

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N :

MORRIS J. WAXMAN

Applicant

-AND-

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

Respondents

**FOURTH REPORT OF DELOITTE & TOUCHE INC. IN ITS
CAPACITY AS RECEIVER OF THE ASSETS, PROPERTIES
AND UNDERTAKINGS OF I. WAXMAN & SONS LIMITED**

June 9, 2008

INTRODUCTION

1. By Order of this Honourable Court dated March 26, 2007 (the "Receivership Order"), Deloitte & Touche Inc. ("Deloitte") was appointed receiver (the "Receiver") of all the assets, properties and undertakings of I. Waxman & Sons Limited ("IWS" or the "Company") pursuant to sections 207 and 248 of the *Business Corporations Act* (Ontario) and section 101 of the *Courts of Justice Act* (Ontario). A copy of the Receivership Order is attached hereto as Appendix A.

PURPOSE OF REPORT

2. This report is the Receiver's fourth report (the "Fourth Report") to the Ontario Superior Court of Justice [Commercial List] (the "Court").
3. The purpose of this Fourth Report is to:
 - (a) provide the background to these proceedings;
 - (b) seek the Court's advice and direction regarding the distribution of certain proceeds from the sale of the properties at 480-500 Centennial Parkway, Hamilton, Ontario (the "Centennial Property") and at 75 Windermere Road, Hamilton, Ontario (the "Windermere Property", and together with the Centennial Property, the "Properties"); and
 - (c) seek approval of this Fourth Report and the Receiver's activities described herein.

BACKGROUND

Summary of Proceedings

- September 1, 2005: Deloitte and Touche Corporate Finance Canada Inc. is appointed as marketing agent to market IWS' operating assets (the "Marketing Agent").
- March 26, 2007: Deloitte is appointed Receiver of all the assets, properties and undertakings of IWS.
- September 4, 2007: IWS is declared bankrupt and Deloitte is appointed as trustee in bankruptcy in the Company's estate (the "Trustee"). A copy of the bankruptcy order is attached hereto as Appendix B.

Sale of IWS Properties

4. The Receiver's Third Report dated August 9, 2007 (as supplemented by the first and second supplements, the "Third Report") sets out in detail the process and outcome of the marketing of the Properties.
5. The Marketing Agent marketed and sold the Centennial Property to SmartCentres Shopping Centres. The effective closing date of this transaction was October 16, 2006.
6. The proceeds from the sale of the Centennial Property, net of closing adjustments, were \$16,518,948.

7. Chesterton Investments Limited ("Chesterton") held a 17.56% ownership interest in the Centennial Property. Following post-sale adjustments, Chesterton was entitled to \$2,832,157 of the Centennial Property proceeds. This amount differs slightly from the calculations put forward in the Receiver's Third Report. As noted in paragraph 15 of the Second Supplement to the Third Report, the final determination of ownership increased Chesterton's percentage allocation by 0.14%.
8. Following its appointment, the Receiver obtained authorization to sell the Windermere Property in accordance with the sales process set out in its First Report dated April 19, 2007.
9. The Receiver sold the Windermere Property to American Iron & Metal Company Inc. ("AIM"). The effective closing date of this transaction was June 20, 2007.
10. The proceeds from the sale of the Windermere Property were \$4,100,000.
11. Chesterton held a 50% interest in the Windermere Property. Following post-sale adjustments, Chesterton was entitled to \$1,917,098 of the Windermere Property proceeds. This amount has increased over the amount reported in the Receiver's Third Report due to accrued interest and reallocation of certain expenses between the Properties.
12. In total, the Receiver currently holds on account of Chesterton approximately \$4.2 million from the proceeds of the sale of the Properties (the "Chesterton Proceeds"). Attached as Appendix C is a summary setting out Chesterton's entitlements to the proceeds of the sale of the Properties.

Retention of the Chesterton Proceeds

13. In its Third Report, the Receiver sought to continue to hold the Chesterton Proceeds in trust, less a deduction of \$70,000 in legal fees disbursed from the Centennial Property proceeds at Chester Waxman's ("Chester") written request. The amount of \$70,000 was included in the post-closing adjusted amount of \$2,832,157. Attached as Appendix D is the Court Order authorizing the Receiver to hold the Chesterton Proceeds in trust pending further Court Order.
14. As summarized in Appendix C, the Receiver has not released the Chesterton Proceeds to any party except for distributions to Morris Waxman ("Morris") of \$625,066 relating to outstanding cost orders in favour of Morris and costs associated with an abandoned stay order in favour of Morris. These distributions were made pursuant to a credit arrangement between the Trustee and Morris in the event the Trustee has an interest in these funds. Chester's counsel Paliare Roland requested these payments to address Chester's obligations to Morris in the outstanding Waxman Litigation (defined below).
15. The Trustee also consented to the posting of \$25,000 from the Windermere funds as security for an order for costs and extending the time to perfect an appeal. This consent was pursuant to restrictions on any such distribution of these funds and the Trustee's continued interest in these funds.

