

**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

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

June 13, 2007

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Introduction

1. By Order of this Honourable Court dated March 26, 2007 (the "Receivership Order"), Deloitte & Touche Inc. 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 Exhibit A.
2. On April 25, 2007, the Receiver sought and obtained an Order (the "April 25 Order") authorizing the Receiver, among other things, to sell the Windermere Property (as defined below) pursuant to the sale process (the "Sale Process") described in the Receiver's First Report. A copy of the April 25 Order is attached as Exhibit B.

Purpose of Report

3. This report is the Receiver's second report (the "Second Report") to the Ontario Superior Court of Justice [Commercial List] (the "Court").
4. The purpose of this Second Report is to:
 - (a) provide the background to these proceedings;
 - (b) report on the activities of the Receiver since the date of the Receiver's First Report to Court dated April 19, 2007 (the "First Report");
 - (c) report on the results of the Sale Process conducted by the Receiver with respect to certain of the property of the Company, Parcels 1 through 29 (the "Scrap Inventory and Fixed Assets") in the Tender Package (as defined below) and the Windermere Property identified as Parcel 30 in the Tender Package (as defined below); and
 - (d) seek an Order of the Court:
 - (i) approving a transaction for the sale of the Scrap Inventory and Fixed Assets and the Windermere Property (collectively, the "Purchased Assets") pursuant to an agreement of purchase and sale dated as of June 1, 2007 (the "Agreement") among the Receiver, Chesterton Investments Limited ("Chesterton"), Morrision Investments Limited ("Morrision" and together with Chesterton, the "Holding Companies") and American Iron & Metal Company Inc. ("AIM");
 - (ii) authorizing and empowering the Receiver to execute the Agreement and all documents and instruments incidental thereto on behalf of the Holding Companies, or either one of them and to take all actions necessary to complete the Recommended Transaction (as defined below);
 - (iii) vesting the right, title and interest of the Company and/or the Holding Companies,

as the case may be, in the Purchased Assets;

(iv) sealing the confidential appendices to this Second Report pending further Order of the Court;

(v) directing Canadian Imperial Bank of Commerce (“CIBC”) to release certain funds currently in its possession; and

(vi) approving the activities of the Receiver all as described in this Second Report;

Background

5. A comprehensive outline of the Receiver’s review of IWS’ assets which were available for realization and liquidation is set out in the First Report, a copy of which is attached (without Exhibits) as Exhibit C. The First Report also provided a detailed summary of the sale process that IWS had previously undertaken upon the appointment of Deloitte & Touche Corporate Finance Canada Inc. on September 1, 2005, as Marketing Agent (“Marketing Agent”) pursuant to an order of The Honourable Mr. Justice Farley. The Marketing Agent was authorized by the Court to identify a potential purchaser for the operating assets of IWS on a going concern basis.
6. Briefly, pursuant to the Marketing Agent’s sale process, the Marketing Agent: (a) identified one hundred and thirty seven (137) potential purchasers; and (b) sent twenty-one (21) potential purchasers a copy of the Confidential Information Memorandum, which ultimately resulted in the identification of one (1) strategic purchaser. In its Fourth Report to the Court dated February 27, 2007, the Marketing Agent advised the Court that the identified strategic purchaser provided no greater return than a liquidation value.
7. This strategic purchaser, identified by the Marketing Agent, had offered a price of \$6.9 million for the operating assets of IWS consisting of accounts receivable, scrap inventory, bins, stationary and mobile equipment, office furniture and certain real property owned by the Holding Companies, municipally known as 75 Windermere Road, Hamilton, Ontario (the “Windermere Property”). The month-end book value of accounts receivable averaged approximately \$4.0 million leaving approximately \$2.9 million to be allocated among the other assets under this scenario.
8. One of the significant difficulties with this identified strategic purchaser’s offer was that included in the stationary and mobile equipment offered for sale were leased assets. The Receiver’s calculations of the current payouts/ buyouts with respect to this leased equipment is approximately \$900,000 and would likely have resulted in a downward purchase price adjustment or a required payout by IWS. With respect to accounts receivable on hand at the date of receivership, this asset was excluded from the Receiver’s Sale Process as well as the leased assets.
9. To date, the Receiver has collected \$4.6 million from accounts receivable on hand as at the date of receivership and anticipates collecting a further \$.25 million.
10. On March 26, 2007, IWS was placed in receivership and, pursuant to the Receivership Order, the

