that surplus funds from the Fort Erie project will be available to the Companies.

THOROLD PROJECT

26. The Companies ceased work on the Thorold project on or about July 14, 2008.

27. The Monitor currently holds the sum of \$75,219.17 in trust for the claimants on the Thorold Project.

28. The last Progress Certificate Number 8 issued by the Companies dated July 11, 2008 to the City of Thorold for work completed to July 4, 2008 in the sum of \$154,230.94, remains unpaid.

29. The Companies have advised the Monitor that the Companies' records support an outstanding sum to be billed by the Companies to Thorold for work performed on the Thorold Project up to July 14, 2008. The Companies have not completed final invoices to quantify the monies due for such work.

30. In June 2008 the Monitor was made aware of GCNA's concerns with respect to the Companies' failure to provide full and complete information to GCNA regarding trust funds and trust payments under the Undertaking. GCNA spoke with the Monitor's representative on at least two (2) occasions about this matter. As a result the Monitor spoke to the Companies representatives and advised that the required information should be delivered to GCNA. The Monitor then

understood that all information required under the Undertaking was being provided.

31. To assist the Companies in relation to its reporting under the Undertaking, the Monitor did prepare the Trust Fund Reconciliation for the Thorold Project dated July 8, 2008 that is attached to the affidavit of Tara Wishart as a representative of GCNA, sworn August 22, 2008. Attached to this supplement to the Monitor's Fifth Report as Appendix "D" is a copy of the Monitor's Trust Fund Reconciliation Report for the Thorold Project now dated September 9, 2008 which contains the same information as the Trust Fund Reconciliation Report dated July 8, 2008 as no monies have been received nor disbursed in relation to the Thorold Project since July 8, 2008 (the "Trust Fund Reconciliation").

32. The Monitor has delivered to GCNA's agent at the request of GCNA's counsel documents reviewed by the Monitor, which were provided by the Companies in relation to the disbursements paid by the Companies as detailed in the Trust Fund Reconciliation.

33. The Undertaking provided:

"Upon completion of the review by the Monitor of the list of payments to be made for each Project each month, and the Monitor being satisfied based on its best effort review that the proposed list of payments relates only to Trust Claimants for the particular Project, the Applicant shall make payments from the particular Project Trust Funds to the particular Project Trust Claimants".

34. Using its best efforts the Monitor did review the disbursements made by the Companies' on the Thorold Project and each were supported by documentation provided by the Companies.

35. The Monitor's review of the disbursements made by the Companies on the Thorold Project indicated that such payments were payments to Trust Claimants and not breaches of trust in that they did not involve re-imbusement to the Companies for operating, profit nor CCAA expenses.
36. The Monitor provided its consent to Thorold to release the Thorold Project from the stayed proceedings imposed by the CCAA Proceeding. The Court did order on August 26, 2008 that the Stay of Proceedings contained in paragraphs 13 and 14 of the Initial Order be and was thereby lifted with respect to the Thorold Project (the "Thorold Order"). Attached to this report and marked as Appendix "E" is a copy of the Thorold Order.
37. On September 5, 2008 the Monitor did receive a copy of correspondence from the solicitor for Thorold providing written notice to GCNA under the Performance Bond for the Thorold Project that the Companies had been declared in default.

MONITOR'S FEES AND MONITOR'S COUNSEL'S FEES

38. The fees and the disbursements of the Monitor for the period from inception of the CCAA proceeding to August 15, 2008 were approved pursuant to the August 26 Order. The fees and disbursements of the Monitor's counsel for the period of May 6, 2008 to August 20, 2008 were approved pursuant to the August 26 Order.
39. The Monitor's counsel has rendered its accounts with time, disbursements and taxes totaling \$23,659.93 for the period to September 11, 2008 (the "Legal Fees and Disbursements"). The Monitor's counsel's accounts are more particularly described in the Affidavit of Melinda Vine of Harrison Pensa LLP, sworn in support hereof and attached at Appendix "F" to this report.

40. The Monitor has rendered its accounts with time, disbursements and taxes totaling \$28,334.06 to September 5, 2008 (the "Monitor's Fees and Disbursements"). The Monitor's accounts are more particularly described in the Affidavit of Uwe Manski, sworn in support hereof and attached at Appendix "G" to this report.
41. Both the Monitor and the Monitor's counsel will incur additional time and disbursements in relation to preparing for and attending the motion seeking the approval of this Supplement to the Fifth Report, the Monitor's Fees and Disbursements and the Legal Fees and Disbursements along with a discharge of the Monitor. These fees will be incurred at the rates as detailed herein, and will be reasonable and in accordance with the provisions of the Initial Order and the Amended and Restated Order. The Monitor intends to pay the additional Monitor's Fees and Disbursements and the Legal Fees and Disbursements in the normal course.
42. The Monitor respectfully submits that the Monitor's fees and Disbursements and the Legal Fees and Disbursements are reasonable in the circumstances and have been incurred in accordance with the provisions of the Initial Order and the Amended and Restated Order. Accordingly the Monitor now seeks the approval of the Monitor's Fees and Disbursements and Legal Fees and Disbursements.

MONITOR'S RECOMMENDATION

43. As previously reported, the activities of the Companies have ceased. The Companies have no full time employees to assist the Monitor in its review of the accounting records to deal with the various issues raised by GCNA and the other creditors. The Monitor recommends that the Stay Period be terminated.

