

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

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
In Bankruptcy and Insolvency

BETWEEN

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

AMERICAN RAILCAR LEASING LLP (“ARL”), a secured creditor and lessor of First Waste America, Inc., will make a motion to a Judge presiding over the Commercial List on a day to be fixed by the court, 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 an order:**

1. Lifting the stay of proceedings against that was imposed after First Waste Utilities Canada Limited, First Waste Utilities Corp., First Waste Transload Inc. and First Waste America Inc. delivered their respective Notices of Intention to Make a Proposal dated October 1 and October 8, 2008, so that ARL can enforce its rights as a secured creditor and lessor of First Waste America Inc. (“First Waste”), terminate the lease made as of September 4, 2007, as amended (the “Lease”) and recover possession of the 164 railcars (the “Railcars”) that it leased to First Waste, pursuant to the Lease;

2. Directing First Waste, the Proposal Trustee, the Chief Restructuring Officer, and all other persons and parties to provide assistance to ARL in its efforts to regain possession of the Railcars;
3. Directing Canadian National Railway Company (“CN”) to transport the Railcars to a railway junction point selected by ARL, at ARL’s expense;
4. Ordering that First Waste pay to ARL the amount of USD \$133,496.00 pursuant to invoice number 535425, issued after the date of the NOI in respect of the continued leasing of the Railcars by First Waste;
5. Declaring that ARL takes the Railcars free and clear of all liens, claims, encumbrances, security interests or other interests in the Railcars;
6. Awarding ARL its costs of this motion; and
7. Granting such further and other relief as counsel may advise and this Honourable Court allow.

**THE GROUNDS OF THE MOTION ARE:**

8. Pursuant to the Lease, ARL leased the Railcars to First Waste. The approximate value of the Railcars is USD\$15,308,000.00.
9. ARL is a secured creditor of First Waste and holds a security interest in the Railcars. ARL’s security interest is registered pursuant to registration number 20081027 170915907709 made pursuant the Ontario *Personal Property Security Act* and registration number registration number 19626 made pursuant to the Canada *Transportation Act*.
10. The Lease required First Waste to make lease payments to ARL on the first day of each month of the lease term. First Waste failed to make the lease payments due on the first of

each of August, September and October, 2008. Additionally, First Waste failed to pay ARL storage fees in the amount of USD \$27,903.75, pursuant to an invoice issued on June 30, 2008. The total outstanding debt that arose prior to the filing of the NOI, exclusive of interest, is in the amount of USD \$ 428,391.75.

11. After First Waste filed the NOI, it retained possession of the Railcars, but failed to make the lease payment of USD \$133,496.00, due on November 1, 2008.
12. It is ARL's information that First Waste will be unable to make the lease payment of USD \$133,496.00, that is due on December 1, 2008.
13. As a result of discussions between ARL's counsel in Ontario and the Chief Restructuring Officer (the "CRO") and as a result of the CRO's Preliminary Report dated November 18, 2008, ARL has learned that, as of today's date, very little, if any, progress has been made to formalize a definitive agreement with respect to a sale or refinancing of First Waste and, in fact, the CRO has not received so much as a letter of commitment, term sheet or any other documentation, with respect to a sale or refinancing of First Waste
14. ARL does not believe that First Waste will be able to either refinance or sell its business for several months, at the least, and in the interim the debt owed to it arising subsequent to the filing of the NOI continues to mount.
15. ARL is not prepared to continue allowing First Waste to have possession and use of the Railcars, without First Waste making the payments pursuant to the Lease.
16. If ARL recovers possession of the Railcars, it will be in a position to lease them immediately to other lessees.
17. The Railcars are located in Ontario, Michigan and Ohio. The Railcars that are in Ontario are to be found in a yard owned by CN. Only CN can transport the Railcars from its yard to a railway junction point.

18. 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:**

1. The affidavit of Umesh Choksi, sworn November \*, 2008;
2. Such further and other material as counsel make advise and this Honourable Court entertain.

November 19, 2008

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capacity as Proposal Trustee of First Waste  
Utilities Canada Limited, First Waste  
Utilities Corp., First Waste Transload Inc.  
and First Waste America Inc.

**AND**  
**TO:** Service List (see attached)

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The Chief Restructuring Officer

**IN THE MATTER OF  
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**PROCEEDING COMMENCED AT TORONTO**

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