Receiver was authorized to solicit proposals for the Scrap Inventory and Fixed Assets. The Receiver was authorized by the April 25 Order, to include the Windermere Property in the sale process. The basis on which this Order was sought and granted was that the Windermere Property had been included in the sale process conducted by the Marketing Agent and inclusion of the Windermere Property in the Receiver's Sale Process would minimize the cost of a separate sale process and potentially increase the realization value of the Fixed Assets.

Receiver's Activities

11. In addition to those other activities outlined herein, since the date of the First Report, the Receiver has undertaken the following activities:

- Completing the review of all 30-day goods claims and arranging for the return of inventory with respect to accepted claims;
- Arranging for the sale of securities as approved by the April 25 Order as well as additional securities that the Receiver was made aware of subsequent to April 25, 2007;
- Arranging for the payment of creditor claims of former employees as approved by the April 25 Order;
- Continuing to identify and confirm IWS customers that have bins in their possession;
- Conducting the sales process which included dealing with ongoing inquiries and arranging thirty-two (32) site visits;
- Reviewing twenty-seven (27) submitted bids following the tender deadline of Tuesday, May 8, 2007;
- Preparing the analysis of bids received to assess the highest recovery;
- Negotiating with AIM a final purchase price with respect to an *en bloc* sale of all parcels;
- Preparing an updated Statement of the Receiver's Receipts and Disbursements to May 11, 2007 at the request of Morris Waxman's legal counsel;
- Ongoing negotiations with the lessors of various pieces of equipment to obtain agreements that the Receiver will receive any surplus over the combined payouts by lessor on the leased equipment;
- Ongoing calls and correspondence with the City of Hamilton (the "City") regarding funds garnished by the City in early 2007 and requesting the garnished funds be forwarded to the Receiver;
- Attending daily (Monday to Friday) at the premises of IWS and maintaining security of the premises in the evenings and weekends;
- Arranging for the transfer of funds received on the Centennial property to the Receiver's trust

account;

- Maintaining the books and records related to the receivership, including making the necessary disbursement and depositing all receipts; and
- Preparing the Second Report.

Receiver's Sale Process

12. In accordance with the Receivership Order and the April 25 Order, the Receiver conducted a Sale Process as follows:

- i. Prepared a tender package (the "Tender Package") listing the assets for sale, describing the sale process and setting out the terms and condition of sale. A copy of the Tender Package including a detailed listing of the Scrap Inventory and Fixed Assets on a parcel by parcel basis as well as the legal description of the Windermere Property (listed as Parcel 30), was attached as an exhibit to the First Report;
 - ii. The Scrap Inventory and Fixed Assets and the Windermere Property were offered for sale on an "as-is, where-is" basis;
 - iii. The Scrap Inventory and Fixed Assets, which were included in the Tender Package, consisted of Scrap Inventory, waste bins, stationary and mobile equipment, office furniture and equipment and an automobile. The Scrap Inventory and Fixed Assets and the Windermere Property were allocated to thirty (30) parcels to maximize the realizable value of the tendered assets in the event an acceptable *en bloc* offer was not received. Prospective purchasers were given the option of making offers on one or more parcels of assets or assets within a parcel;
 - iv. Assets leased by IWS from various lessors were excluded from the sale process ("Excluded Assets"). As noted earlier, the current lease payouts/buyouts with respect to the Excluded Assets is approximately \$900,000;
 - v. The deadline for submission of offers was 5:00pm EDT (Toronto time), Tuesday, May 8, 2007 (the "Offer Date");
 - vi. The Receiver reserved the right to negotiate with any prospective purchaser at any time and to sell any or all assets at any time prior to the Offer Date;
 - vii. The acceptance of any offer was subject to Court approval; and
 - viii. Each offer was to be accompanied by a deposit in the form of a bank draft or certified cheque payable to the Receiver in the amount of 10% of the gross purchase price offered.
13. The Tender Package was sent to fifty-five (55) prospective purchasers who were identified by the Marketing Agent and the Receiver. Chester Waxman and Morris Waxman also provided names of prospective purchasers they considered as being serious prospects.
14. Site visits were arranged for thirty-two (32) prospective purchasers to view the assets being offered

