

Estate File Nos. 31-455620

31-455619

31-455613

31-1118466

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE)
JUSTICE CUMMING) FRIDAY, THIS 28TH DAY OF
NOVEMBER, 2008.

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.

ORDER

THIS MOTION, made by American Railcar Leasing LLC ("ARL"), a secured creditor of and the lessor to First Waste America Inc., for an Order lifting the stay imposed pursuant to section 69(1) of the *Bankruptcy and Insolvency Act* and for other relief, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the moving party's Motion Record, Supplementary Motion Record and Factum and the Responding Record of the Bank of Montreal ("BMO"), and on hearing submissions of counsel for the moving party, counsel for Zwaig Associates Inc. ("Proposal Trustee") 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. (collectively "First Waste), counsel for BDO Dunwoody Limited, the Chief Restructuring Officer (the "CRO") of First Waste, and counsel for the Canadian National Railway Company ("CN") and

Integrated Business Concepts Inc. and on being advised by counsel for CN that it consents to this order

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1. THIS COURT ORDERS that the time for service of the Supplementary Motion Record and the factum of the moving party is hereby abridged and service thereof is validated.
2. THIS COURT ORDERS that the stay of proceedings that was imposed pursuant to section 69(1) of the *Bankruptcy and Insolvency Act* with respect to First Waste is lifted, so that ARL can enforce its rights as a secured creditor and lessor of First Waste America Inc., terminate the lease made as of September 4, 2007, as amended and recover possession of the 164 railcars (the "Railcars") that it leased to First Waste America Inc,
insertion on separate sheet
3. THIS COURT ORDERS that First Waste, the Proposal Trustee, the CRO, CN and all other persons and parties are to provide assistance to ARL in its efforts to regain possession of the Railcars.
4. THIS COURT ORDERS that:
 - (i) CN shall transport the Railcars to a railway junction point agreed upon by ARL and CN at a date and time agreed upon and subject to business terms agreed upon by CN and ARL, all ARL's expense;
 - (ii) CN shall incur no liability or obligation to ARL or anyone as a result of carrying out the provisions of this Order, save and except for any gross negligence or willful misconduct on its part; and

(iii) Upon carrying out its obligations pursuant to this order, CN is hereby relieved of any liability whatsoever to ARL, First Waste or anyone else, with respect to the Railcars or their contents, save and except for any gross negligence or willful misconduct on its part.

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THIS COURT DECLARES that, upon ARL providing evidence satisfactory to the BMO that ~~the sum of \$500,000.00~~ *an amount sufficient to repay the BMO indebtedness in full* is being held in trust by the solicitors for ARL, in an interest bearing account, and will be held and not paid to anyone until the earlier of:

- (i) such time as there is a final determination by the Court as to the priority of the respective interests of the BMO and ARL in and to the Railcars and in such case the money is to be paid in accordance with the order of the Court;
- (ii) such time as there is an agreement in writing between the BMO and ARL regarding the payment of the moneys held in trust and in such case the money is to be paid in accordance with the written agreement; and
- (iii) such time as the BMO has received payment in full of all obligations of First Waste America Inc. to the BMO and in such case the money is to be paid in accordance with the written direction of ARL,

ARL takes the Railcars free and clear of all liens, claims, encumbrances, security interests or other interests in the Railcars, other than the interest of the secured creditor of ARL, U.S.

Bancorp Equipment Finance, Inc.

all 6. THIS COURT ~~ORDERS~~ *DECLARES THAT* ARL is entitled to receive from *all* First Waste America Inc. ~~pay to ARL~~ *the amount of* USD \$133,496.00 pursuant to invoice number 535425, issued after October 8, 2008, in respect of the continued leasing of the Railcars by First Waste America Inc. *all*

ALL → THIS COURT DECLARES that ~~the~~ Canadian National Railway is entitled to receive from First Waste Transload Inc. ~~\$311,030.00~~ \$114,192 CAD and \$224,224 USD TO NOVEMBER 25, 2008. JAC

~~THIS COURT ORDERS that First Waste America Inc. and ~~pay~~ pay ARL its~~

~~costs of this motion, as assessed or agreed.~~

Nov. 28, 2008 Peter A. Cumming J.

pal

insertion to paragraph 2 of draft order

subject to the term that ARL shall not lease the Railcars to any person prior to December 31, 2008 and that IBC or any other person shall, upon:

- (a) paying all amounts due to ARL under the Lease as of the date of assumption of the lease, including but not limited to all costs incurred by ARL, which shall include its legal fees and the costs to repossess, transport, empty, clean and restore as necessary the Railcars;
- (b) satisfying ARL, acting reasonably, as to the financial viability of the person intending to assume the lease and of its business plan. In the event of any disagreement respecting financial viability, the parties may bring this issue back before the court; and
- (c) paying all amounts due to CN pursuant to CN Tariff 9000 ~~1000~~ - J.

The foregoing right shall expire if on or before December 19, 2008, the court has not approved a sale of the Trust Waste companies.

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A PROPOSAL OF
THE NOTICE OF INTENTION TO MAKE
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SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

ORDER

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