

Estate File 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 NOTICE OF INTENTION TO MAKE A PROPOSAL OF FIRST WASTE  
UTILITIES CANADA LIMITED, FIRST WASTE UTILITIES CORP. , FIRST WASTE  
TRANSLOAD INC. and FIRST WASTE AMERICA INC.**

**NOTICE OF MOTION  
(Returnable November 28, 2008)**

Zwaig Associates Inc. ("Zwaig"), in its capacity as Proposal Trustee of First Waste Utilities Canada Limited, First Waste Utilities Corp., First Waste Transload Inc. and First Waste America Inc. ("First Waste"), will make a motion to a Judge of 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 abridging the time for service of the Notice of Motion and Motion Record, validating the service of such notice materials and dispensing with service of such Motion materials on any party not served;
- (b) An Order that First Waste be granted an extension of time to file a proposal to January 2, 2008 pursuant to subsection 50.4(9) of the *Bankruptcy and Insolvency Act*;

- (c) An Order that to the extent American Railcar Leasing succeeds in its motion, which is also to be heard on the same date as the within motion, that any repossession of the railcars not occur until after December 3, 2008 and that the order is without prejudice to First Waste to seek, prior to December 3, 2008, a variance of any order that ARL may obtain.
- (d) An Order permitting the late filing of the Affidavit of Joel Wagman to be sworn today, November 27, 2008;
- (e) such further and other relief as counsel may request and this Honourable Court may allow.

**THE GROUNDS FOR THE MOTION ARE:**

1. On October 1, 2008, First Waste Utilities Canada Limited, First Waste Utilities Corp. and First Waste Transload Inc. filed a Notice of Intention to file a proposal naming Zwaig as Trustee. On October 8, 2008, First Waste America Inc. filed a Notice of Intention to file a proposal naming Zwaig as Trustee;
2. First Waste is a publicly traded Ontario corporation headquartered in Toronto. It has constructed and operates Canada's first Transload Facility™. The Transload Facility transfers different types of waste from trucks to railcars and transports the waste to landfill sites. The use of railcars reduces the cost and the carbon dioxide emissions resulting from transporting the waste;
3. The railcars leased from ARL are especially designed for waste transportation and are pertinent to the business of First Waste;
4. On November, 3, 2008 First Waste obtained an order from the Honourable Justice Wilton-Siegel granting, *inter alia*, an extension of time within which to file a proposal and appointing a Chief Restructuring Officer ("CRO");
5. The CRO prepared and delivered a Preliminary Report of the Chief Restructuring Officer dated November 18, 2008 ("CRO Report");

6. The CRO Report set out a sale process that is supported by First Waste. As agreed to by the CRO and in consultation with the CRO, the extension of time does not interfere with the sale process and will run concurrently with it;
7. Three unsolicited offers with respect to financing and/or purchasing First Waste have been received, including one today;
8. As the railcars are pertinent to the business, at a minimum, in the event ARL is granted its relief to repossess the railcars, the order ought to be suspended or stayed until December 3, 2008, if at that time First Waste has not obtained an order varying ARL's order (if obtained);
9. The Trustee is of the view that First Waste is acting in good faith and with due diligence;
10. Section 274 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3;
11. Rules 1.04, 2.03, 3.02, 37, 60.05 and 60.11 of the *Rules of Civil Procedure*, R.S.O. 1990, c. 43, as amended;
12. Section 101 of the *Courts of Justice Act*, R.S.O. 1990, C. c-43, as amended; and
13. Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

1. Notice of Motion;
2. Second Report of the Trustee (Melvin Zwaig) dated November 27, 2008;
3. The Affidavit of Joel Wagman sworn November, 27 2008; and
4. Such further and other material as counsel may advise and this Honourable Court may allow.

**DATE:** November 27, 2008

**BENNETT JONES LLP**

Barristers and Solicitors  
One First Canadian Place  
Suite 3400, P.O. Box 130  
Toronto, ON M5X 1A4

**Justin R. Fogarty / Maureen M. Ward**

Tel: 416.777.4859 / 4630  
Fax: 416.863.1716

Lawyers for Zwaig Associates Inc. in its  
capacity as Proposal Trustee of First Waste  
Utilities Canada Limited, First Waste  
Utilities Corp., First Waste Transload Inc.  
and First Waste America Inc.

**TO: FRASER MILNER CASGRAIN LLP**  
1 First Canadian Place  
100 King Street West, 42<sup>nd</sup> Floor  
Toronto, ON M5X 1B2

Dan Dowdall / Jane Dietrich  
Tel: (416) 863-4700 / 4467  
Fax: (416) 863-4592

Lawyers for Integrated Business Concepts Inc.

**AND TO: LENCZNER SLAGHT**  
2600 – 130 Adelaide Street West  
Toronto, ON M5H 3P5

Monique Jilesen  
Tel: (416) 865-2926  
Fax: (416) 865-9010

Lawyers for Canadian National Railway

**AND TO: CHAITONS LLP**  
185 Sheppard Avenue West  
Toronto, ON M2N 1M9

George Benchetrit  
Tel: (416) 222-8888  
Fax: (416) 222-8402

Lawyers for Bank of Montreal

**AND TO: DAVIS LLP**  
1 First Canadian Place, Suite 5600  
100 King Street West  
Toronto, ON M5X 1E2

Susan Friedman / Bruce Darlington  
Tel: (416) 365-3503 / 3529  
Fax: (416) 777-7415 / (416) 369-5210

**AND TO: TORKIN MANES COHEN ARBUS LLP**  
151 Yonge Street, Suite 1500  
Toronto, ON M5C 2W7

S. Fay Sulley  
Tel: (416) 777-5419  
Fax: (888) 587-5769

Lawyers for the Chief Restructuring Officer,  
BDO Dunwoody Limited

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF FIRST WASTE UTILITIES  
CANADA LIMITED, FIRST WASTE UTILITIES CORP., FIRST WASTE TRANSLOAD INC. and FIRST WASTE  
AMERICA INC.**

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

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

**IN BANKRUPTCY AND INSOLVENCY**  
Proceeding commenced at Toronto

**NOTICE OF MOTION  
(Returnable November 28, 2008)**

**BENNETT JONES LLP**  
One First Canadian Place  
Suite 3400, P.O. Box 130  
Toronto, ON M5X 1A4

**Justin R. Fogarty / Maureen M. Ward**  
Tel: 416.777.4859 / 4630  
Fax: 416.863.1716

Lawyers for Zwaig Associates Inc. in its  
capacity as Proposal Trustee of First Waste  
Utilities Canada Limited, First Waste  
Utilities Corp., First Waste Transload Inc.  
and First Waste America Inc.