for sale.

15. By the Offer Date, offers were received from twenty-seven (27) bidders. There were two (2) *en bloc* offers for all the parcels (Parcels 1 to 30) and five (5) *en bloc* offers on the IWS Fixed Assets (Parcels 2 to 29 which excluded the scrap inventory and the Windermere Property). These seven (7) offers are collectively referred to as the *en bloc* offers. The balance of the other offers were on selected parcels and/or selected assets. Upon receipt of the offers on the Offer Date, the Receiver corresponded with various of the prospective purchasers to clarify certain aspects of their offers, including correspondence with AIM in respect of its offer. A summary of the seven *en bloc* offers, including the offer received from AIM,¹ is attached as Confidential Appendix 1 to this Second Report. The basis on which the Receiver is seeking an Order sealing this Confidential Appendix 1 is set out below.
16. The following is a breakdown of prospective purchasers by the following categories: Strategic (companies in the same or similar business of IWS), Non-Strategic (companies interested in certain parcels or specific equipment), Liquidators (companies interested in conducting an auction of the assets) and Real Estate Agents (companies potentially representing interested real estate purchasers).

Summary of Prospective Purchasers by Category					
	Strategic Parties	Non-Strategic Parties	Liquidators	Real Estate Agents	TOTAL
Number of Tender Packages	26	21	5	3	55
Number of Offers Submitted	11	11	5	-	27

17. As provided for in the terms and conditions of sale in the Tender Package, the Receiver reserved the right to negotiate with any prospective purchaser at any time. AIM's original offer received on the Offer Date was with respect to the Windermere Property and certain equipment and bin assets (and included a deposit for the offer). This original offer provided for the highest recovery with respect to the Windermere Property. The Receiver contacted AIM and entered into negotiations with respect to the Scrap Inventory and Fixed Assets. As a result of this negotiation, AIM's offer constituted the highest overall offer for the Scrap Inventory and Fixed Assets and the Windermere Property. AIM subsequently increased their 10% deposit to reflect the increase in the gross purchase price.
18. The most significant conditions included in AIM's offer were as follows: (a) a May 31, 2007 closing date;² and (b) AIM being satisfied as to title to the Windermere Property. The offer also contained certain purchase price adjustment mechanisms related to the actual weighing of scrap inventory (Parcel 1) and a verification of bins outstanding (Parcels 2 – 6); however, these were similar conditions submitted by other bidders and deemed acceptable by the Receiver.

¹ The summary includes a summary of the AIM offer, as amended.

² The May 31, 2007 closing date condition was subsequently extended by AIM to June 20, 2007.

19. The seven (7) *en bloc* offers as described above, were received from two (2) Strategic Parties and five (5) Liquidators. The five (5) Liquidators required the use of the Windermere Property for an extended period of time, well beyond May 31, 2007, to conduct an onsite auction. As well, the wording of each of the *en bloc* offers required further negotiation by the Receiver to determine the ultimate recovery on Parcels 2 to 29. Four (4) of the Liquidators *en bloc* offers did not include the 10% deposit as required by the terms and conditions contained in the Tender Package, one (1) Liquidator required that certain of the Excluded Assets be made available to be included in an auction sale and five (5) *en bloc* offers excluded the scrap inventory which would have resulted in the Receiver negotiating a separate sale agreement with potentially three purchasers of scrap inventory.

