

Estate Nos.: 31-455620  
31-455619  
31-455613  
31-1118466

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY  
OF FIRST WASTE UTILITIES CANADA LIMITED,  
FIRST WASTE UTILITIES CORP., FIRST WASTE TRANSLOAD INC. AND  
FIRST WASTE AMERICA INC.**

**MOTION RECORD OF CANADIAN NATIONAL RAILWAY  
COMPANY**

Date: November 25, 2008

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<u>TAB</u>	<u>DOCUMENT</u>
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|----|---|
| 1. | Notice of Motion  |
| 2. | Affidavit of Paul Bannister sworn October 29, 2008                                    |
| A. | Letter from Dennis O'Leary to Gordon Acton dated September 12, 2008                   |
| B. | Email from Dennis O'Leary to Gordon Acton dated September 16, 2008                    |
| C. | Letter from Gordon Acton to Dennis O'Leary dated September 18, 2008                   |
| D. | Ministry of the Environment Provincial Officer Report and Order dated August 22, 2008 |
| E. | Letter from Gordon Acton to Dennis O'Leary dated September 19, 2008                   |
| F. | Vaughan Fire and Rescue Service Inspection Order                                      |
| G. | Letter from Gordon Acton to Dennis O'Leary dated September 29, 2008                   |
| H. | Email from Dennis O'Leary to Gordon Acton dated September 29, 2008                    |
| I. | Email from Dennis O'Leary to Gordon Acton dated October 1, 2008                       |
| 3. | Affidavit of Paul Bannister sworn November 25, 2008                                   |
| A. | CN Tariff 9000  |
| 4. | Preliminary Report of the Chief Restructuring Officer dated November 28, 2008         |

**TAB 1**

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**ONTARIO  
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**IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF THE BANKRUPTCY AND INSOLVENCY  
OF FIRST WASTE UTILITIES CANADA LIMITED,  
FIRST WASTE UTILITIES CORP., FIRST WASTE TRANSLOAD INC. AND  
FIRST WASTE AMERICA INC.**

**NOTICE OF MOTION**

Canadian National Railway Company ("CN"), an unsecured creditor and lessor of First Waste Transload Inc., will make a motion to a judge presiding over the Commercial List on Friday, November 28, 2008, at 10:00 a.m. or as soon after that time as the motion can be heard at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

- (a) an order providing for a court-supervised sales process in accordance with the preliminary report of the Chief Restructuring Officer;
- (b) in the event that the Court grants the Order sought by ARL, an Order that First Waste Transload Inc. ("First Waste Transload") pay to CN the amount of \$114,212 (CAN) and \$224,224 (USD) with respect to demurrage fees accruing since the date of the Notice of Intention to file a Proposal;

- (c) awarding CN its cost of this motion; and
- (d) granting such further and other relief as counsel may advise and this Honourable Court may permit.

**THE GROUNDS FOR THE MOTION ARE:**

- (a) A Notice of Intention to file a proposal was filed by the First Waste entities (“First Waste”) on October 1, 2008;
- (b) First Waste has been delinquent in its payments to CN since the spring of 2008;
- (c) First Waste has been making assurances with respect to imminent financing for several months and none to date has been forthcoming;
- (d) CN has not seen any documentation from First Waste relating to a proposed refinancing; and
- (e) The CRO recommends a court-supervised sale process being implemented for the assets of First Waste.

**Demurrage fees**

- (f) Demurrage (storage) fees with respect to the ARL railcars on CN property have been accruing at a of \$52 per day per car with a total amount to November 25, 2008 of \$114,212 (CAN) and \$224,224 (USD);
- (g) With respect to post-filing obligations, CN is in no different position than ARL;

- (h) If this Honourable Court, in its discretion, grants an Order for a payment of ARL's lease invoice, CN should have its demurrage fees from the date of the filing of the Notice of Intention;
- (i) Such further and other grounds as counsel may advise and this Honourable Court permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:**

- (a) The Affidavit of Paul Bannister sworn November 25, 2008;
- (b) The Affidavit of Paul Bannister sworn October 29, 2008;
- (c) The Preliminary Report of the Chief Restructuring Officer dated November 28, 2008; and
- (d) Such further and other material as counsel may advise and this Honourable Court may permit.

Date: November 25, 2008

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IN THE MATTER OF THE PROPOSAL OF FIRST WASTE UTILITIES CANADA LIMITED et al.

Estate Nos. 31-455620, 31-455619,  
31-455613, and 31-1118466

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**NOTICE OF MOTION**

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