

**ONTARIO
SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST**

BETWEEN:

MORRIS J. WAXMAN

Applicant

-AND-

CHESTER WAXMAN, BAILEY WAXMAN, AARON WAXMAN, WAXMAN INDUSTRIAL
SERVICES CORP., WARREN WAXMAN, AND I. WAXMAN & SONS LIMITED

Respondents

APPLICATION UNDER SECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT,
R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O.
1990, c. C.43, AS AMENDED

**FIFTH REPORT OF DELOITTE & TOUCHE INC.
IN ITS CAPACITY AS RECEIVER OF
I. WAXMAN & SONS LIMITED**

February 3, 2011

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EXHIBITS

- EXHIBIT “A” - Receivership Order dated March 26, 2007
- EXHIBIT “B” - First Report of the Receiver dated April 19, 2007
- EXHIBIT “C” - April 25, 2007 Order
- EXHIBIT “D” - Second Report of the Receiver dated June 13, 2007
- EXHIBIT “E” - June 19, 2007 Order
- EXHIBIT “F-1” - Third Report of the Receiver dated August 9, 2007
- EXHIBIT “F-2” - Supplement to the Third Report dated August 20, 2007
- EXHIBIT “G” - August 14, 2007 Order
- EXHIBIT “H” - August 21, 2007 Order
- EXHIBIT “I” - Second Supplement to the Third Report dated August 22, 2007
- EXHIBIT “J” – September 4, 2007 Bankruptcy Order
- EXHIBIT “K” - Fourth Report of the Receiver dated June 9, 2008
- EXHIBIT “L” - May 19, 2009 Order
- EXHIBIT “M” - Receiver’s Final Statement of Receipts and Disbursements
- EXHIBIT “N” - Affidavit of Brenda Wong re: fees of the Receiver
- EXHIBIT “O” - Affidavit of Mario Forte re: fees of Ogilvy Renault LLP

Introduction

1. This report is the Receiver's fifth report (the "**Fifth Report**") to the Ontario Superior Court of Justice (Commercial List) (the "**Court**").
2. This Fifth Report is filed by Deloitte & Touche Inc. ("**Deloitte**"), in its capacity as Receiver pursuant to sections 207 and 248 of the *Business Corporations Act* (Ontario) R.S. 199, c. B 16, as amended, and section 101 of the *Courts of Justice Act*, R.S.O. 1990 c C.43, as amended (the "**Receiver**"), without security, of all the assets, undertaking and properties of I. Waxman & Sons Limited ("**IWS**" or the "**Company**").
3. On March 26, 2007, Morris Waxman ("**Morris**") made a motion for an Order appointing Deloitte as Receiver (the "**Receivership Order**"). A copy of the Receivership Order is attached hereto as Exhibit "**A**".
4. The Receiver's First Report dated April 19, 2007 (the "**First Report**") outlined, among other things, the Receiver's marketing and sales process for the assets of IWS (the "**Sales Process**"). A copy of the First Report (without exhibits) is attached as Exhibit "**B**".
5. On April 25, 2007, the Receiver sought and obtained an Order authorizing the Receiver to dispose of certain marketable securities and to include the property located at 75 Windermere Road, Hamilton ("**Windermere Property**") among the assets offered for sale pursuant to the Sales Process outlined in the First Report ("**April 25 Order**"). A copy of the April 25 Order is attached as Exhibit "**C**".
6. The Receiver's Second Report dated June 13, 2007 detailed the results of the Sales Process (the "**Second Report**"). A copy of the Second Report (without exhibits) is attached as Exhibit "**D**".
7. On June 19, 2007, the Receiver sought and obtained an Order authorizing the sale of the scrap inventory, fixed assets and the Windermere Property to American Iron & Metal Company Inc. ("**June 19 Order**"). A copy of the June 19 Order (without schedules) is attached as Exhibit "**E**".
8. The Receiver's Third Report dated August 9, 2007, and the Supplement to the Third Report, dated August 20, 2007 (collectively the "**Third Reports**") focused on the allocation of proceeds and costs from the pre-receivership sale of the property located at 480-500 Centennial Parkway, Hamilton (the "**Centennial Property**") and the Windermere Property. The allocation issue involved the interests of the IWS estate, Morriston Investments Limited ("**Morriston**"),

Chesterton Investments Limited (“**Chesterton**”) and Lightning Distribution Inc. (“**Lightning**”). A copy of the Third Reports (without exhibits) is attached as Exhibits “**F-1**” and “**F-2**”.