Approval of the Sale Transaction

20. Upon acceptance of AIM's offer, the Receiver entered into negotiations with AIM to complete a definitive agreement. As a result, the parties entered into the Agreement which provides for the purchase and sale of the Scrap Inventory and Fixed Assets and the Windermere Property (the "Recommended Transaction"). Certain key elements of the Agreement include:
- (a) the payment of a cash purchase price on closing;
 - (b) AIM's obligation to purchase the Scrap Inventory and Fixed Assets is conditional upon the completion of the sale of the Windermere Property;
 - (c) adjustments with respect to Parcel 1 (which is scrap steel inventory that must be weighed) and Parcels 2 – 6 (which constitutes bins, many of which are located at third party locations and whose location will be subject to verification); and
 - (d) AIM will take delivery of the Fixed Assets wherever they may be situated. Additionally, the Agreement does not contemplate the acquisition of any of the Excluded Assets.
21. The Agreement provides that the Recommended Transaction is subject to certain conditions, including the following:
- (a) AIM must be satisfied with its corporate escheat search in connection with title to the Windermere Property;
 - (b) AIM must be satisfied as to its ability to obtain a licence to operate a salvage yard at the Windermere Property;
 - (c) AIM must be satisfied with the form of Approval and Vesting Order being sought (including those encumbrances which will be vested out of the Windermere Property);
 - (d) A certain lease between the Company and Mediacom Inc. must be assigned or repudiated at or prior to closing; and
 - (e) the Agreement must be approved by the Court and the Company's right, title and interest in the Scrap Inventory and Fixed Assets and the Holding Companies' right, title and interest in the

Windermere Property must be vested by way of a vesting order in AIM.

22. The Agreement required AIM to satisfy its conditions in 20 (a), (b) and (c) above on or prior to June 8, 2007 and contemplates a June 20, 2007 closing date. On June 8, 2007, AIM provided notice to the Receiver that, aside from 20 (a) above, it had satisfied its conditions. With respect to the condition in 20 (a) (the "Remaining Condition"), AIM requested and the Receiver granted, an extension to Wednesday, June 13, 2007 in order to receive the final searches. On June 12, 2007, AIM provided notice to the Receiver that it had satisfied the Remaining Condition. A redacted version of the Agreement is attached as Exhibit D to this Second Report. An unredacted version of the Agreement is attached to this Second Report as Confidential Appendix 2. The basis on which the Receiver is seeking an Order sealing this Confidential Appendix 2 is set out below.
23. The Receiver recommends that this Honourable Court approve the Recommended Transaction for the following reasons:
 - i. The Recommended Transaction provides for a greater recovery on the Scrap Inventory and Fixed Assets than the other *en bloc* offers and all possible combinations of offers on individual parcels;
 - ii. The Recommended Transaction provides for the highest recovery on the Windermere Property (Parcel 30 of the Tender Package);
 - iii. The Recommended Transaction eliminates the Receiver's need to incur costs associated with an onsite liquidation, and hiring third parties to retrieve assets currently located off site and potential significant costs that could arise from the dismantling and removal of assets sold to bidders other than the purchaser of the real property;
 - iv. The Recommended Transaction is materially higher than the offer submitted to the Marketing Agent in the previous sale process;
 - v. The Recommended Transaction provides for a closing which is anticipated to take place immediately after the granting of the Approval and Vesting Order, if so granted by the Court, which will in turn reduce the Receiver's costs associated with securing and monitoring the assets of IWS;
 - vi. Aside from the granting of the Approval and Vesting Order, AIM has satisfied or waived all of its material conditions to completion of the Recommended Transaction;
 - vii. The Recommended Transaction will result in reduced professional fees relating to the closing of the sale of assets as there is only one and not multiple purchasers with whom the Receiver is required to complete a sale; and
 - viii. Morris Waxman, the largest unsecured creditor of the Company, is supportive of the Receiver's recommendation.

