

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE
JUSTICE MORAWETZ

THURSDAY, THE 8TH
DAY OF OCTOBER, 2009

BETWEEN:

(Court Seal)



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 BRUCE R. SMITH LIMITED

Applicant

INITIAL ORDER

THIS APPLICATION, made by the Applicant, 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 John Henry Smith, sworn October 6, 2009 (the "Smith Affidavit") and the Exhibits thereto and the Report of the Proposed Monitor, KPMG Inc. ("KPMG"), and on hearing the submissions of counsel for the Applicant, Royal Bank of Canada ("RBC"), G.E. Canada Equipment Financing G.P. ("GE"), CIT Financial Ltd. ("CIT") and RoyNat Capital ("RoyNat") and KPMG and the submissions of such other counsel as may appear and on reading the consent of KPMG to act as the Monitor,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicant is a company to which the CCAA applies.

PLAN OF ARRANGEMENT

3. 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 Applicant and one or more classes of its secured and/or unsecured creditors as it deems appropriate.

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that the Applicant 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 (the "Property"). Subject to further Order of this Court, the Applicant shall continue to carry on business in a manner consistent with the preservation of its business (the "Business") and Property. The Applicant shall be authorized and empowered to continue to retain and employ the employees, advisors, owner operators, consultants, agents, experts, appraisers, valuers, 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.

5. THIS COURT ORDERS that the Applicant shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order to the extent that such expenses are incurred or payable by the Applicant:

- (a) all outstanding and future wages, salaries, commissions and employee benefits (including, but not limited to, employee medical, dental, disability, life insurance, and similar benefit plans or arrangements), vacation pay, bonuses and expenses payable 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;

- (b) compensation to employees in respect of any payments to employees prior to the date of this Order by way of the issuance of cheques or electronic transfers that are subsequently dishonoured due to the commencement of these proceedings; and,
- (c) the reasonable fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at its standard rates and charges, including an payments made to the Assistants prior to the date of this Order by way of the issuance of cheques or electronic transfers that are subsequently dishonoured due to the commencement of these proceedings.

6. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Applicant shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course from and 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, including the posting of letters of credit, for goods or services actually supplied to the Applicant following the date of this Order.

7. THIS COURT ORDERS that the Applicant 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 Applicant in connection with the sale of goods and services by the Applicant, 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, workers' compensation 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 Applicant.

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8. ~~THIS COURT ORDERS that until a real property lease is disclaimed or resiliated in accordance with paragraph [10(c)] of this Order, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated by the Applicant from time to time ("Rent"), for the period commencing from and including the date of this Order, bi-weekly, in advance (but not in arrears). Upon delivery of a notice of disclaimer or resiliation, the Applicant shall pay all Rent owing by the Applicant to the applicable landlord in respect of such lease due for the notice period stipulated in Section 32 of the CCAA, to the extent that Rent for such period has not already been paid.~~ (72)

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9. THIS COURT ORDERS that, except as specifically permitted herein, the Applicant is 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 Applicant to any of its creditors as of this date provided that the Applicant shall continue to make all interest payments owing to RBC, GE, CIT, Alter Moneta and RoyNat in accordance with current arrangements; (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.

RESTRUCTURING

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10. THIS COURT ORDERS that the Applicant shall, subject to such requirements as are imposed by the CCAA, have the right to:

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~~(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 \$100,000 in any one transaction or \$300,000 in the aggregate, provided that the Applicant will not dispose of equipment without the prior consent of the equipment lender or RBC with first ranking security in such equipment and provided that the proceeds of sale are paid to such equipment financier to the extent of their indebtedness secured by such equipment;~~ 9/10

(b) terminate the employment of such of its employees or lay off or temporarily or indefinitely lay off such of its employees as it deems appropriate on such terms as may be agreed upon between the Applicant and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;

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(c)

~~in accordance with paragraphs 11 and 12, with the prior consent of the Monitor, the landlord and the mortgagee of the leased premises, if any, or further Order of the Court, vacate, abandon or quit the whole but not part of any leased premises and/or disclaim or resiliate any real property lease and any ancillary agreements relating to any leased premises, in accordance with Section 32 of the CCAA, on such terms as may be agreed upon among the Applicant, such landlord and the mortgagee of the leased premises, if any, or failing such agreement, to deal with the consequences thereof in the Plan;~~ 9/10

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(d)

~~disclaim or resiliate, in whole or in part, with the prior consent of the Monitor or further Order of the Court, such of its arrangements or agreements of any nature whatsoever, whether oral or written, as the Applicant deems appropriate, in accordance with Section 32 of the CCAA, with such disclaimers or resiliations to be on such terms as may be agreed upon between the Applicant and such~~

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~~counter-parties, or failing such agreement, to deal with the consequences thereof in the Plan; and, *MM*~~

MM (c) ~~(e)~~

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

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

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~~11. THIS COURT ORDERS that the Applicant shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least fourteen (14) days' prior to the date of the intended removal. The relevant landlord and mortgagee shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord or mortgagee disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, (including mortgagees of the leased premises) such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least seven (7) days' notice to such landlord and any such secured creditors and mortgagees. If the Applicant disclaims or resiliates the lease governing such leased premises in accordance with paragraph [10(c)] of this Order, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute.~~

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~~12. THIS COURT ORDERS that if a notice of disclaimer or resiliation is delivered by the Applicant, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the relevant landlord may show the affected leased premises to prospective tenants~~

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~~during normal business hours, on giving the Applicant and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicant of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.~~

NO PROCEEDINGS AGAINST THE APPLICANT OR THE PROPERTY

13. THIS COURT ORDERS that until and including ~~November 6, 2009~~ ^{MA ✓ Oct 19, 2009 ✓}, 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 Applicant or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

14. 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 Applicant or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) exempt the Applicant 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

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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 Applicant except with the written consent of the Applicant and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

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THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicant 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 Applicant, 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 Applicant, and that the Applicant shall be entitled to the continued use of its 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 Applicant in accordance with normal payment practices of the Applicant or such other practices as may be agreed upon by the supplier or service provider and the Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

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14 17.