44. The Monitor recommends and respectfully requests that the court grant the following:

- a. An Order approving the Monitor's activities as reported herein;
- b. An Order discharging the Monitor of the Companies effective immediately and providing that the Monitor shall have no further duties as Monitor, subject to duties incidental to the termination of the CCAA proceedings;
- c. An Order allowing for the payment due to CFSL on account of interest and costs under the DIP Loans;
- d. An Order approving the fees of the Monitor and the Monitor's counsel.

Respectfully submitted,

Dated this 12th day of September, 2008.



BDO Dunwoody Limited

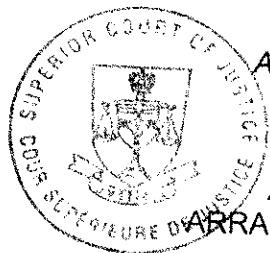
In its capacity as Monitor of The Hard-Rock Paving Company Limited
and the companies listed at schedule "A" to the Initial Order

APPENDIX "A"

Court File No. 08-CL-7503

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) TUESDAY, THE 26th DAY
JUSTICE C. L. CAMPBELL) 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, 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** that the stay period as originally defined in the Order of Justice Spence dated May 12, 2008 is hereby extended to September 23, 2008.

- 6. **THIS COURT ORDERS** that the balance of the relief sought in all other motions and applications returnable today is adjourned to September 23, 2008.
- 7. **THIS COURT ORDERS** that no other expenditures shall be incurred from this date to September 23, 2008 unless approved by the Monitor, GE and CFSL.
- 8. **THIS COURT ORDERS** that all funds in the Applicants' bank account and any future cheques payable to the Applicants shall forthwith be transferred and/or delivered to the Monitor to be held in separate accounts pending further order of the court.
- 9. **THIS COURT ORDERS** that further to paragraph 13 of the Amended and Restated Initial Order dated May 12, 2008, the Court hereby grants leave to the Unions, IVOE Local 793 and LIUNA Local 857, to register and/or file a lien and commence lien actions under the Construction Lien Act, for the purposes of complying with limitation periods under the Construction Lien Act, regarding any Applicants' project they worked upon. These actions will be stayed immediately after they are issued.



 Justice – Ontario Superior Court of Justice-
 Commercial List
 T. Vecchiola Registrar Superior Court of
 Justice

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

AUG 27 2008

PER/PAR: *Dr*

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"
(collectively, the "Applicants")

Court File No. 08-CL-7503

ONTARIO
SUPERIOR COURT OF JUSTICE

ORDER

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
136777 : cc

APPENDIX "B"

BURR, CHRIS

From: George Benchetrit [George@chaitons.com]
Sent: Thursday, August 28, 2008 3:10 PM
To: renglish@airdberlis.com; bppilley@bellnet.ca; BURR, CHRIS; MCEACHERN, KATHERINE; MCGRAW, MICHAEL; WEISZ, STEVEN; mhecke@blaney.com; Craig J. Hill; jmaclellan@blgcanada.com; SRappos@blgcanada.com; mark.mancini@devrylaw.ca; kevin.ohara@fin.gov.on.ca; slatinovich@flettbeccario.com; jm@glaholt.com; kenneth.movat@gowlings.com; ozier@gsnh.com; Ian Wallace; thogan@harrisonpensa.com; KKraft@heenan.ca; NSaxe@heenan.ca; diane.winters@justice.gc.ca; dhager@langmichener.ca; mrabinovitch@langmichener.ca; aggusg@lazierhickey.com; sullivanpj@lazierhickey.com; jessicafiore@live.com; dullman@mindengross.com; RSlattery@mindengross.com; aesposito@palletvalo.com; gluftspring@rickettsharris.com; MSolmon@SRGLEGAL.com; jmgottli@sullivan-mahoney.com; mshafir@torkinmanes.com; pcorless@waterousholden.com; cwilson@wilsonop.com; Jason.Moyse@xerox.com
Cc: Harvey Chaiton
Subject: Fwd: Hard Rock - Timetable for September 23 Hearings

Counsel:

The only comment I have received on the proposed timetable is to set September 18 as the deadline for any cross-examinations, which I think is sensible. The timetable will be submitted to the court for endorsement at a chambers appointment tomorrow morning.

George Benchetrit
Partner, Chaitons LLP
 Tel: (416) 218-1141
 Cell: (416) 917-2121

>>> George Benchetrit 8/26/2008 9:55 PM >>>
 Counsel:

The following timetable is being proposed for the hearings scheduled to be heard on September 23, 2008:

- All notices of motion and accompanying motion material to be sent to the service list no later than Friday September 5
- All responding material to be sent to the service list no later than Friday September 12
- Any reply material and any requests for cross-examinations to be sent to the service list no later than Tuesday September 16
- All cross examinations to be completed by ^{Friday} ~~Friday~~ September 19 *Sho*
- Any facta to be sent to the service list no later than Friday September 19

Subject to any comments, the timetable will be submitted to the Court for endorsement at a chambers appointment on Friday morning this week.

George Benchetrit
Partner, Chaitons LLP
 Tel: (416) 218-1141
 Cell: (416) 917-2121

Aug. 29/08
Timetable approved
as amended
Chaiton J.

