

Court File No. CV-18-595577-00CL

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

BETWEEN:

**AMERICAN IRON & METAL COMPANY INC.**

Applicant

- and -

**1340923 ONTARIO INC. and  
WAXMAN REALTY COMPANY INC.**

Respondents

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND  
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE  
*COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

**FIRST REPORT TO THE COURT OF A. FARBER & PARTNERS INC. IN ITS  
CAPACITY AS COURT-APPOINTED RECEIVER OF 1340923 ONTARIO INC. AND  
WAXMAN REALTY COMPANY INC.**

**AUGUST 3, 2018****INTRODUCTION**

1. This report (this “**First Report**”) is filed by A. Farber & Partners Inc. (“**Farber**”), in its capacity as the court-appointed receiver (in such capacity, the “**Receiver**”) of all the assets, undertakings and properties of 1340923 Ontario Inc. (“**134Co**”) and Waxman Realty Company Inc. (“**Waxman**”, and together with 134Co, the “**Debtors**”), pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) and section 101 of the *Courts of Justice Act* (Ontario).
2. Farber was appointed as the Receiver pursuant to an Order of the Honourable Mr. Justice Pattillo of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made

June 5, 2018 (the “**Receivership Order**”). His Honour also approved a stalking horse sale process in respect of the Debtors’ real property interests (the “**Sale Process**”) pursuant to a second Order also made June 5, 2018 (the “**Sale Process Order**”). Copies of the Receivership Order, the Sale Process Order and His Honour’s endorsements made May 25, 2018 (the “**May Endorsement**”) and June 5, 2018 (the “**June Endorsement**”) are attached collectively to this First Report as **Appendix “A”**.

3. The application for the Receivership Order and the Sale Process Order was made by American Iron & Metal Company Inc. (“**AIM**”), which is: (i) a secured creditor of the Debtors; (ii) a tenant in common with the Debtors in respect of the Real Property (as defined below); and (iii) the stalking horse bidder under the Sale Process. A copy of AIM’s supporting affidavit in respect of its application, being the Affidavit of Kamila Wirpszo sworn April 11, 2018 (the “**AIM Affidavit**”), is attached to this First Report (without exhibits) as **Appendix “B”**. A copy of the report dated April 17, 2018 filed by Farber, in its capacity as the proposed Receiver (in such capacity, the “**Proposed Receiver**”), is attached to this First Report as **Appendix “C”** (the “**Proposed Receiver’s Report**”).
4. Additional background in respect of the Debtors, AIM and the Real Property is set out in the AIM Affidavit and the Proposed Receiver’s Report. In short, the Receiver understands that:
  - a. the Debtors do not have any employees, do not carry on any day-to-day business activities and do not have any substantive business other than their interests in the Real Property;
  - b. AIM is part of a group of companies that carries on business in the scrap metal and recycling industry across North America and elsewhere; and
  - c. AIM and the Debtors are parties to joint venture agreements that govern certain aspects of their tenancies in common of the Real Property, from which Real Property scrap metal yards are operated.

## PURPOSE

5. The purpose of this First Report is to: (i) advise as to the results of the Sale Process; and (ii) seek Orders:
  - a. approving the transaction (the “**Transaction**”) contemplated by the Agreement of Purchase and Sale dated June 5, 2018 between the Receiver and AIM (the “**Original Sale Agreement**”), as amended by a letter agreement dated July 31, 2018 (the “**Amendment**”, and together with the Original Sale Agreement, “**Sale Agreement**”), and authorizing the Receiver to take such steps and execute such documents as may be necessary or desirable for the completion of the Transaction, and vesting in AIM all the Debtors’ right, title and interest in and to the assets described in the Sale Agreement (the “**Purchased Assets**”) free and clear of all encumbrances except for certain permitted encumbrances;
  - b. approving the amount of the BDC Credit Amount (as defined herein);
  - c. approving the Proposed Receiver’s Report and the activities of the Proposed Receiver therein;
  - d. approving this First Report and the activities of the Receiver described herein, including, without limitation, the Receiver’s interim statement of actual receipts and disbursements dated July 31, 2018; and
  - e. approving the fees and disbursements of the Receiver and its legal counsel for the period ending July 31, 2018.

## DISCLAIMER

6. This First Report has been prepared for the use of the Court and the Debtors’ stakeholders in connection with the relief being sought at paragraph 5 of this First Report. Accordingly, the reader is cautioned that this First Report may not be appropriate for any other purpose. Neither Farber nor the Receiver will assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this First Report for any other purpose.

7. In preparing this First Report, the Receiver has relied upon certain unaudited, draft and/or internal financial and other information by parties who have knowledge of the affairs of the Debtors, including AIM and the Debtors. The Receiver has not performed an audit or verification of such information for accuracy, completeness or compliance with Accounting Standards for Private Enterprises or International Financial Reporting Standards. Accordingly, the Receiver expresses no opinion or other form of assurance with respect to such information.
8. All references to dollars in this First Report are in Canadian currency, unless otherwise noted.

