

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE)

MISTER JUSTICE GROUND)

TUESDAY, THE 11th DAY

OF OCTOBER, 2005

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 186 OF THE *BUSINESS CORPORATIONS ACT* (ONTARIO), R.S.O. 1990, C. B-16, AS AMENDED, BY THE BEVERLY GROUP LIMITED AND AN APPLICATION PURSUANT TO SECTION 182 OF THE *BUSINESS CORPORATIONS ACT* (ONTARIO), R.S.O. 1990, C. B-16, AS AMENDED, BY THE BEVERLY GROUP LIMITED, THE BEVERLY GROUP INC., BEVERLY TIRE (COMMERCIAL) INC., BEVERLY TIRE (RETAIL) INC., BEVERLY TIRE (DUNDAS) INC., BEVERLY TIRE (MOUNTAIN) INC., BEVERLY TIRE (WATERDOWN) INC., BEVERLY TIRE (DISTRIBUTION) INC., BEVERLY TIRE (OFF ROAD) INC., BEVERLY TIRE (CAMBRIDGE RETREADING) INC., BEVERLY TIRE (CONCORDE) INC., RIDGE MOUNT PROPERTIES LIMITED, 1374362 ONTARIO INC., AND 1667787 ONTARIO INC., APPLICANTS

REORGANIZATION APPROVAL ORDER

THIS APPLICATION, made by The Beverly Group Limited (the "Applicant") for an Order pursuant to Section 186 of the *Business Corporations Act (Ontario)*, R.S.O. 1990, c. B-16, as amended (the "OBCA"), approving a proposed reorganization ("Reorganization") involving the Applicant was heard this day at 393 University Avenue, Toronto, Ontario.

UPON READING the Notice of Application, the Affidavit of G. William Streeter sworn September 29, 2005, the Report of Mintz & Partners Limited (the "Trustee") dated September 28, 2005, and upon hearing the submissions of counsel for the Applicant, the Trustee and Goodyear Canada Inc. no other parties appearing.

AND UPON READING the Order of this Court dated October 11, 2005 in Court File Number 05-CL-6098 approving the proposal, including all schedules thereto (the "Proposal") made by the Applicant to certain of its creditors under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended.

1. THIS COURT ORDERS that capitalized terms not otherwise defined in this Order shall have the meanings ascribed to them in the Proposal, attached hereto as Schedule "A".

2. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged if necessary so that the application is properly returnable today, and further, that any requirement for any further service of the Notice of Application and the Application Record is hereby dispensed with.

3. THIS COURT ORDERS that the transactions involving the share structure of the Applicant, as detailed in the Proposal, including without limitation the Recapitalization Steps set out in Schedule "A" thereto, are hereby approved.

4. THIS COURT ORDERS that the Reorganization, as described in the articles of reorganization in the form attached hereto as Schedule "B" (the "Articles of Reorganization"), is fair and reasonable and is hereby approved and sanctioned pursuant to Section 186 of the OBCA.

5. THIS COURT ORDERS that the Reorganization shall be effective: (i) on the filing of a certificate by the Trustee with this Court stating that all of the conditions precedent to the implementation of the Proposal have been satisfied or, where applicable, waived; and (ii) in the sequential order contemplated in the Proposal and in the Articles of Reorganization, as applicable.

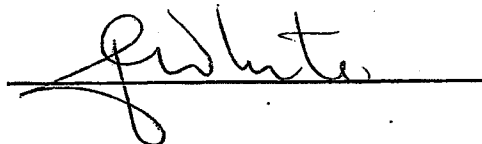
6. THIS COURT ORDERS that the Applicant is authorized, in the sequential order set out in the Proposal, including the Recapitalization Steps attached as Schedule "A" to the Proposal, to take all actions necessary or appropriate to enter into, adopt, execute, deliver, implement and consummate the transactions, contracts, instruments, releases and all other agreements or documents to be created or which are to come into effect in connection with the Proposal and to complete all of the transactions set out in the Proposal, and such actions are hereby approved, in all respects and for all purposes, without any requirement of further action by shareholders, directors or officers of the Applicant. Further, to the extent not previously given, any and all necessary approvals to take such actions shall be deemed to have been obtained from the relevant directors or the shareholders of the Applicant, as applicable, including

the deemed passing by any class of shareholders of any resolution or special resolution if necessary.