9. On August 14, 2007, the Receiver obtained an Order authorizing the initial distribution of approximately \$1.7 million to Morriston (the “**August 14 Order**”). A copy of the August 14 Order is attached as Exhibit “**G**”.
10. On August 21, 2007, the Receiver obtained an Order that finalized the allocation of proceeds and costs between Morriston, Chesterton, Lightning and the estate of IWS (the “**August 21 Order**”). The August 21 Order authorized the Receiver to recover \$474,045 from the sale of the Centennial Property and \$294,927 from the sale of the Windermere Property for selling and caretaking costs. In addition, the August 21 Order authorized the Receiver to retain \$9,725,949 as IWS’s entitlement to sales proceeds from the sale of the Centennial Property, and directed the Receiver to hold in trust net proceeds from the sale of the Centennial Property and the Windermere Property owing to Chesterton and Lightning pending further order of the Court. A copy of the August 21 Order is attached as Exhibit “**H**”.
11. In the Second Supplement to the Third Report dated August 22, 2007, the Receiver provided the Court with an update on the above real estate cost allocation and furthermore updated the Court on IWS’ net asset base and creditors (“**Second Supplement to the Third Report**”). The purpose of the Second Supplement to the Third Report was to request the Court’s authorization for the Receiver to consent to the bankruptcy order in respect of IWS due to the estimated shortfall to IWS’s creditors of approximately \$22.2 million. A copy of the Second Supplement to the Third Report (without exhibits) is attached as Exhibit “**I**”.
12. On September 4, 2007, a Bankruptcy Order was issued by the Court upon the application of Solid Waste Reclamation Inc. (“**SWR**”) and the consent of the Receiver (“**Bankruptcy Order**”). A copy of the Bankruptcy Order in which Deloitte & Touche Inc. is appointed as Trustee in Bankruptcy (“**Trustee**”) is attached as Exhibit “**J**”.
13. In the Receiver’s Fourth Report to the Court dated June 9, 2008 (the “**Fourth Report**”), the Receiver updated the Court on the sale of the Centennial and Windermere properties, the Receiver’s retention of the portion of the proceeds payable to Chesterton, and competing claims to these Chesterton proceeds. A copy of the Fourth Report (without appendices) is attached as Exhibit “**K**”.
14. All amounts in this Fifth Report are reported in Canadian dollars (“**CAD**”) unless otherwise noted.

Purpose of Report

15. The purpose of this Fifth Report of the Receiver is to:
 - a) Provide the Court with a report on the activities of the Receiver since the date of the Fourth Report;
 - b) Request that the Court approve the activities of the Receiver to date, as described in this Fifth Report, and the Receiver's fees and costs, including those of its legal counsel, Ogilvy Renault LLP ("Ogilvy"); and
 - c) Request that the Court discharge the Receiver.

Background on IWS Receivership

16. IWS was a private corporation that carried on business as a scrap metal processor and broker at 75 Windermere Road, Hamilton.
17. IWS was incorporated on December 21, 1956; however its predecessor company was founded by Isaac Waxman in 1911. Morris and Chester Waxman ("**Chester**"), the sons of Isaac, began working for the predecessor company in the 1940's and by the mid-1960's had together grown IWS into a thriving scrap metal business with entrenched relationships with marquee suppliers and customers in the heart of Canada's steel producing region.
18. In December 1983, Morris signed a variety of documents that effected the sale and transfer of his 50% ownership interest in IWS to his brother Chester. Based on the findings of the Court, it was determined that Morris was unaware that his shares were sold to Chester. When Morris became aware of the sale of these shares, he sought to privately undo the transaction through direct negotiations and discussion with Chester during the period 1984 to mid-1988.
19. In late 1988, Morris determined that these discussions had reached an impasse and on November 18, 1988, Morris et al filed a Statement of Claim against Chester et al regarding the terms and conditions of the sale of Morris' IWS shares in December 1983. At this same time, Morris did not continue in a management capacity with IWS and the management of the Company was assumed by Chester along with his sons Warren Waxman, Gary Waxman and Robert Waxman.

20. This litigation continued for several years and in June 2002, the Ontario Superior Court of Justice issued its Judgment and Reasons for Decision in favour of Morris. The Decision held, among other items, that Chester had held Morris' 50% shares in IWS in constructive trust for Morris since December 1983.
21. As a result of the Decision, Morris and Chester held discussions with respect to the compensation of Morris; however, these discussions ultimately reached an impasse and on September 1, 2005, the Honourable Mr. Justice Farley issued an Order that all the operating assets of the Company be sold, including the Centennial Property and the Windermere Property ("**September 2005 Order**").
22. In order to facilitate the sale of IWS, the September 2005 Order included the appointment of Deloitte & Touche Corporate Finance Canada Inc. as the court-appointed Marketing Agent (the "**Marketing Agent**").
23. The Marketing Agent was successful in marketing and selling the Centennial Property prior to the appointment of the Receiver. As it related to IWS's remaining assets located at the Windermere Property, the Marketing Agent undertook an exhaustive marketing and sales process and advised the Court that the sales process had not resulted in identifying a purchaser that ascribed a value to the assets that was above the estimated liquidation value. The Marketing Agent concluded in its Fourth Report to the Court dated February 27, 2007 that there should be a liquidation of IWS's remaining assets.
24. By Order of the Court dated March 26, 2007, Deloitte & Touche Inc. was appointed as the Receiver of all of the assets, properties and undertakings of IWS. The Receiver discussed the conclusions of the Marketing Agent with both Morris and Chester and both parties agreed to proceed on an expedited sales process to liquidate the Company's remaining assets.