### THE SALE PROCESS

9. As set out in Schedule “A” to the Sale Process Order, the purpose of the Sale Process was to identify one or more purchasers of all the Debtors’ right, title and interest in and to the following (the “**Real Property Interests**”):
  - a. the real property municipally known as 143 Adams Boulevard in Brantford, Ontario and legally described in PIN 32281-0152 (LT) (the “**Brantford Real Property**”, with the Debtors’ right, title and interest in and to the Brantford Real Property being defined as the “**Branford Real Property Interest**”). As set out in the Proposed Receiver’s Report, AIM and 134Co are registered on title as being tenants in common, with each holding a one-half interest in the Brantford Real Property. An updated parcel page in respect of the Brantford Real Property is attached to this First Report as **Appendix “D”**. The registrations on the Brantford Real Property remain as reported in the Proposed Receiver’s Report, save and except that liens in the aggregate amount of approximately \$170,000 in favour of the Crown were registered after the issuance of the Proposed Receiver’s Report (but before the issuance of the Receivership Order). Copies of these new liens, which, by their terms, do not appear to have a priority position over existing registrations (in the case of one lien) or prescribed security interests (in the case of the other lien), are attached collectively to this First Report as **Appendix “E”**. The Receiver understands that these liens in favour of the Crown, together with previously-

registered liens on the Burlington Real Property (as defined below), have been made on the basis of notional assessments triggered by the incomplete filings and reporting by the Debtors of corporate income tax and HST returns; and

- b. the real property municipally known as 4350 Harvester Road in Burlington, Ontario and legally described in PIN 07034-0014 (LT) (the “**Burlington Real Property**”, with the Debtors’ right, title and interest in and to the Burlington Real Property being the “**Burlington Real Property Interest**”). As set out in the Proposed Receiver’s Report, AIM and Waxman are registered on title as being tenants in common, with each holding a one-half interest in the Burlington Real Property. An updated parcel page in respect of the Burlington Real Property is attached to this First Report as **Appendix “F”**. The registrations on the Burlington Real Property remain as reported in the Proposed Receiver’s Report.
10. Amongst other things, the Sale Process Order approved both the Sale Process itself and the Original Sale Agreement executed by AIM as the stalking horse bid pursuant to the Sale Process (the “**Stalking Horse Bid**”). The Sale Process Order also authorized the Receiver to execute the Original Sale Agreement and to perform its obligations thereunder. A copy of the fully-executed Sale Agreement is attached as **Appendix “G”** to this First Report, inclusive of the Amendment. The Amendment was prepared to allow for an earlier Closing Date (as defined in the Original Sale Agreement).
11. In accordance with the Sale Process Order, the Receiver set up a virtual data room in respect of the opportunity and prepared a two-page information sheet (the “**Teaser**”) containing pertinent information related to the Brantford Real Property and the Burlington Real Property (collectively, the “**Real Property**”), including details of the Real Property, the Stalking Horse Bid and the Sale Process.
12. The Teaser was sent with a form of Confidentiality Agreement (“**CA**”) to 166 potentially-interested parties via e-mail. A copy of the template CA is attached as **Appendix “H”** to this First Report. The list of parties who were sent a Teaser was comprised of:
  - a. 17 scrap metal operators with similar operations in Ontario and abroad;

- b. 148 real estate investors, private equity investors, lawyers and/or real estate brokers, as applicable, who were identified by the Receiver either through previous sale processes of real estate interests or through Farber's network of professionals and advisors in the real estate space for parties completing similar sized real estate transactions; and
  - c. NASG Canada Inc. ("NASG"). As set out in the AIM Affidavit and the Proposed Receiver's Report, NASG has asserted a constructive trust claim over some or all of the Real Property. NASG opposed the receivership application on the grounds that the Sale Process (and, in particular, the vesting component thereof) would remove NASG's proprietary interest in the Real Property Interests. The Receivership Order and the Sale Process Order were granted over NASG's objections, with His Honour concluding at paragraphs 33 and 34 of the May Endorsement that any constructive trust claim over the Real Property Interests, if any, would attach to the net proceeds from the sale of the Real Property Interests, such that vesting orders may issue upon the sale of the Real Property Interests.
13. The Receiver also placed the Teaser, the Stalking Horse Bid, the CA, the Sale Process terms and conditions, the Sale Process Order and other relevant public documents in the Sale Process section of its case website (<https://farbergroup.com/engagements/waxman-realty/>). The Receiver also placed a public advertisement in the *Globe and Mail* (national edition) on June 12, 2018, as required by the Sale Process Order.
14. As a result of the public advertisement of the Sale Process, one additional party contacted the Receiver to request information.
15. A total of four parties executed CAs and were provided access to the data room. Of those parties, two were regional competitors in the scrap metal sale and recycling industry, one was a real estate investor and one was NASG.
16. Interested parties had until 4:00 p.m. on July 10, 2018 (the "**Bid Deadline**") to submit offers. The Receiver received no offers before (or after) the Bid Deadline.

