

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

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

THE HONOURABLE)
) FRIDAY, THE 28th DAY
)
JUSTICE CUMMING) OF NOVEMBER, 2008

**INT THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF
FIRST WASTE UTILITIES CANADA ILMTIED, FIRST WASTE UTILITIES CORP.,
FIRST WASTE TRANSLOAD INC. AND FIRST WASTE AMERICA INC.**

ORDER

THIS MOTION, made by Canadian National Railway Company ("CN"), an unsecured creditor and lessor of First Waste Transload Inc, for an order authorizing and mandating a sale process was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Preliminary Report of the Chief Restructuring Officer dated November 18, 2008, the affidavits of Paul Bannister sworn October 29, 2008 and November 25, 2008, and upon hearing the submissions of counsel for the Trustee, the CRO, Integrated Business Concepts Inc. and CN;

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged so that this motion is properly returnable today and hereby dispenses with further service thereof.

DEFINITIONS

2. **THIS COURT ORDERS** that capitalized terms not otherwise defined in this Order shall have the meanings ascribed to them in the Order of Mr. Justice Wilton Speigel dated November 3, 2008 (the "CRO Order").

THE CRO'S POWERS

3. **THIS COURT ORDERS** that the CRO is hereby empowered, authorized and directed to conduct a marketing process (the "Marketing Process") for the current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"), without in any way limiting the generality of the foregoing, the CRO is authorized and empowered to:

- (a) market any or all of the Property, including soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the CRO in its discretion may deem appropriate;
- (b) to negotiate the sale, conveyance, transfer, lease or assignment of the of the Property or any part or parts thereof out of the ordinary course of business, with the approval of this Court
- (c) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (d) to take any steps reasonably incidental to the exercise of these powers,

and in each case where the CRO takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

4. **THIS COURT ORDERS** that the CRO is hereby authorized and directed to conduct the following Marketing Process in respect of the Property:

- (a) The CRO shall immediately:
- (i) contact all prospective purchasers and interested parties and inform them of this marketing process;
 - (i) publish this court-approved marketing process on the CRO's website;
 - (ii) prepare electronic due diligence room and relevant documentation;
 - (iii) prepare a Confidential Information Memorandum ("CIM") and Confidentiality Agreement and distribute them to interested parties;
 - (iv) prepare procedures for submissions of offers, and structure of transaction;
- (b) the CRO shall obtain non-binding letters of intent by December 12, 2008;
- MLL* (c) ~~by December 15, 2008 the CRO shall prequalify and shortlist selected bidders,~~
by December 15, 2008 or such earlier date as the bidder may agree
- (d) the CRO shall provide all parties on the service list who have not submitted bids or proposals, with copies of the shortlisted letters of intent subject to such terms of confidentiality the CRO deems appropriate; *MLL*
- (e) the CRO shall provide a status report with respect to the Marketing Process no later than *December 15, 2008;* *MLL*
- MLL* (f) ~~by no later than~~ *until* January 15, 2009 the CRO shall:
- (i) assist shortlisted bidders in the due diligence process;

- (ii) coordinate meetings as necessary between bidders and other interested stakeholders including CN;
- (g) binding offers from potential purchasers shall be received by no later than January 15, 2009;
- (h) the selection of the successful bidder with the final bid accepted shall occur no later than January 23, 2009;
- (i) court approval and a vesting order shall be sought by no later than January 30, 2009;
- (j) the closing of the transaction shall occur in accordance with the terms of the agreement with the purchaser.

5. THIS COURT ORDERS that the Debtor shall assist the CRO, as the CRO requests in the Marketing Process, and shall not interfere, impede or otherwise participate in the sales process, unless assistance is requested by the CRO.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE CRO

6. THIS COURT ORDERS that all Persons shall forthwith advise the CRO of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the CRO or permit the CRO to make, retain and take away copies thereof and grant to the CRO unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the CRO due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the CRO for the purpose of allowing the CRO to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the CRO in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the CRO. Further, for the purposes of this paragraph, all Persons shall provide the CRO with all such assistance in gaining immediate access to the information in the Records as the CRO may in its discretion require including providing the CRO with instructions on the use of any computer or other system and providing the CRO with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE CRO

8. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the CRO except with the written consent of the CRO or with leave of this Court.

EMPLOYEES

9. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the CRO shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the CRO, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all

material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the CRO, or ensure that all other personal information is destroyed.

LIMITATION ON THE CRO'S LIABILITY

10. THIS COURT ORDERS that the CRO shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

GENERAL

11. THIS COURT ORDERS that the CRO may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

12. THIS COURT ORDERS that nothing in this Order shall prevent the CRO from acting as a trustee in bankruptcy of the Debtor.

RC / Or Receiver / PAC

13. THIS COURT ORDERS that this order should be read in conjunction with the CRO Order and that nothing in this Order shall derogate from the powers of and protections for the CRO described in the CRO. All the provisions of the CRO Order shall continue to apply to activities of the CRO in respect of this Order.

14. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the CRO and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the CRO, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the CRO and its agents in carrying out the terms of this Order.

15. THIS COURT ORDERS that the CRO be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

pac including terminating the marketing process - 7 - *pac*

16. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on notice to the CRO and to any other party on the service list or who is likely to be affected by the order.

Nov. 28, 2008 Peter A. Cumming J.

pac, 17. THIS COURT ORDERS that this order is without prejudice to ~~the CRO~~ apply to the Trustee or CRO to apply to the Court for the approval of a proposal. *pac*

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

Estate Nos. 31-455620, 31-455619,
31-455613, and 31-11118466

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

ORDER

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