CLAIMS TO CHESTERTON PROCEEDS

Judgment Debt—IWS

16. Pursuant to an order of Justice Sanderson dated January 10, 2003 (the “Cost Order”), Chester was ordered to pay an unascertained amount to IWS for legal fees and other disbursements paid by IWS in the litigation culminating in Sanderson J.’s decision of June 27, 2002 (the “Waxman Litigation”). A copy of the Cost Order is attached hereto as Appendix E.
17. Chester was held liable to pay 99.5% of the legal fees owing under the Cost Order, subject to certain set off rights set out in that Order. To date, there have been no recoveries on account of this judgment debt.
18. The Trustee has calculated the total amount of legal fees owing under the Cost Order to be \$6,100,998.44.
19. This amount comprises \$1,440,589.71 paid on account of legal services provided by Lenczner Slaght Royce Smith Griffin LLP (“LSRSG”) in the Waxman Litigation, and \$4,660,408.73 paid on account of legal services provided by Cassels Brock & Blackwell LLP (“Cassels Brock”) in the Waxman Litigation.
20. The amounts owed to Cassels Brock were adjusted to account for legal services provided to IWS which were possibly unrelated to the Waxman Litigation. Attached hereto as Appendix F is a chart detailing the legal services provided by Cassels Brock to IWS and Chester.
21. The Trustee asserts a claim to the Chesterton Proceeds to satisfy the debts owing by Chester under the Cost Order.

Judgment Debt—Morris Waxman

22. The Receiver is aware that Chester also owes Morris outstanding amounts as a judgment debtor in the Waxman Litigation.
23. Morris has filed a proof of claim in the estate for \$46 million owed by Chester pursuant to the Cost Order. Morris received approximately \$14.4 million in an interim distribution by the Trustee on May 30, 2008.
24. Morris has indicated his intention to assert a claim to the Chesterton Proceeds in partial satisfaction of the debts owed to him by Chester under the Cost Order.

Chester’s Claim to the Chesterton Proceeds

25. Chester’s son Robert Waxman (“Robert”) has brought a motion before the Court seeking the release of a portion of the Chesterton Proceeds. If released, these monies will be used to pay Chester’s legal fees in respect of appeals pertaining to claims filed in the IWS estate by Chester and another of his holding companies, CHW Holdings Inc. (“CHW”).
26. Chesterton is a holding company for Chester, as Morrision Investments (“Morrision”), one of the other recipients of proceeds from the sale of the Properties, is a holding

company for Morris. At paragraph 63 of her June 27, 2002 trial decision, Sanderson J. characterizes these entities as the holding companies of Chester and Morris. Attached as Appendix G is the relevant excerpt from that decision.

27. Chester is the President and Secretary of Chesterton, and has been Chesterton's only Director since its incorporation in 1963. From 1963 until 2000, Chester was Chesterton's only Officer. Attached as Appendix H is a Corporation Profile Report for Chesterton.
28. Attached as Appendix I is a PPSA summary indicating that Chesterton has no other secured creditors.
29. In the course of the Waxman Litigation, the Ontario Court of Appeal characterized Chesterton as Chester's holding company (paragraph 29), under Chester's control (paragraph 164). A copy of the relevant excerpts of the Court of Appeal's April 30, 2004 judgment is attached hereto as Appendix J.

RECEIVER'S ACTIVITIES

30. In addition to those other activities outlined herein, since the date of the Third Report, the Receiver has undertaken the following activities:
 - Preparation of the 2007 corporate income tax return, including tax research and discussions with the former tax advisors to IWS;
 - Preparation of the amended 2007 corporate income tax returns and correspondence with respective tax authorities;
 - Preparing the post acquisition price adjustment and final negotiations with AIM;
 - Review of Ivaco receivable and dividends from CCAA proceeding;
 - Preparation of amended T4s and T4 summaries and review and respond to various employees as it relates to T4 questions and/or requests for information;
 - Follow-up with respect to refund of insurance prepayment;
 - Maintaining the books and records of the receivership including depositing all receipts, making the necessary disbursements, managing the short-term investments;
 - Maintaining the books and records relating to funds held in respect of the Properties;
 - Preparing updated statement of receipts and disbursements; and
 - Other miscellaneous receivership administration.

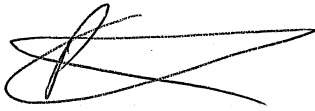
RECOMMENDATION

31. Deloitte in its capacity as Trustee will be responding to this motion and seeking particular relief—the payment of money to the estate out of the Chesterton Proceeds. Accordingly, the Receiver makes no recommendation as to the disposition of the motion.

Dated the 9th day of June, 2008.

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
Senior Vice-President