Discussions with the Holding Companies

24. Subsequent to the Offer Date, the Receiver met with Morris Waxman, the principal of Morriston, along with Michael Waxman and their counsel to discuss the offers received. Upon review of the information that was provided by the Receiver, Morris Waxman indicated that Morriston would be supportive with proceeding with the Recommended Transaction and, in fact, Morris Waxman has executed the Agreement on behalf of Morriston.
25. The Receiver's counsel, Ogilvy Renault LLP, has also been in contact with counsel to Chesterton to arrange a meeting with Chester Waxman and/or representatives of Chesterton and Chester to discuss the Recommended Transaction. The Receiver proposes to meet with Chester or his representatives shortly, subject to Chester's availability.
26. The April 25 Order authorizes the Receiver to sell the Windermere Property.
27. AIM has indicated its strong desire to have an immediate closing of the sale of the Fixed Assets, but more importantly, the Windermere Property. Any delay on the part of any of the parties to the Agreement, including Chesterton, might jeopardize the ability of the Receiver to complete the Recommended Transaction.

PPSA and Real Property Registrants

28. As discussed above, certain of the Excluded Assets that are not being transferred to AIM include leased equipment with the following equipment lessors: (a) Key Equipment Finance Canada Ltd.; (b) GE Capital Canada Leasing; and (c) Liftcapital Corporation (collectively, the "Equipment Lessors"). Additionally, upon the appointment of the Receiver, there were a number of vehicle leases with the Company. The Receiver has now returned all such vehicles.
29. Ogilvy Renault LLP, counsel to the Receiver, has provided the Receiver with opinions with respect to the equipment leases with each of the Equipment Lessors and, in each case, concluded that subject to certain assumptions and qualifications, the Equipment Lessors have valid security in the equipment subject to each of their leases.
30. In anticipation of the completion of the Recommended Transaction, the Receiver has made arrangements with each of the Equipment Lessors for the removal of their subject equipment.
31. In any event, the Receiver intends to provide all of the Equipment Lessors, the vehicle lessors and all other registrants pursuant to the *Personal Property Security Act* ("PPSA") with notice of this motion.
32. Counsel to the Receiver has also reviewed summaries of personal property and other corporate searches that were conducted against each of the Holding Companies. Searches against Chesterton resulted in no registrations. The PPSA search against Morriston revealed a registration made by CIBC. Although the only property of Morriston's being transferred is the Windermere Property (in

which CIBC has not taken security), the Receiver has given CIBC notice of this motion out of an abundance of caution.

33. Additionally, *Executions Act* searches conducted against Morriston revealed certain writs of execution (the "Writs") issued by Chesterton against Morris Waxman and Morriston. AIM has requested that the Writs be lifted in the sheriff's office of both Hamilton and Toronto. The Writs themselves, do not provide Chesterton with priority to any proceeds of sale from the Windermere Property. It is anticipated that any claims that Chesterton may have against Morriston will be addressed in the context of a distribution of the sale proceeds.
34. Additionally, as part of the Recommended Transaction, AIM has also requested that certain registrations on title to the Windermere Property be deleted. They are as follows:
 - (a) Instrument 150363 HL registered January 3, 1961 is a Charge of Land between Morris J. Waxman and Chester H. Waxman, as mortgagors, and Isaac Waxman, as mortgagee for a principal amount of \$25,840.00;
 - (b) Instrument 150365 HL registered January 3, 1961 is a Charge of Land between Morris J. Waxman and Chester H. Waxman, as mortgagors, and Isaac Waxman, as mortgagee for a principal amount of \$2,860.80;
 - (c) Instrument 180586 registered April 13, 1994 is a Claim for Lien by Ironwood Design & Construction Ltd. for the amount of \$26,215.00; and
 - (d) Lease dated September 21, 1981 (the "Ferrous Lease") between the Holding Companies, as landlord, and I.W. & S Ferrous Limited ("Ferrous"), as tenant.
35. With respect to the items in 32(a) and (b), the title searches on the Windermere Property indicate that Isaac Waxman passed away and that his estate discharged the two (2) instruments; however, the mortgages were not properly ruled off at the Registry Office and still appear on the parcel register.
36. With respect to the instrument listed in 32(c), the title searches on the Windermere Property indicate that the lien was released, but not properly ruled off the Registry Office and still appears outstanding.
37. With respect to the Ferrous Lease, based on corporate searches that were reviewed by counsel to the Receiver, Ferrous amalgamated with a number of other companies in 1998 to become "Philip Enterprises Inc.". Former management to the Company has advised that upon the amalgamation, the tenant ceased to occupy the premises.
38. In any event, the Ferrous Lease, on its face, appears to have expired and does not contain an option to renew other than an overholding provision that would require continuous physical occupation by the tenant. Further, since the date of its appointment, the Receiver has not been made aware that Ferrous is in any way, occupying or purporting to occupy any portion of the premises on the Windermere Property nor do the books and records of the Company indicate that it has received any rent payments in respect of the Ferrous Lease.
39. Although the Receiver does not believe there are amounts owing under any of the registrations to be discharged on title, it intends to provide notice to the relevant parties out of an abundance of caution.

