

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

August 22, 2007

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Purpose of Report

1. The report of Deloitte & Touche Inc., in its capacity as receiver (the “Receiver”) of all of the assets, properties and undertakings of I. Waxman & Sons Limited (“IWS” or the “Company”) has been prepared as a second supplement to the Receiver’s Third Report dated August 9, 2007 (together with the Supplemental Third Report dated August 20, 2007, the “Third Report”). This supplement is hereafter referred to as the “Second Supplemental Third Report”.
2. The purpose of the Second Supplemental Third Report is to advise the Ontario Superior Court of Justice (the “Court”) of the outcome of the Cost Allocation Motion and Fees Motion heard on August 21, 2007 discussed below and provide the Court with an estimate of the realizable value of the assets of IWS net of the costs of liquidation, the list of known IWS creditors, prior to the initiation of a claims process, and the resulting estimated shortfall on creditors’ claims.
3. Capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Third Report.

August 21 Orders

4. As was outlined in the Supplemental Third Report, on August 14, 2007, with the exception of a distribution to Morriston, Justice Pepall adjourned the Cost Allocation Motion and the Fees Motion to August 21, 2007 and August 23, 2007 respectively. On August 21, 2007, the Receiver, Chesterton and Morriston returned to Court at a 9:30 am appointment and advised the Court that they had come to a resolution on the allocation issues and that there were no further objections on the Fees Motion. The only issue that remained outstanding on that date was the issuance of the bankruptcy order. In light of this resolution, the Court granted the Order in respect of the Cost Allocation Motion and adjourned the motion with respect to the Receiver consenting to a bankruptcy order to August 23, 2007. The Court also granted the Order in respect of the Fees Motion.
5. Attached as Exhibits “A” and “B” are copies of the Orders (along with endorsements) granted in respect of the Cost Allocation Motion and Fees Motion.

Estimated Realizable Value of Assets of IWS

6. The Receiver has almost completed its liquidation of the assets of IWS and the sale of the Windermere Property with some anticipated minor price adjustments to come with respect to the sale of bins and inventory to American Iron & Metal Company Inc. There is also a pending sale of shares which have not yet come into the possession of the Receiver and are expected to realize approximately \$20,000.

7. As a result of the asset liquidations to date, the Receiver holds as cash on hand as of August 20, 2007, (including term deposits) the amount of \$25.7 million. This balance includes the proceeds of sale from the Windermere Property, plus accrued interest attributable to Chesterton Investments Limited (“Chesterton”) and Morriston Investments Limited (“Morriston”) in the approximate amount of \$2.0 million which is net of the interim distribution of \$1.8 million to Morriston as authorized by the Court Order dated August 14, 2007.
8. As a result of the August 21 Cost Allocation Order, there is a recovery for IWS of \$0.8 million in selling costs from the sale proceeds of the Centennial Property and the Windermere Property (of which \$.3 million related to the Windermere Property is in cash on hand) and \$9.7 million in respect of IWS’ ownership interest in the sale proceeds from the sale of the Centennial Property, net of Court-approved allocated selling costs.
9. Taking into account the August 21 Court Allocation Order, the Receiver’s cash on hand related solely to the realization of IWS assets is \$33.9 million calculated as follows:

Cash on hand as at August 20, 2007	\$25.7 million
Less: Proceeds of sale from the Windermere Property plus accrued interest attributable to Chesterton and Morriston, net of the interim distribution to Morriston	(2.0)
Add: Selling costs recovered from the sale of the Centennial Property	0.5
IWS’ ownership interest in the net sale proceeds of Centennial Property	9.7
Cash on hand and in term deposits	<u>\$33.9 million</u>

10. There are additional possible recoveries from matters currently in dispute which may increase the realizable value of IWS’ assets.
11. These potential recoveries include the following, though there may be additional recoveries from other sources:
- i. Recovery of legal fees paid by IWS on behalf of Chester Waxman. Discussions have occurred with a view to resolving this dispute and are ongoing, but it may be that this dispute will be resolved through litigation; consequently, it is difficult to estimate a realizable value both on a gross basis and net of any applicable corporate taxes which may be payable by IWS in the event of a recovery of fees from Chester Waxman. For the purpose of this report only, a recovery of \$5.0 million is estimated.
 - ii. Recovery of an amount due from Lightning Distribution Inc. (“Lightning”). Again, discussions are ongoing to try to resolve this dispute

but it may be that this matter will be resolved through litigation. For the purpose of this report only, a recovery of \$0.6 million is estimated.