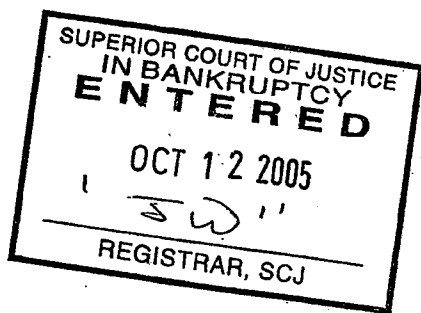
7. THIS COURT ORDERS AND DECLARES that none of the transactions contemplated to be performed or effected pursuant to the Proposal, including, without limitation, the Recapitalization Steps set out in Schedule "A" thereto, result in a preference, fraudulent conveyance, settlement or reviewable transaction or otherwise give rise to the ability of any person to challenge the payment of money or the issuance of Shares to any person pursuant to the Proposal or give rise to the ability of any person to challenge or unwind such transactions in the event of a subsequent bankruptcy of the Company or Amalco.

8. THIS COURT ORDERS that this Order shall have full force and effect in all provinces and territories in Canada and abroad and as against all Persons against whom it may otherwise be enforceable.

9. THIS COURT ORDERS AND REQUESTS the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court or any judicial, regulatory or administrative body of the United States of America and the states or other subdivisions of the United States of America and of any nation or state to act in aid of and to be complementary to this Court in carrying out the terms of this Order.



JOAN WHITE
REGISTRAR



SCHEDULE "A"

In the Matter of the Proposal Of The Beverly Group Limited,
a Corporation Duly Incorporated Under the Laws of the Province Of Ontario,
of the Town of Flamborough, in the Province Of Ontario

PROPOSAL

The Beverly Group Limited hereby submits the following proposal under Part III, Division I of the *Bankruptcy and Insolvency Act* (Canada).

ARTICLE I DEFINITIONS

1.01 Definitions

In this Proposal:

"Act" means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, B-31 as amended;

"Administrative Fees and Expenses" means:

- (a) all proper fees and expenses of the Trustee incurred both before and after the filing by the Debtor of this Proposal pursuant to the Act; and
- (b) all reasonable legal fees and disbursements of the Debtor and the Trustee that are incidental to any proceedings relating to or arising out of the Proposal, the preparation of the Proposal and negotiations in connection therewith, the performance by the Debtor of its obligations hereunder, and advice to the Debtor with respect thereto;

"Affected Claims" means Unsecured Claims, Preferred Claims and the Claims of the Affected Secured Creditor which are affected by this Proposal;

"Affected Creditors" means the Affected Secured Creditor, the Preferred Creditors and the Unsecured Creditors, in such capacities;

"Affected Secured Creditor" means Goodyear, with respect to and to the extent of its Claims which are affected by this Proposal;

"Affected Secured Creditor's Remaining Secured Claims" means the balance of the Affected Secured Creditor's Affected Claims after deducting the \$5.8 million amount of the Affected Claims which are to be treated as Unsecured Claims and which, for greater certainty shall remain as Secured Claims and shall be unaffected by this Proposal save and except as set out in Section 4.01(b) and shall include any additional amounts which become payable to the Affected Creditor by the Debtor or Amalco after the Filing Date;

"Amalco" means the corporation to be formed pursuant to step 4 of the Recapitalization Steps;

"Amalco Distress Preferred Shares" means the class of preferred shares in the capital of Amalco which are to be issued to Unsecured Creditors and the Affected Secured Creditor pursuant to this Proposal, each such share to be issued with an initial stated capital and redemption amount of \$1.00;