Sealing of Confidential Appendices

40. Both of the Confidential Appendices (summary of offers and the unredacted Agreement) contain sensitive financial information that could affect the completion of the Recommended Transaction or the ability of the Receiver to re-market the Scrap Inventory and Fixed Assets and the Windermere Property if the Recommended Transaction is not completed.
41. Additionally, AIM has provided the Receiver with notice that it may re-sell certain or all of the Scrap Inventory and Fixed Assets in the near future and believes that disclosure of the Confidential Appendices could jeopardize its ability to dispose of those assets effectively.
42. AIM has further requested that the financial information related to the Recommended Transaction remain confidential indefinitely as it believes that general public knowledge of this information might adversely affect its business interests.
43. In order to facilitate the completion of the Recommended Transaction the Receiver believes that the granting of this relief is justified in the circumstances.
44. Additionally, the Receiver has disclosed or plans (with AIM's consent) to disclose the financial terms of the Agreement to Morris Waxman and Chester Waxman, each of whom will have to agree not to further disclose the details of the Recommended Transaction.

Release of Funds

45. As was discussed in the Receiver's First Report, upon the appointment of the Receiver, certain of the Company's funds were located at bank accounts with CIBC in Hamilton, Ontario. Approximately, \$993,715.64 (the "Garnishment Funds") of these funds were subject to a garnishment order that had been served on CIBC by the Ministry of Finance ("MOF") prior to the Receiver's appointment.
46. Upon the request of CIBC, the Receiver has been attempting to make arrangements for the release of the Garnishment Funds from CIBC to the Receiver which would result in the Receiver's and MOF's acknowledgement that CIBC would not incur any liability as a result of the transfer of those funds to the Receiver and that MOF's claim to the Garnishment Funds (if any), would continue after the transfer.
47. However, as of the date of this motion, the Garnishment Funds have not been released to the Receiver. These funds, although subject to a notice of garnishment, remain funds of the Company.
48. The Receiver therefore believes it is appropriate for the Garnishment Funds to be released to the Receiver, without liability to CIBC and subject to any claim that MOF might have in them.

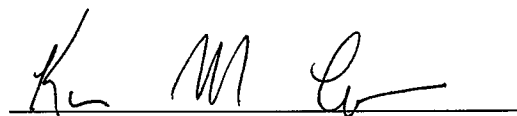
Conclusion

49. The Receiver respectfully requests that this Honourable Court grant the relief requested in paragraph 4 above.

Dated the 13th day of June, 2007.

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.

A handwritten signature in black ink, appearing to read 'K M Cramm', is written over a horizontal line.

Karen Cramm, CA-CIRP, MBA
Senior Vice-President