8/28/2008

APPENDIX "C"

POS	LUNA - Hamilton		LUNA - Niagara		DSC		LCS		WCCX		TOTAL	
	LUNA - Hamilton	LUNA - Niagara	UOE - Scheldt H	UOE - Local 793 Niagara	LUNA Local 837	LUNA Local 837	UOE - Local 793 Benefit Trust	UOE - Local 793 Hamilton	LUNA - Local 837 Hamilton	LUNA - Local 837 Niagara	LUNA - Local 837 Niagara	TOTAL
Retire/Benefit	33.30	5,071.01	521.28	815.10	623.64	1,021.68	2,588.84	1,596.67	372.50	7,785.65	3,603.35	\$ 33.30
ST on Welfare	44.40	405.68	41.70	65.21	49.69	81.73	207.10	124.53	29.86	618.97	288.27	\$ 24,484.72
Industry Fund	11.10											\$ 1,957.78
Ranking and Building Fund	144.30	650.16	51.85	74.10	85.14	229.10	159.78	96.96	532.66	474.14	2,489.05	\$ 18.66
ST	1,225.44	11,662.30	825.37	1,205.96	415.75	2,152.16	5,212.65	2,670.53	822.48	13,313.19	7,775.65	\$ 2,489.05
ST	0.96		1.75						0.37			\$ 479.25
Locking Dues	172.66	1,854.56	113.61	170.53	191.98	278.04	634.53	389.11	117.91	1,894.98	1,533.75	\$ 7,580.28
PDC		650.16							22.38			\$ 2.08
Professional Fund			2.80									\$ 7,341.85
Monthly Dues			20.75									\$ 2.80
Discretionary Dues			14.01									\$ 560.25
Relations Dues			35.03									\$ 479.25
IT Fund												\$ 35.03
TOTAL	\$ 2,186.76	\$ 20,593.87	\$ 1,628.15	\$ 2,396.60	\$ 1,281.28	\$ 3,642.41	\$ 8,936.18	\$ 4,946.29	\$ 1,469.74	\$ 24,883.57	\$ 14,054.49	\$ 86,048.22

APPENDIX "D"

The Corporation of the City of Thorold
 CSO Improvements
 Job #27107
 Trust Fund Reconciliation as of July 8, 2008

	Gross	Total
Receipts:		
23-May-08 Cert No. 6	\$ 29,099.82	
19-Jun-08 Cert No. 7	345,566.94	
Total receipts		<u>\$ 374,666.76</u>
Disbursements paid by Hard-Rock:		
Supported by documentation		
30-May-08 Harris Rebar [chq #6863]	60,000.00	
09-May-08 Roll Form [chq #6139]	30,253.38	
27-May-08 Roll Form [chq #6731]		
21-May-08 Amherst Crane [chq #6607]	30,253.38	
14-May-08 Battelfield [chq #6164]	5,000.00	
21-May-08 Battelfield [chq #6609]	2,153.55	
14-May-08 Sam De Rose [chq #6168]	3,979.01	
23-May-08 Direct Equipment [chq #6696]	2,625.00	
21-May-08 Lafarge [chq #6608]	3,305.25	
Wage costs	19,106.89	
	142,771.13	
	<u>\$ 299,447.59</u>	
Not supported by documentation as of June 26, 2008		
14-May-08 Amherst Crane [chq #6590]	1,765.01	
20-May-08 Direct Equipment [chq #6601]	1,271.25	
	<u>\$ 3,036.26</u>	
Total payments to date by Hard-Rock		<u>\$ 302,483.85</u>
Funds repaid to Hard-Rock @ July 8, 2008		<u>299,447.59</u>
Balance of Trust Funds held as of July 8, 2008		<u>\$ 75,219.17</u>

Explanation

Rebar supplied to job site per agreement
 Piling supplied to job site - inv #48652
 Piling supplied to job site - inv #49061. Cheque issued for \$32,550 credit of \$2,296.62 being returned
 Pump concrete - inv #100034
 Compressor rental for job site - inv #2112406
 \$5,000 deposit placed with Battelfield. To date various invoices received total \$3,979.01 for Thorold City job.
 Engineer shoring plans - inv #2008-21
 Trench boxes supplied to site - inv #46488
 Blanket fund of \$20,000 for concrete pours - \$19,106.89 confirmed to City of Thorold job. For the month of May and June

Supply concrete - inv to come
 Trench boxes supplied to site

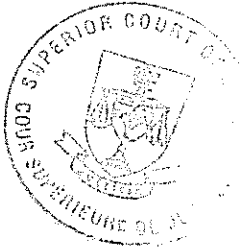
APPENDIX "E"

ONTARIO
SUPERIOR COURT OF JUSTICE
 COMMERCIAL LIST

THE HONOURABLE MR.) TUESDAY, THE 26th DAY
 JUSTICE CAMPBELL) 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")



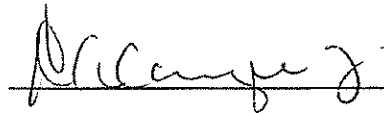
ORDER

THIS MOTION, made by THE CORPORATION OF THE CITY OF THOROLD ("City"), for an order abridging the time for service and lifting the stay of proceedings contained at paragraphs 13 and 14 of the Amended and Restated Initial Order of the Honourable Mr. Justice Spence made on May 12, 2008 (the "Initial Order") with respect to the Applicants pursuant to the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the Affidavit of Phill Lambert, sworn August 20, 2008 and the exhibits thereto, and the Motion Record, and on hearing the submissions of counsel for the City, and 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 further service is hereby dispensed.

- 2) **THIS COURT ORDERS** that the stay of proceedings contained at paragraphs 13 and 14 of the Initial Order be and is hereby lifted with respect to the written agreement made August 7, 2007 between Hard Rock Construction Inc. and the City for the Combined Sewer Separation Relief Structures in the contract price of \$4,298,270.00, plus G.S.T. ("Contract").
- 3) **THIS COURT ORDERS** that the City be and is entitled to exercise all of its rights and remedies under the Contract against the Applicant, including its right to declare the Applicant in default of its contractual obligations under the said Contract.