Activities of the Receiver

25. The past activities of the Receiver are outlined in the Receiver's previous reports to the Court. All of IWS's assets were realized upon as at the date of the Fourth Report. Since the date of the Fourth Report, the activities of the Receiver have mainly focused on the final settlement and allocation of funds in its possession relating to the interests of Morris, Chester and the IWS estate. The Receiver has also dealt with various administrative matters discussed below.

Final Settlement and Allocation of Funds held in trust by the Receiver

- 26. Pursuant to the August 21 Order, the Receiver was authorized to hold in trust the portion of the sale proceeds payable to Chesterton and Lightning relating to the sale of the Centennial Property and Windermere Property.
- 27. In May 2008, Morris, Shirley Waxman, Michael Waxman, Douglas Waxman, Morriston and SWR (collectively the “**Morris Parties**”) reached an agreement to settle all outstanding disputes (the “**Global Settlement**”) with any and all of Chester, Bailey Waxman, Debra Waxman, Justin Waxman, Chesterton, CHW Holdings Inc., The Chester Waxman Family Trust, Lightning and the beneficiaries of the Trust (collectively the “**Chester Parties**”).
- 28. The terms of the Global Settlement included, among other items, the following;
 - the Chester Parties would release to the Morris Parties their share of the sales proceeds from the Centennial Property and Windermere Property held in trust by the Receiver; and
 - Lightning would release to the IWS estate the sale proceeds of the Centennial Property owing to Lightning held in trust by the Receiver.
- 29. On May 19, 2009, this Honourable Court issued an order granting judgment in accordance with the terms of the Global Settlement (the “**May 19 Order**”). A copy of the May 19 Order is attached at Exhibit “**L**”.
- 30. The final allocations of the Centennial Property and Windermere Property were as follows;

Centennial Property – Final Allocation

	Cash on hand	Allocated to IWS	Allocated to Morris Waxman
Chesterton share	\$ 2,512,611	\$ 493,147	\$ 2,019,464
Lightning share	1,164,778	1,164,778	
Less: Amounts already distributed to Morris	(105,000)		(105,000)
Total funds in Centennial account	\$ 3,572,389	\$ 1,657,925	\$ 1,914,464

Windermere Property – Final Allocation

	Cash on hand	Allocated to IWS	Allocated to Morris Waxman
Chesterton share	\$ 1,915,775	\$ 376,006	\$ 1,539,769
Morris Waxman share	26,217		26,217
Total funds in Windermere account	\$ 1,941,992	\$ 376,006	\$ 1,565,986

31. The funds that were allocated to IWS, as per the above summaries, were transferred by the Receiver to the Trustee to be made available for distribution to the unsecured creditors.
32. The amount of \$26,217 was an amount allocated to Morris by the Receiver for his interest in the Windermere Property, but at the time of the final allocation, Chester asserted a claim to the \$26,217 for historical damages owing to Chester by Morris. The Receiver held this amount in a separate trust pending final resolution, which was achieved with the Global Settlement. This amount was subsequently remitted to Morris by the Receiver.
33. In February 2008, the amount of \$25,000 from the Chesterton share of the Windermere proceeds was paid into Court by the Receiver as security for costs of an appeal by Chester. Of this amount, \$10,000 was owed directly to Morris as costs of the appeal, and the balance of \$15,000 was payable to Morris as part of the Global Settlement.

Other Administrative Matters

34. Since the date of the Fourth Report, the Receiver has also dealt with various administrative matters including:
- (i) Collection of miscellaneous accounts receivable;
 - (ii) The receivership and bankruptcy estates combined were owed GST refunds in excess of \$81,000 as of August 31, 2010. As IWS owed Canada Revenue Agency (“CRA”) for pre-receivership corporate tax, GST and payroll remittances, a hold was automatically placed by CRA on IWS’s account to freeze any GST refund payments owed to the Receiver/Trustee. This matter was dealt with by the Trustee who reached an agreement with CRA to deduct the outstanding GST refunds from dividend payments owed to CRA by the bankruptcy estate; and
 - (iii) Upon its appointment, the Receiver took possession of the books and records of IWS. As the Receiver is proceeding to its discharge, these records will be transferred to the possession of the Trustee.