"Amalgamating Entities" means Newco, BGI, the Debtor, Ridge Mount Properties Limited, Beverly Tire (Commercial) Inc., Beverly Tire (Retail) Inc., Beverly Tire (Dundas) Inc., Beverly Tire (Mountain) Inc., Beverly Tire (Waterdown) Inc., Beverly Tire (Distribution) Inc., Beverly Tire (Off Road) Inc., Beverly Tire (Cambridge Retreading) Inc., Beverly Tire (Concorde) Inc., and 1374362 Ontario Inc.;

"Arrangement" means an arrangement with respect to the Debtor pursuant to Section 182 of the OBCA, for which approval of the Court will be sought on the Court Approval Date;

"BensonCo" means Benson Group Inc.

"BGI" means The Beverly Group Inc.

"Claim" means any right or claim of any Person against the Debtor in connection with any indebtedness, liability or obligation of any kind of the Debtor in existence on the Filing Date (or which has arisen after the Filing Date as a result of the termination or repudiation by the Debtor on or prior to the Filing Date of any lease or executory contract (other than a collective bargaining agreement)), and any interest accrued thereon to and including the Filing Date, whether liquidated, unliquidated, fixed, contingent, absolute, matured, unmatured, disputed, undisputed, asserted, unasserted, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise, whether or not reduced to judgment, and whether or not such right is executory in nature including the right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future based in whole or in part on facts, events or matters which exist or occurred on or before the Filing Date.

"Court" means the Ontario Superior Court of Justice (Commercial List);

"Court Approval Date" means the date upon which the Court makes an order approving this Proposal;

"Current Source Deductions" means all amounts of a kind that could be subject to a demand under subsection 224(1.2) of the *Income Tax Act* (Canada) or any substantially similar provision of the laws of any Province of Canada and that become payable after the Filing Date;

"Debtor" means The Beverly Group Limited;

"Effective Date" shall mean the date on which the transactions and agreements provided for in this Proposal, including the Recapitalization Steps set out in Schedule "A" hereto, become effective, which shall be the date on which the certificate of the Trustee referenced in Section 2.02 is filed with the Court;

"Election Date" means September 12, 2005;

"Election to Receive Cash" means the form to be provided by an Unsecured Creditor who elects to receive cash in respect of its Unsecured Claims pursuant to Section 4.03(a) hereof, substantially in the form set out in Schedule "C" hereto;

"Equipment Lease" means any lease of equipment to the Debtor, including without limitation, computer equipment, photocopying equipment, motor vehicles, furniture or tangible personal property, other than inventory, regardless of whether such leases are true leases or financing arrangements;

"Filing Date" means August 25, 2005, being the date upon which this Proposal was filed by the Debtor with the Official Receiver;

"Goodyear" means Goodyear Canada Inc.;

"Inspector" means any inspector appointed pursuant to Section 6.01 hereof;

"Intercompany Claim" means a Claim of any of the Amalgamating Entities against any one or more of the other Amalgamating Entities;

"Legislation" means Section 224(1.2) of the *Income Tax Act* (Canada), the Canada Pension Plan, or the Employment Insurance Act and any provisions of any provincial legislation that is similar in nature to any of the foregoing;

"Newco" means 1667787 Ontario Inc., a wholly-owned subsidiary of BensonCo;

"OBCA" means the *Business Corporations Act* (Ontario), R.S.O. 1990, c.B.16 (ON), as amended;

"Past Source Deductions" means all amounts of a kind that could be subject to a demand under subsection 224(1.2) of the *Income Tax Act* (Canada) or any substantially similar provision of the laws of any Province of Canada and that were payable as at the Filing Date but had not been paid on or prior to the Filing Date;

"Person" means any individual, sole proprietorship, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, Governmental Authority and a natural person in such person's capacity as trustee, executor, administrator or other legal representative;