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

AUG 26 2008

PER/PAR: *JSN* Joanne Nicoara
Registrar Superior Court of Justice

In the matter of the Companies' Creditors Arrangement Act, R.S.C. 1985, c.C-36, as amended

Court File Number: 08-CL-7503

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

ORDER

SULLIVAN MAHONEY LLP
Lawyers
40 Queen Street, Box 1360
St. Catharines, ON L2R 6Z2

Attention: Joseph M. Gottli (22034C)
(905) 688-6655
(905) 688-5814 (Fax)
Solicitors for The Corporation of the City of
Thorold

APPENDIX "F"

**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 MELINDA VINE
(sworn September 12, 2008)**

I, **MELINDA VINE**, of the City of London, in the Province of Ontario,

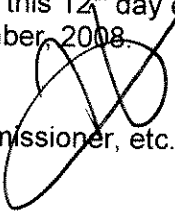
MAKE OATH AND SAY:

1. I am a solicitor qualified to practice law in the Province of Ontario and I am a lawyer with Harrison Pensa ^{LLP}, who acts as counsel for BDO Dunwoody Limited as Monitor of Hard-Rock Paving Company Limited in the within proceeding and as such I have knowledge of the matters to which I hereinafter depose except for those matters based expressly upon information and belief.
2. Attached hereto and marked as Exhibit "A" to this my Affidavit are particulars of time spent by professionals at Harrison Pensa ^{LLP} in connection with this matter for the period of August 15, 2008 to September 11, 2008 and an account statement detailing the services provided.
3. The hourly billing rates set out on Exhibit "A" are comparable to the hourly rates charged by Harrison Pensa ^{LLP} for services rendered in relation to similar proceedings

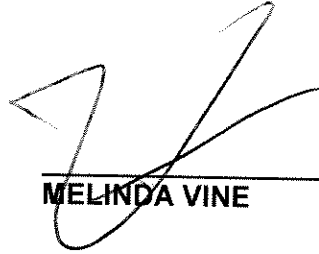
4. I make this Affidavit in support of among other things, approval of fees and disbursements of the counsel for the Monitor.

SWORN BEFORE ME at the City
of London, in the Province of
Ontario this 12th day of
September, 2008.

A Commissioner, etc.



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)
)
)
)



MELINDA VINE

(From August 15, 2008 to September 11, 2008)

	NAME	YEAR OF CALL	ACTUAL HOURS	HOURLY RATE	TOTAL
Partners	Ian Wallace	1981	22.3	\$410/hr.	\$ 9,143.00
	Timothy C. Hogan	1995	30.4	\$350/hr.	\$10,640.00
Associate	Melinda Vine	2007	1.2	\$175/hr	\$210.00
	Michael Cassone	2002	1.8	\$265/hr	\$477.00
	Lindsay Kirk	2008	8.6	\$175/hr.	\$1,505.00
TOTAL FEES					\$22,027.50
TOTAL DISBURSEMENTS					\$ 508.26
GST ON FEES DISBURSEMENTS (5%)					\$ 1,124.17
TOTAL FEES, DISBURSEMENTS AND GST					\$23,659.93



HARRISON PENZA
450 Talbot Street
P.O. Box 3237
LONDON ON N6A 4K3

Telephone: (519) 679 9660
Facsimile: (519) 667 3362

BDO DUNWOODY LIMITED
25 Main Street W., Suite 805
Hamilton, Ontario
L8P 1H1

September 12, 2008
Invoice #: 88800

File #: 136777/Timothy C. Hogan
RE: The Hard-Rock Paving Company Limited

SUMMARY OF THIS INVOICE

Total Fees	\$ 22,027.50
Total Disbursements	\$ 508.26
Total GST	\$ <u>1,124.17</u>
TOTAL	\$ 23,659.93
APPLIED FROM TRUST	\$ <u>0.00</u>
TOTAL THIS INVOICE	\$ 23,659.93
TOTAL PRIOR OUTSTANDING INVOICES	\$ <u>0.00</u>
TOTAL DUE AND OWING:	\$ <u>23,659.93</u>

**PLEASE REMIT WITH PAYMENT
TO HARRISON PENZA LLP**

GST REGISTRATION NO: R867630543
Interest is charged based on the Courts of Justice Act at time of billing on all invoices over 30 days.

TERMS: DUE UPON RECEIPT - Mastercard and Visa Accepted
HARRISON PENZA LLP, 450 Talbot Street, P.O. Box 3237, London ON N6A 4K3



HARRISON PENSA
450 Talbot Street
P.O. Box 3237
LONDON ON N6A 4K3

Telephone: (519) 679 9660
Facsimile: (519) 667 3362

BDO DUNWOODY LIMITED
25 Main Street W., Suite 805
Hamilton, Ontario
L8P 1H1

September 12, 2008
Invoice #: 88800

File #: 136777/Timothy C. Hogan
RE: The Hard-Rock Paving Company Limited

TO ALL PROFESSIONAL SERVICES RENDERED in connection with the above-noted matter, including:

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
19-Aug-08	To sort inbox	.50	\$87.50	LKI
19-Aug-08	To review correspondence, conference call;	.80	\$328.00	ICW
20-Aug-08	To determine docs necessary to bring motion on a continuing matter// to proof read motion materials and 5th report	.80	\$140.00	LKI
20-Aug-08	Call to BDO and review expenses/wages for approval and e-mail to counsel	.60	\$210.00	TCH
20-Aug-08	Review of draft order and e-mail	.50	\$175.00	TCH
20-Aug-08	Call with BDO	.50	\$175.00	TCH
20-Aug-08	To call with CFSL counsel re order and e-mail re DIP costs	.40	\$140.00	TCH
20-Aug-08	To Notice of Motion and finalize Fifth report	1.00	\$350.00	TCH
20-Aug-08	To review correspondence, calls re: matter;	.90	\$369.00	ICW
21-Aug-08	Draft order	.50	\$175.00	TCH
21-Aug-08	Call to court	.20	\$70.00	TCH
21-Aug-08	Prepare Continuing request form and e-mail to court	.40	\$140.00	TCH
21-Aug-08	Calls to counsel for debtor	.20	\$70.00	TCH
21-Aug-08	Call to Gottli	.20	\$70.00	TCH
21-Aug-08	Conferences with BDO	.40	\$140.00	TCH
21-Aug-08	Call with counsel for CFSL	.40	\$140.00	TCH
21-Aug-08	Call to Ray Slattery	.20	\$70.00	TCH

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
21-Aug-08	To locate documents	.30	\$52.50	LKI
21-Aug-08	Calls from and to Chaiton re Blake's DIP fees, review accounts and e-mail to BDO re issue	.80	\$280.00	TCH
21-Aug-08	Call with KPMG re: DIP fees	.20	\$70.00	TCH
21-Aug-08	E-mail from KPMG re DIP fees	.20	\$70.00	TCH
21-Aug-08	To review correspondence and Court documents, review issues re Court application, calls re meeting;	1.20	\$492.00	ICW
22-Aug-08	Attendances to review issues re Court Application re bankruptcy, termination of Monitor appointment, review issues re GCNA concerns, calls to client;	2.30	\$943.00	ICW
22-Aug-08	Review AK KPMG {MG fees and e-mail to Brad Newton	.40	\$140.00	TCH
22-Aug-08	E-mail to BDO	.20	\$70.00	TCH
22-Aug-08	To sort/file e-mails	1.00	\$175.00	LKI
22-Aug-08	Call with counsel for debtor and call to BDO re union remittance issues	.40	\$140.00	TCH
22-Aug-08	Conference call with Blakes and Koskie Minskie and e-mail to Company, GE and CFSL re: union dues	.50	\$175.00	TCH
22-Aug-08	E-mail from BDO and e-mail to counsel for union	.40	\$140.00	TCH
22-Aug-08	E-mail exchange with counsel for union	.40	\$140.00	TCH
22-Aug-08	E-mail exchange with CFSL counsel	.40	\$140.00	TCH
24-Aug-08	Receive and review Court documents, calls to client, prepare for Hearing, review materials;	7.60	\$3,116.00	ICW
25-Aug-08	Prepare for and attendance at Hearing, follow up with other counsel on various issues, review material;	7.80	\$3,198.00	ICW
25-Aug-08	To organize/file inbox	.50	\$87.50	LKI
26-Aug-08	To sort e-mails	.40	\$70.00	LKI
26-Aug-08	Follow up on outstanding items, review correspondence, calls to other counsel;	.90	\$369.00	ICW
29-Aug-08	To file e-mails	.50	\$87.50	LKI
2-Sep-08	Call to Ullman and e-mail from GE counsel	.20	\$70.00	TCH
2-Sep-08	To sort e-mails	.10	\$17.50	LKI
3-Sep-08	Various e-mails from BDO and call to BDO	.50	\$175.00	TCH
3-Sep-08	Letter to Winger Transport	.20	\$70.00	TCH
3-Sep-08	E-mail to Margie re lien	.10	\$35.00	TCH
4-Sep-08	To sort e-mails	.30	\$52.50	LKI
5-Sep-08	Letters from counsel for lien holders (x3) and e-mail to BDO and company	.40	\$140.00	TCH

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
5-Sep-08	E-mail from counsel for Hard Rock	.20	\$70.00	TCH
5-Sep-08	To file e-mails	.30	\$52.50	LKI
6-Sep-08	Various e-mails to lien counsel	.40	\$140.00	TCH
6-Sep-08	To security review	1.00	\$350.00	TCH
8-Sep-08	To review of CFSL security	2.00	\$700.00	TCH
8-Sep-08	Call with BDO	.50	\$175.00	TCH
8-Sep-08	Review of e-mail to Winger	.20	\$70.00	TCH
8-Sep-08	Review of GE security	2.00	\$700.00	TCH
8-Sep-08	Draft opinion	1.00	\$350.00	TCH
8-Sep-08	To pull and print motion records from lien claimants	.30	\$52.50	LKI
9-Sep-08	To review of GE security	.60	\$210.00	TCH
9-Sep-08	To review GE security/leases, to report to TCH	1.80	\$315.00	LKI
9-Sep-08	Call to GE counsel	.20	\$70.00	TCH
9-Sep-08	Review McLennan motion material	.50	\$175.00	TCH
9-Sep-08	Review Union materials and call to counsel for union	.60	\$210.00	TCH
9-Sep-08	Review of Fowler motion and call to counsel for Fowler	1.00	\$350.00	TCH
9-Sep-08	To pull e-mails re: GCNA protocol	1.60	\$280.00	LKI
9-Sep-08	Review of PPSA re retroactive application of s.46(3). Conference with student re principles of statutory interpretation. Compilation of research. Draft and edit of memo.	1.80	\$477.00	MEC
9-Sep-08	Review GCNA motion material	1.00	\$350.00	TCH
9-Sep-08	Draft Supplement to Fifth Report	4.00	\$1,400.00	TCH
10-Sep-08	To file e-mails	.50	\$87.50	LKI
10-Sep-08	Call from counsel for Fowler	.20	\$70.00	TCH
10-Sep-08	Call with counsel for Union	.20	\$70.00	TCH
10-Sep-08	Draft Fifth report	.80	\$280.00	TCH
10-Sep-08	Review draft materials, discuss issues;	.80	\$328.00	ICW
11-Sep-08	Conference call with BDO	1.50	\$525.00	TCH
11-Sep-08	Amend Report	1.00	\$350.00	TCH
11-Sep-08	E-mail re leased computer and response	.20	\$70.00	TCH
11-Sep-08	To put together exhibits; to draft affidavit; to telephone call to Grotti; to conference TCH:	1.20	\$210.00	MVI
11-Sep-08	Draft report	.50	\$175.00	TCH