THIS COURT ORDERS that, notwithstanding anything else contained herein, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor any Person be under any obligation after the making of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

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THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers (or their estates) of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant 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 Applicant if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

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16 19.

THIS COURT ORDERS that the Applicant shall indemnify its respective directors and officers from all claims, costs, charges and expenses relating to the failure of the Applicant, after the date hereof, to (i) make payments of the nature referred to in subparagraphs **[5(a)]**, **[7(a)]**, **[7(b)]** and **[7(c)]**, and (ii) make payments of amounts in respect of the Applicant for which the directors and officers are statutorily liable, which they sustain or incur by reason of or in relation to their respective capacities as directors and/or officers of the Applicant 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 wilful misconduct.

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20. THIS COURT ORDERS that the directors and officers of the Applicant 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 \$250,000.00, as security for the indemnity provided in paragraph ^{[16] M} [19] of this Order. The Directors' Charge shall have the priority set out in paragraphs ^{[28] M} ^{[30] M} [31] and [33] herein.

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21. 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 Applicant's 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 with paragraph ^{[16] M} [19] of this Order.

APPOINTMENT OF MONITOR

subject to further order of this court M

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22. THIS COURT ORDERS that ^KKPMG is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property and the Applicant's conduct of the Business with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations.

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23. 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 Applicant's 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;

fl (c) ~~advise the Applicant in its development of the Plan and any amendments to the Plan;~~ *fl*

fl (d) ~~assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;~~ *fl*

fl (e) (c) have full and complete access to the Property and Business, including the premises, books, records, data, including data in electronic form, and other financial documents, to the extent that is necessary to adequately assess the business and financial affairs or to perform its duties arising under this Order;

fl (d) 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;

fl (g) ~~consider, and if deemed advisable by the Monitor, prepare a report and assessment on the Plan;~~ *fl*

fl (f) (e) assist the Applicant in pursuing offers of refinancing or sale of all or substantially all of the Business or Property; and

fl (b) perform such other duties as are required by this Order or by this Court from time to time.

fl 2) 24. THIS COURT ORDERS that the Monitor 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.

22-25. THIS COURT ORDERS that nothing herein contained shall require the Monitor 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.

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23-26. THIS COURT ORDERS that the Monitor shall provide any creditor of the Applicant with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

27.24 THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor 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 wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation

28.25 THIS COURT ORDERS that the Monitor, counsel to the Monitor, and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor, and counsel for the Applicant on a weekly basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant retainers each in the amount of \$25,000.00 to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

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, counsel to the Monitor, and the Applicant's 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 amount of \$250,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs [28] [30] [31] [32] [34] and [33] hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

21.28 THIS COURT ORDERS that the priorities of the Directors' Charge and the Administration Charge as between them, shall be as follows:

First – Administration Charge (to the maximum amount of \$250,000);

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

29 32. THIS COURT ORDERS that the filing, registration or perfection of the Directors' 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.

30 33. THIS COURT ORDERS that each of the Directors' 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.

31 34. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Directors' Charge or the Administration Charge, unless the Applicant also obtains the prior written consent of the Monitor, the beneficiaries of the Directors' Charge and the Administration Charge, or further Order of this Court.

32 35. THIS COURT ORDERS that the Directors' 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") 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 Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not be deemed to constitute a breach by the Applicant of any Agreement to which they are parties;
- (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 Applicant agreeing to the creation of the Charges; and
- (c) the payments made by the Applicant 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.

SERVICE AND NOTICE

33 ~~35~~ THIS COURT ORDERS that the Applicant or the Monitor shall, (i) without delay, publish a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly

33 ~~35~~ This Court orders that a further hearing of this Application shall be held on Friday, October 16, 2009 at which time this Order may be supplemented or otherwise varied, and the Stay Period (as defined herein) extended or terminated. The Applicant and the Monitor shall serve ~~its~~ ^{their} materials for this further hearing on all parties.

who delivered a Notice of appearance ^{to all secured creditors of all unsecured}
such materials to be served on ^A by no later than noon on
October 14, 2009. ^{AS}

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~~available in the prescribed manner, all in accordance with Section 23(1)(a)(ii)(C) of the CCAA
and the regulations made thereunder.~~ ^{AS}

34 ~~37.~~ THIS COURT ORDERS that the Applicant 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 Applicant's creditors or other interested parties at their
respective addresses as last shown on the records of the Applicant 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.

35 ~~38.~~ THIS COURT ORDERS that the Applicant, 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.kpmg.ca/BruceR.Smith.

GENERAL

36 ~~39.~~ THIS COURT ORDERS that the Applicant 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.

37 ~~40.~~ 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
Applicant, the Business or the Property.

38 ~~41.~~ 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 Applicant, 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 Applicant 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 Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

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42. THIS COURT ORDERS that the Applicant 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.

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43. THIS COURT ORDERS that any interested party (including the Applicant 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.

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~~44. 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.~~

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✓ This Court Orders that the provisions of paragraphs 28 and 30 of this Order are currently effective as against the respective interests of RBC, GE, RoyNat and CIT. ✓



(Signature of Judge)

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

RCP-E 59A (July 1, 2007)

OCT 08 2009

PER / PAR: IV

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF BRUCE R. SMITH LIMITED
Applicant**

Court File No. 09-8339-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
PROCEEDING COMMENCED AT
TORONTO**

INITIAL ORDER

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Lawyers for the Applicant

RCP-E 4D (July 1, 2007)