"Preferred Claim" means a Claim enumerated in Section 136(1) of the Act;

"Preferred Creditor" means the holder of a Preferred Claim in such capacity;

"Proposal" means this Proposal of the Debtor, as may be amended or altered in accordance with the terms hereof;

"Proposal Fund" means the fund created pursuant to and described in Article V of this Proposal;

"Recapitalization Steps" means the steps and transactions set out in Schedule "A" to this Proposal;

"Reorganization" means the reorganization of the Debtor pursuant to Section 186 of the OBCA, for which approval of the Court will be sought on the Court Approval Date;

"Secured Claims" means all Claims which are secured by a mortgage, charge, lien, hypothec or other security validly charging or encumbering assets of the Debtor (including statutory and possessory liens and Equipment Leases which create security interests);

"Secured Creditors" means a creditor holding a Secured Claim with respect to, and to the extent of, such Secured Claim;

"Superintendent's Levy" means the levy payable to Superintendent of Bankruptcy pursuant to Section 147 of the Act;

"Trustee" means Mintz & Partners Limited, in its capacity as trustee in respect of this Proposal;

"Unaffected Claim" means any Claim other than an Affected Claim;

"Unaffected Creditor" means a creditor holding an Unaffected Claim, with respect to, and to the extent of such Unaffected Claim and, for greater certainty, includes Congress Financial Corporation (Canada);

"Unsecured Claim" means any Claim, other than a Claim:

- (a) in respect of Current Source Deductions;
- (b) in respect of Past Source Deductions;
- (c) in respect of Administrative Fees and Expenses;
- (d) that is a Secured Claim other than a claim of a deficiency, if any, suffered by such Secured Creditor upon realization of its security; or
- (e) that is a Preferred Claim;

"Unsecured Creditor" means a creditor holding an Unsecured Claim, with respect to, and to the extent of such Unsecured Claim.

ARTICLE II

CONDITIONS PRECEDENT AND TRUSTEE'S CERTIFICATE

2.01 Conditions Precedent

The implementation of this Proposal shall be conditional upon the fulfillment of all of the following conditions:

- (a) The Proposal shall be approved by the Affected Creditors in accordance with the Act;
- (b) The Proposal, the Reorganization and Arrangement shall be approved by the Court and all appeal periods with respect to the approval orders shall have expired or the Debtor shall have decided to implement and complete the Proposal prior to the expiry of such appeal periods;
- (c) Shareholder approval of the Arrangement shall have been obtained; and
- (d) Each of the Recapitalization Steps set out in Schedule "A" to this Proposal shall be capable of being completed at the times or in the sequence set out therein and the documentation for the transactions contemplated thereby must be executed and delivered irrevocably in escrow on or prior to the Effective Date.

2.02 Trustee's Certificate

Upon the satisfaction (or, where applicable, waiver) of the conditions set out in Section 2.01, the Trustee shall file with the Court a certificate which states that all conditions precedent set out in Section 2.01 of this Proposal have been satisfied, and that the Effective Date has occurred. In so certifying that the conditions precedent set out in Section 2.01 of this Proposal have been satisfied, the Trustee shall be entitled to rely upon certificates, representations and confirmations from the Debtor or any director or officer thereof and the Trustee shall incur no liability in connection with its reliance thereon.

ARTICLE III CLASSES OF CREDITORS

3.01 Classes of Creditors

There shall be two classes of Creditors for the purpose of voting on the Proposal, as follows:

- Class 1: The Affected Secured Creditor in respect of the portion of its Claims that shall continue to remain as Secured Claims pursuant to this Proposal
- Class 2: All Unsecured Creditors and all Preferred Creditors of the Debtor to the extent of their Unsecured Claims and Preferred Claims and the Affected Secured Creditor with respect to the \$5,800,000 amount of its Claims that are to be treated as Unsecured Claims pursuant to this Proposal.