Total Fees:	\$	22,027.50	
Plus 5% GST		<u>1,101.38</u>	
Total Fees and GST:	\$		<u>23,128.88</u>

FEE SUMMARY:

LAWYER	HOURS	RATE	AMOUNT
Timothy C. Hogan	30.40	\$350.00	\$10,640.00
Ian C. Wallace	22.30	\$410.00	\$9,143.00
Michael Cassone	1.80	\$265.00	\$477.00
Lindsay Kirk	8.90	\$175.00	\$1,557.50
Melinda Vine	1.20	\$175.00	\$210.00

NON-TAXABLE DISBURSEMENTS

Cyberbahn - Government Disbs	\$40.00
Hotel Accommodation, Miscellaneous - Exempt	\$12.45
Total Non-Taxable Disbursements:	<u>52.45</u>

TAXABLE DISBURSEMENTS

Cyberbahn - PPSA	\$45.00	
Photocopies	\$145.50	
Long Distance Charges	\$9.20	
Hotel Accommodation, Miscellaneous	\$256.11	
Total Taxable Disbursements:	<u>455.81</u>	
Plus 5% GST:	<u>22.79</u>	
Total Disbursements (INCL GST)		<u>\$ 531.05</u>

TOTAL DUE & OWING**\$ 23,659.93****THIS IS OUR ACCOUNT HEREIN*****HARRISON PENSE LLP***Per: _____
Timothy C. Hogan

E. & O.E.

APPENDIX "G"

Court File No. 08-CL-7503

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 UWE MANSKI

I, UWE MANSKI, of the Town of Stouffville, in the Province of Ontario, MAKE OATH AND SAY that:

1. I am the President of BDO Dunwoody Limited, and as such have personal knowledge of the matters referred to herein.
2. By Order of the Honourable Mr. Justice Spence, dated May 2, 2008 (the "Initial Order"), BDO Dunwoody Limited was appointed Monitor (the "Monitor") of Hard-Rock Paving Company Limited.
3. Pursuant to the Initial Order, the Monitor has provided services and incurred disbursements which are more particularly described in the detailed time dockets attached hereto and marked as **Exhibit "A"**.
4. The detailed time dockets attached as Exhibit "A" are a fair and accurate description of the services provided and the amounts charged by the Monitor. Additional time will be required to complete the administration of this file.
5. The Monitor requests that the Court approve its fees and disbursements for the period from August 11, 2008 to September 5, 2008 in the amount of \$26,984.82 plus GST of \$1,349.24, totalling \$28,334.06, for the services set out in **Exhibit "A"**.

- 6. The hourly billing rates set out on Exhibit "A" are comparable to the hourly rates charged by BDO Dunwoody Limited for services rendered in relation to similar proceedings.
- 7. This affidavit is sworn in support of the Monitor's motion for, among other things, approval of its fees and disbursements and those of its legal representatives and for no other or improper purpose.

SWORN BEFORE ME at the City of)
 Toronto, in the Province of Ontario, this)
 11th day of September, 2008)


 Commissioner for Taking Affidavits, etc)


 Uwe Manski FCA, FCIRP

Mark Goodfellow Chow, a Commissioner, etc.,
 Province of Ontario, for BDO Dunwoody LLP, Chartered
 Accountants and Consultants and BDO Dunwoody
 Limited, Trustee in Bankruptcy, and their subsidiaries,
 associates and affiliates. Expires July 2, 2008.

Exhibit "A"

INVOICE

The Hard Rock Group
 198 Welland St. Box 220
 Port Colborne, Ontario
 L3K 5V8

Attention: David Semley, President

Date	Client No.	Invoice No.
September 11, 2008	The Hard Rock Group	09112008

FOR PROFESSIONAL SERVICES RENDERED for the period commencing August 16, 2008 to September 5, 2008 (plus time not previously billed between August 11, 2008 and August 15, 2008) inclusive per attached detail:

Fees	\$ 26,704.00
Expenses	\$ 280.82
GST	\$ <u>1,349.24</u>
Total Due	\$ <u>28,334.06</u>
Add: Balance from Prior Invoice	\$ <u>0</u>
Balance Due	\$ <u>28,334.06</u>

G.S.T. #R101518124

Terms: Net 30 days.
 Interest at 1% per month (12.68 per annum calculated monthly) charged on accounts over 30 days

The Hard Rock Group
 Listing of Time Charges
 For the Period of August 16, 2008 and ending September 5, 2008
 [Plus time between August 11, 2008 to August 15, 2008 not previously billed]