12. To complete the administration of the receivership and pending bankruptcy, the following steps are required:

- (i) Preparation and filing of the 2006 and 2007 tax returns to assess the tax implications arising from recoveries on the assets of IWS;
- (ii) Implementation of a claims process through to resolution of disputed claims and payment of interim and/or final dividends to creditors with proven claims;
- (iii) Resolution of disputed potential recoveries as described in paragraph 11 above;
- (iv) Resolution of entitlement to proceeds of sale to the Windermere/Centennial Properties not yet approved by the Court for distribution; and
- (v) Preparing final accounts and applying for a discharge as Receiver and/or Trustee in Bankruptcy.

13. Again, it is not possible at this stage in the administration to estimate the tax consequences arising from the sale of IWS' assets and the professional fees and costs and miscellaneous administration expenses pertaining to the completion of the steps outlined above; however, for the purpose of this report only and to give recognition to the incurring of such costs, we are estimating \$4.0 million to pay the income taxes which may be owing and the costs of completing the administration of the receivership and pending bankruptcy.

14. In summary, the estimated realizable value of IWS' assets as at the date of this Second Supplemental Third Report to be as follows:

Cash on hand	\$33.9 million
Add: Estimated recovery from disputed matters	5.6
Less: Estimated taxes payable and costs of administration	(4.0)
Estimated realizable value of IWS' assets net of costs	\$35.5 million

Current Known Creditors of IWS

15. Attached as Exhibit "C" is a list of known unsecured creditors of IWS as at August 14, 2007 totalling \$57.7 million and comprised of the following categories of creditors:

Trade creditors	\$1.5 million
Former employees	1.5
Tax authorities	2.8
Related parties	51.9
Total	<u>\$57.7 million</u>

16. The related party claims include the claims of Morris Waxman (“Morris”) and Solid Waste Reclamation Inc. (“SWR”) totalling \$46.4 million and \$5.0 million respectively. The balances owing to Morris and to SWR have been provided to the Receiver by legal counsel for Morris and SWR.
17. These claims have been reduced from the amounts set out in the bankruptcy application dated May 8, 2007 wherein the amounts owing were stated as \$57.3 million for Morris and \$5.9 million for SWR.
18. Robert Waxman has advised the Receiver that he believes the claims of Morris and SWR as stated in Exhibit “C” should be significantly reduced.
19. IWS’ financial statements, dated December 31, 2005, show an amount due to a shareholder of \$1.9 million. At this time, we have received correspondence from the shareholder to provide for a claim but no amount was provided. The notes to the financial statements advise that the shareholder is not able to request payment of the loan due to the judgments as described in the notes to the financial statements. Pending the final determination of amounts owing in relation to the judgments and a review of appropriate set-offs for amounts that might be owing by the shareholder to IWS, we have valued the amount at \$1.00 pending a formal claims process.
20. Creditors of IWS have called the Receiver inquiring as to when they will be able to file a proof of claim and when they can expect to receive a payment.

Conclusion

21. The calculation of the recoveries set out in this Second Supplemental Third Report is the Receiver’s current estimate based on the information it has as of the date of this Second Supplemental Third Report.
22. The list of known creditors is derived from the books and records of IWS and from certain correspondence addressed to the Receiver. None of the listed amounts have been verified to date by either the Receiver or by means of a formal claims process. The claims of Morris and SWR totalling \$51.4 million represent approximately 89% of the total claims with the majority of Morris’ claim

being subject to confirmation by the Court of a Report on Reference dated January 4, 2007. This confirmation is still pending.

23. Given the limitations as described above, the current estimated shortfall to creditors of IWS is as follows:

Estimated realizable value of IWS' assets (paragraph 14 above)	\$35.5 million
Less: Total owing to known creditors (paragraph 15 above)	(57.7)
Estimated shortfall to creditors of IWS	<u>(\$22.2) million</u>

Recommendation

24. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court make an order authorizing the Receiver to consent to the making of a bankruptcy order in respect of IWS. A bankruptcy will allow for the immediate implementation of a claims process that is a well-established and cost-effective process. In addition, a bankruptcy proceeding will enable the bankruptcy trustee to begin a review to determine if there were any reviewable transactions and fraudulent preferences.

Dated this 22nd day of August, 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.



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