

Court File No 09-8399-00CL

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 BRUCE R. SMITH LIMITED**

**FIRST REPORT OF THE MONITOR KPMG INC.,
AS AMENDED**

October 15, 2009

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I. Introduction

On October 8, 2009 Bruce R. Smith Limited (“BRS” or the “Company”) filed an application with the Court under the Companies’ Creditors Arrangement Act (“CCAA”). The Ontario Superior Court of Justice [Commercial List], (the “**Court**”) granted an order (the “**Initial Order**”) which, *inter alia*, appointed KPMG Inc. as Monitor of BRS (the “**Monitor**”) and provided a stay of proceedings against BRS. As set out in the Initial Order, the stay of proceedings expires on October 19, 2009.

This report is the Monitor’s amended first report (the “Amended First Report”) to the Court and is intended to provide information pertaining to:

- The status of BRS’ operations;
- The activities of the Monitor since its appointment;
- Seeking this Court’s approval of the substitution of The Fuller Landau Group Inc. (“FLG”) as Monitor; and,
- Seeking this Court’s approval of the Monitor’s activities as described in this report and discharging KPMG Inc. as the Monitor.

This report has been amended to address the concerns raised by counsel for the Office of the Superintendent of Bankruptcy (“OSB”) with respect to the Monitor’s requirements to provide notice of the CCAA filing with the OSB. This amendment appears in the initial paragraph in Section III, “Monitor’s Activities”.

II. Status of BRS' Operations

Immediately after the granting of the Initial Order, BRS contacted its major customers to inform them of the filing and to solicit their continued support for the Company. The majority of customers have expressed their support and intention to continue to engage the Company's services. However, three major customers have temporarily withheld their business from BRS citing concerns with the impact of the filing on BRS' ability to carry on its business without interruption. The Company, the Company's counsel and the Monitor have all communicated with these customers in an attempt to reassure them that the filing will not interrupt service and that BRS is more stable under the CCAA order.

The Company has informed its employees, both directly and through a Company wide email communication, of the CCAA filing, the status of the Company and the need to continue to provide the excellent service the customers have come to expect from BRS. The Company has obtained the ongoing support of the employees and the Company's union.

The Company has also issued a press release to help reduce damaging rumours and inaccurate information that may be circulated in the industry and among the Company's customers and suppliers.

The Company has also been in contact with the majority of its major suppliers to inform them of the effect of the Initial Order including: the stay imposed; the need to continue supply without interruption; to discuss trade terms and the need to maintain pricing at pre-filing levels; and, the status of their pre-filing claim. The majority of suppliers understood the need to continue supply, to continue with pre-filing pricing and the cut off of invoicing as at the filing date. The majority of suppliers fully support BRS' efforts to restructure. However, as is typical at the beginning of a filing, there were attempts by certain suppliers to extract payment for outstanding pre-filing invoices. However, the Company and the Monitor have dealt with and continue to deal with these situations as they arise.

As required by the Court, the Company contacted Volvo Financial Services ("Volvo") before 5 p.m. on Friday October 9, 2009 to make arrangements to return the remaining tractors that are subject to Volvo's security. Both parties agreed to allow the Company to return the tractors by Friday October 16, 2009 without the need of bailiffs. The Company has several idle tractors available to replace the Volvo tractors. However, at the time of

the making of this report the Ministry of Transportation of Ontario (“MTO”) had not yet reinstated BRS’ ability to transfer licenses among its fleet making it impossible for BRS to redeploy the licenses on the Volvo tractors to the replacement tractors. This may cause a delay in the return of the Volvo tractors as BRS must continue to service its clients. The Monitor has communicated with the MTO and provided them with a copy of the Initial Order.

III. Monitor's Activities

As ordered by the Court, the Monitor has not issued the Notice to Creditors, or caused the publishing of the Notice of the CCAA in the newspaper pending a further order of the Court with respect to the appointment of the Monitor under these proceedings. However, the Monitor has complied with paragraphs 23(1)(f) and (j) of the CCAA with respect to providing notice to the Office of the Superintendent of Bankruptcy; and, the substituted monitor, if appointed by the Court, will comply with paragraph 23(1)(a) re: providing the Notice to Creditors.

The Monitor has continued to keep the Royal Bank of Canada ("RBC") informed as to the status of various issues affecting BRS' operating line including: drawings on certain letters of credit; the Company's operating receipts and disbursements; the possible need for interim financing; and, the issuance of new letters of credit. RBC continues to be supportive of the Company's restructuring efforts.

The Monitor's main focus since its appointment has been to work with the Company to help stabilize its operations. The Monitor has been working with the Company to inform major suppliers and secured creditors of the stay imposed under the CCAA and the Company's need to obtain ongoing supply. The Monitor has also been helping creditors, suppliers, customers and employees to understand the CCAA process and that the Company is continuing to operate and service its customers with the intention of filing a plan of compromise or arrangement with its creditors as soon as practicable.

The Monitor has been in contact with representatives of Volvo to assist the Company with making arrangements to return the tractors subject to Volvo's security. The Company and Volvo agreed to have all of the remaining tractors returned by Friday October 16, 2009.

The Monitor has also had continuing discussions with each of the secured creditors who were not served with the initial CCAA application to explain to them: the status of BRS; the effect of the Initial Order; the status of KPMG Inc. as Monitor; and, the motion scheduled for Friday, October 16, 2009.

IV. Monitor's Substitution

As previously disclosed, KPMG LLP is the auditor of BRS. The new amendments to the CCAA preclude the auditor from being the Monitor of an audit client except with the permission of the Court. Understandably, the Court was not willing to grant the exception without thorough analysis and deliberation on the issue. However, the Court did appoint KPMG Inc. as Monitor under the Initial Order and required the matter to be brought before the Court again during the motion scheduled for October 16, 2009 for final determination.

Based on the advice of counsel, BRS has determined that it is in the best interest of all stakeholders that KPMG Inc. be substituted as Monitor by a firm completely independent from BRS. Accordingly, BRS is requesting that FLG substitute KPMG Inc. as Monitor. Both G.E. Canada Equipment Finance G.P. and RBC, BRS' two largest creditors, support the appointment of FLG. BRS intends to continue to retain KPMG Inc. as its financial advisor during the CCAA process. KPMG Inc. fully supports BRS' decision to substitute FLG as Monitor.

V. Order Sought

This report is filed in support of an application by Bruce R. Smith Limited for an Order pursuant to the CCAA for *inter alia*:

- a) approving the activities of the Monitor as described in this Amended First Report;
- b) approving the substitution of FLG as Monitor; and,
- c) discharging KPMG Inc. as Monitor of the Company in this proceeding.

This Amended First Report of the Monitor is respectfully submitted this 15th day of October 2009.

KPMG INC.
COURT APPOINTED MONITOR OF
BRUCE R. SMITH LIMITED



Per: Kevin J. Treacy
Senior Vice President