Date	Employee	Hours	Rate	Charge	Comments
11-Aug-08	Barrett, James	0.6	110	\$66.00	Email to CM - updated AR listings and information regarding creditor calls.
12-Aug-08	Barrett, James	1.5	110	\$165.00	Emails from GW requesting copies of letter sent to truckers. Email and conversation with Ed requesting same.
12-Aug-08	Mazur, Chris	2.1	475	\$997.50	Call with Manski & Hogan, attend re issues, tdw Manski & Hogan, call with stakeholders, tdw Semley, call with stakeholders in afternoon
13-Aug-08	Mazur, Chris	0.1	475	\$47.50	Attend re creditor call
13-Aug-08	Manski, Uwe	0.5	550	\$275.00	Review, and sort accumulated emails
13-Aug-08	Barrett, James	0.3	110	\$33.00	Email to Ed requesting cash receipt info.
13-Aug-08	Barrett, James	0.3	110	\$33.00	Received email from Ed S requesting verification of deposit on June 30. Review notes and reply.
14-Aug-08	Barrett, James	0.3	110	\$33.00	Email Ed S followup as to status of letter to trucking companies and cash receipt status.
14-Aug-08	Mazur, Chris	0.2	475	\$95.00	Tdw Scepanowski re A/P and other issues.
15-Aug-08	Barrett, James	1.0	110	\$110.00	Travel time to attend site to retrieve daily cash receipts for the week.
18-Aug-08	Barrett, James	2.5	110	\$275.00	Email and telephone discussion with Ed S regrading remaining accounting tasks to be completed. Emails to Bob Berry regarding outstanding information, and to have information forwarded. Email from Ed S correspondence regarding memo circulated to trucking companies.
18-Aug-08	Manski, Uwe	1.0	550	\$550.00	Call from Tim Hogan re pending bankruptcy and receivership applications; review first draft of Monitor's Fifth report
18-Aug-08	Ponting, David	0.7	400	\$280.00	Review court report draft prepared by Tim Hogan, review status of accounting record preparation; attend to notice to stakeholders of Ritchie Bros' refusal to complete appraisal.
18-Aug-08	Whitehead, Graeme	0.5	300	\$150.00	Call w/ Ritchie Bros. to confirm Friday's voicemail message, draft email to stakeholders
19-Aug-08	Ponting, David	3.6	400	\$1,440.00	Prepare statement of receipts and disbursements to date; prepare invoice for monitor time outstanding; conference call with Tim Hogan and Uwe Manski re outstanding matters and preparation of monitors report to court; review report to court and provide comments on content; review union's claim for unpaid wage costs; review receipts to date and instruct Ed S. to remit receivables collected to date to the Monitor; review issue of GST payments made by David Semley; review salaries requested to August 21, 2008.
19-Aug-08	Manski, Uwe	3.0	550	\$1,650.00	Call with Tim Hogan re Fifth report, and with david Ponting re various open issues;- 1hr; conference call with CAT, Blakes and KPMG re receivership and bankruptcy issues - 1hr.; emails re operational issues; cash from A/R, outstanding debt to post-filing creditors, etc. -1hr.
19-Aug-08	Barrett, James	3.0	110	\$330.00	Emails from Dave requesting information; Email and telephone discussion with Ed S requesting bank rec's, trust account rec's update A/R's.
19-Aug-08	Sharp, Zachery	0.4	50	\$20.00	TCW/ Ponting RE instructions for invoicing; Emails to Ponting RE account balances and billing to date.
19-Aug-08	Smith, Teresa	0.3	125	\$37.50	Find and send bank statements to Dave Ponting.

19-Aug-08	Smith, Teresa	0.3	125	\$37.50	Print cheques on acct for retainer and CCAA.
20-Aug-08	Manski, Uwe	3.5	550	\$1,925.00	Review and amend Fifth report; finalize invoice and affidavit of fees; calls and emaild with Tim Hogan and David Ponting
21-Aug-08	Manski, Uwe	2.5	550	\$1,375.00	Finalize Monitor's Fifth report and release; review of Motion records and draft Order discharging Monitor - 1.5hrs; review of bankruptcy and receivership Orders as submitted by Blakes - 1hr;
21-Aug-08	Barrett, James	2.0	110	\$220.00	Receive email from Ed S reagrdng the update schedule of unpaid suppliers, forward to Dave Ponting for review. Email to Ed S regarding cash receipts. Assist in the review of information for the Monitors report to court. Prepare cheque requests for KPMG and BDO professional fees.
21-Aug-08	Whitehead, Graeme	0.4	300	\$120.00	TDW Ken Lund re:appraisal for CAT, draft email to Ken Lund
22-Aug-08	Ponting, David	1.1	400	\$440.00	Review of payables outstanding post May 2; review of union costs outstanding; correspond with Uwe Manski and Tim Hogan re payables post May 2.
22-Aug-08	Barrett, James	4.0	110	\$440.00	Discussion with Nick S from Town of Fort Erie regarding the final payment certificate. Discussion with Dave Ponting regarding questions from the Bonding comapny regarding payments on particualr jobs. Further discussion with Nick S regarding letter received from Bonding Company's agent as to claims on the job. Telephone discussion with Gail Winger of Winger Trucking regarding outstanding payment.
22-Aug-08	Gribben, June	0.3	125	\$37.50	TCW David Ponting and Jim Barrett, attend to preparation of trust account cheques.
22-Aug-08	Manski, Uwe	1.0	550	\$550.00	Inquiries from unpaid creditors; review of list of payables; calls re same with Tim Hogan and David Ponting.
25-Aug-08	Manski, Uwe	5.0	550	\$2,750.00	Calls and emails in preparation for upcoming Court hearing; review of bonding company's motion record, and calls with ian wallace and david Ponting re same; review of draft receivership order; issues re proposed fee of only \$10,000 for bankruptcies; emails re disagreements between GE and CAT re appraisal instructions.
25-Aug-08	Barrett, James	6.0	110	\$660.00	Assist Dave Ponting in preparation to court hearing. Required to prepare files for information.
25-Aug-08	Ponting, David	5.3	400	\$2,120.00	Prepare for Court appearance on August 26; conference call with Uwe Manski and Ian Wallace regarding issues to be discussed in Court including motion material filed by the Bonding Company; review motion material filed by Bonding Company; review trust accounts for City of Thorold and Town of Fort Erie jobs; review payables outstanding post May 2, 2008.
25-Aug-08	Whitehead, Graeme	0.4	300	\$120.00	Email to stakeholders regarding appraisal definitions, email corr. w/ Ken Lund
26-Aug-08	Ponting, David	4.8	400	\$1,920.00	Review receivership order and files for court appearance; meet with Uwe Manski and Ian Wallace prior to attending court; attend court.
26-Aug-08	Manski, Uwe	5.0	550	\$2,750.00	8am meeting with David Ponting and Ian Wallace, to get ready for Court attendance - 1hr; attendance at Court - 3.5hrs; subsequent briefing as to issues to be dealt with for Sept 23 court attendance. -.5hrs.
27-Aug-08	Manski, Uwe	1.0	550	\$550.00	Calls and emails re Order of Justice campbell of Aug. 26, collection of bank account monies, and arrangement for conference call with david semley