IWS Bankruptcy Proceedings

35. As noted above, the Court issued a Bankruptcy Order on September 4, 2007. The administration of the IWS bankruptcy estate is substantially complete as at the date of this Fifth Report. To date, the Trustee has declared five interim dividends and distributed to the unsecured creditors a total of approximately \$36.5 million, representing 65% of the value of proven unsecured claims.
36. The remaining administration of the IWS bankruptcy is not impacted by the discharge of the Receiver. All funds owing to the IWS bankruptcy estate have been remitted by the Receiver to the Trustee.

Final Statement of Receipts and Disbursements of the Receiver

37. Attached as Exhibit “M” hereto is the Receiver’s final statement of receipts and disbursements for the period March 26, 2007 to January 24, 2011 (the “**Final R&D Statement**”). Total receipts were \$42,510,613. Total disbursements were \$42,471,137, of which \$36,188,555 was transferred to the bankruptcy estate for distribution to unsecured creditors.
38. The Final R&D Statement reflects all of the activities of the Receiver, including, but not limited to the following:
 - The Receiver’s efforts in collecting on pre-receivership accounts receivable;
 - The marketing and sales process associated with IWS’ assets located onsite or with numerous third parties (i.e., bins);
 - The negotiation of the final asset purchase agreement with American Iron & Metal Company Inc.;
 - The administration and accounting for the real estate allocations related to Centennial and Windermere; and
 - Final negotiations and discussions with the individuals associated with Morris and Chester on the Global Settlement and amounts owing to the IWS estate.
39. The Final R&D Statement indicates a closing balance of \$39,476 as at January 24, 2011. The closing balance amount of \$39,476 will be used to fund the professional fees of the Receiver and Ogilvy associated with the completion of the Fifth Report and with the winding up of the Receivership. It is estimated that there will be a residual amount of approximately \$5,500 that will be distributed by the Receiver to the Trustee.

Fees and Disbursements of the Receiver

40. Attached as Exhibit “N” to this Fifth Report is the affidavit of Paul van Eyk in respect of the fees and disbursements of the Receiver.
41. Attached as Exhibit “O” to this Fifth Report is the affidavit of Mario Forte in respect of the fees and disbursements of the Receiver’s counsel.
42. The Receiver has reviewed the accounts of its legal counsel and confirms that the services reflected therein have been duly authorized and duly rendered and that, in the Receiver’s opinion, the charges are reasonable.

Fees and Costs to Complete the Wind-Up of the Receivership

43. The Receiver estimates that the fees and costs to complete the receivership administration will be approximately \$33,900, inclusive of HST. A summary of these fees and costs is as follows:

Receiver		
	Fees to complete wind-up of the administration	\$ 16,950
Legal counsel to Receiver		
	Fees to complete wind-up of the administration	16,950
Total		<u>\$ 33,900</u>

44. The actual and estimated fees and disbursements of the Receiver and its counsel have been reviewed by Morris, the largest unsecured creditor of the IWS estate and the petitioning creditor. The Receiver has been advised that Morris does not oppose these fees and disbursements.
45. The estimated fees and costs of the Receiver to complete the wind-up of the receivership administration mainly relate to the time incurred to complete this Fifth Report and the costs associated with final administrative matters. The estimated fees and costs to complete the wind-up could increase if the discharge motion is contested.
46. As detailed above, the Receiver and its counsel have estimated that the final fees and disbursements that will be incurred to complete the final work above is approximately \$33,900, assuming that the motion for the discharge is not opposed. Although this amount is an estimate, the Receiver recommends that, instead of establishing a reserve for the remaining professional fees and having the fees and disbursements approved at a later date, the remaining fees of the Receiver and its counsel be fixed by the Court at this time. This will reduce the need for a larger reserve and a further motion, along with attendant costs to the estate, will be eliminated.

Conclusion

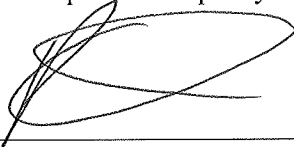
47. The Receiver respectfully requests that this Honourable Court grant an Order which provides for the following:

- a) Approving the Receiver's conduct and activities from June 9, 2008 to date;
- b) Approving the Receiver's fees and disbursements and those of its legal counsel; and
- c) Discharging the Receiver.

Dated the 3rd day of February, 2011.

RESPECTFULLY SUBMITTED,

Deloitte & Touche Inc.,
In its capacity as Receiver
of all of the assets, properties and undertakings of
I. Waxman & Sons Limited
and not in its personal capacity



Paul van Eyk, CA•CIRP, CA•IFA
Senior Vice-President