27-Aug-08	Barrett, James	1.0	110	\$110.00	Telephone discussion with Nick S from Town of Fort Erie seeking clarification as to who can sign on behalf of Hard Rock for the revised paymnet certificate. As well as clarification if they are to release funds to claimants.
27-Aug-08	Ponting, David	0.3	400	\$120.00	TCW Ed S. re transferring all funds on hand to the Monitor in Trust for the Company.
27-Aug-08	Whitehead, Graeme	0.2	300	\$60.00	Email corr. w/ appraiser
28-Aug-08	Ponting, David	1.9	400	\$760.00	Conference call with David Semley, Uwe Manski and Ray Slattery re outstanding matters; TCW Stewart of Brennan re collection of accounts receivable; correspond with Uwe and Ian Wallace regarding a/r collection; review 2006 Ford Expedition black book value; draft email to Stewart Valentine of Miller confirming agreement.
28-Aug-08	Manski, Uwe	1.0	550	\$550.00	Conference call with David semley, Ray Slattery and David Ponting to discuss status of accounts receivable, billings, collections, and MTO claims -.5hrs; review terms of Collection agreement with Brennan Paving, and prepare letter to customers to be provided to Brennan for collectoin purposes.
28-Aug-08	Barrett, James	1.5	110	\$165.00	Telephone discussion with Ed S regarding duties remaining who is doing them. Followup emails to determine if and when T4's will be completed
29-Aug-08	Barrett, James	0.4	110	\$44.00	Discussion with Dave POnting regarding the collection of the receivables and pick up cheque from Ed S.
29-Aug-08	Manski, Juergen	0.8	250	\$187.50	Website updated with new court report and service listing.
29-Aug-08	Manski, Uwe	0.5	550	\$275.00	Call from Winger transport, and advise David Ponting of psot-filing creditor unhappy with being unpaid. finalize letter to customers, and send to David Ponting.
29-Aug-08	Ponting, David	1.2	400	\$480.00	Correspond with Brennan re accounts receivable collections; TCW Ed S. re status of invoicing.
29-Aug-08	Whitehead, Graeme	0.3	300	\$90.00	TDW D. Ponting re appraisers to attend at site, Call to D. Semley
2-Sep-08	Whitehead, Graeme	0.4	300	\$120.00	Email to appraiser, TDW D. Semely re:tour for appraiser, note reponse, DW C. Mazur re:D. Semley's reply
2-Sep-08	Mazur, Chris	0.3	475	\$142.50	E-mails, attend re status
3-Sep-08	Mazur, Chris	0.3	475	\$142.50	E-mail, tdw bookkeeper review co's
4-Sep-08	Mazur, Chris	0.8	475	\$380.00	Tdw staff, attend re bank account, attend re payment, KPMG queries, TDw Scepanowski
5-Sep-08	Mazur, Chris	0.2	475	\$95.00	Attend re payroll-account
5-Sep-08	Whitehead, Graeme	0.2	300	\$60.00	Attend to payables to Reed Construction and Globe & Mail
8-Sep-08	Smith, Teresa	1.0	125	\$125.00	Attend to bank accounts pursuant to court order.
9-Sep-08	Smith, Teresa	0.6	125	\$75.00	Attend to bank accounts pursuant to court order.
9-Sep-08	Whitehead, Graeme	0.4	300	\$120.00	TDW unpaid post filing creditor
Time Charges				<u>\$26,704.00</u>	
15-Aug-08	Barrett, James			\$14.36	Travel to premises from Fenwick.
18-Aug-08	Postage			\$7.42	Purolator 2936 743 8891
18-Aug-08	Postage			\$7.42	Purolator 320 498 744 381
26-Aug-08	Ponting, David			\$251.62	Hotel costs for attendance at Court.
Expenses				<u>\$280.82</u>	
Total Time and Expense Charges				<u>\$26,984.82</u>	

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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

**SUPPLEMENT TO THE MONITORS
FIFTH REPORT TO COURT**

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