17. As no other offer was received, the Receiver completed the Sale Process by declaring the Stalking Horse Bid to be the winning bid for the Real Property Interests.
18. The Receiver now seeks an order vesting the Purchased Assets in and to AIM free and clear of all encumbrances, except certain permitted encumbrances, and authorizing the Receiver and AIM to complete the Transaction contemplated by the Sale Agreement.
19. The Receiver is of the view that the market has been adequately canvassed, that the Sale Agreement represents the best, highest and only offer for the Purchased Assets and that the Transaction is fair and reasonable and is for the benefit of the Debtors' stakeholders. As set out in the Proposed Receiver's Report (Appendix "C"), the Receiver arrives at this conclusion having, amongst other things, reviewed the Altus Appraisals (as defined in the Proposed Receiver's Report and sealed pursuant to Receivership Order) and the appraised values of the Real Property set out therein.
20. Provided that the Transaction closes, the Receiver intends to return to Court at a later date to make recommendations regarding the distribution of the cash component of the sale proceeds.

#### **THE BDC CREDIT AMOUNT**

21. Article 4 of the Sale Agreement provides that the Purchase Price (as defined in the Sale Agreement) of \$6,650,000 shall be allocated as follows:
  - a. \$5,000,000 for the Burlington Real Property Interest, or 75.19% of the Purchase Price; and
  - b. \$1,650,000 for the Brantford Real Property Interest, or 24.81% of the Purchase Price.
22. Article 4 of the Sale Agreement further provides that the Purchase Price shall be comprised of:
  - a. a cash deposit in the amount of \$360,000, which has already been delivered to the Receiver;

- b. a credit in the amount of \$2,336,007.10, representing all the secured debt and accrued interest thereon outstanding under the loans provided by AIM to the Debtors;
  - c. a further credit in an amount to be determined by the Receiver or this Court as recoverable by AIM from the Debtors for the discharge of the Debtors' obligations under a mortgage in favour of Business Development Bank of Canada ("**BDC**") that is registered on title to the Brantford Real Property, ahead of the mortgage in favour of AIM, in the principal amount of \$2,050,000 (the "**BDC Charge**") (collectively, the "**BDC Credit Amount**"); and
  - d. the balance to be paid in cash on closing of the Transaction ("**Closing**").
23. As set out in the Proposed Receiver's Report, because 134Co only holds a 50% registered ownership position in the Brantford Real Property, the Receiver's preliminary determination was that, all other things being equal, the BDC Credit Amount in favour of AIM for discharging 134Co's obligations under the BDC Charge should be 50% of the total outstanding indebtedness secured by the BDC Charge at Closing. The Receiver has since confirmed this view after having:
- a. reviewed the agreement pursuant to which AIM acquired its 50% interest in the Brantford Real Property from 134Co, pursuant to which AIM expressly assumed 50% of the debt owing to BDC under the BDC Charge;
  - b. reviewed an indemnity agreement pursuant to which 134Co expressly agreed and undertook to indemnify AIM from all obligations and liabilities arising from or otherwise related to any amounts due to BDC over and above the above-referenced assumed obligations; and
  - c. obtained a security opinion from the Receiver's independent legal counsel, which, subject to the usual assumptions and qualifications of an opinion of such nature, confirms the validity and enforceability of the BDC Charge.



24. Effective August 14, 2018, the Receiver understands that the total amount owing to BDC under the BDC Charge (excluding BDC's legal fees and disbursements, which will be added to the BDC Charge) is \$998,112.84, such that the proposed BDC Credit Amount will be \$499,056.42 (plus half of BDC's legal fees and disbursements and accruing interest to Closing).
25. Contemporaneously with Closing, and in addition to the cash amount due by AIM to the Receiver on Closing (which is estimated to be between \$3.4 million and \$3.5 million), the Receiver understands that AIM may elect to pay directly to BDC any and all amounts owing under the BDC Charge (which BDC Charge is a permitted encumbrance under the Sale Agreement).

#### **ACTIVITIES OF THE RECEIVER**

26. The Receiver's activities since the date of the Proposed Receiver's Report include:
  - a. corresponding with AIM to ensure landlord duties and responsibilities are being undertaken;
  - b. corresponding with the Debtors and AIM to obtain information about the Real Property and other due diligence materials for the preparation of the Receiver's Confidential Information Memorandum (the "CIM") and inclusion in the Receiver's virtual data room;
  - c. drafting the CIM;
  - d. implementing the Sale Process, marketing the Real Property Interests and corresponding with brokers and prospective purchasers;
  - e. corresponding with the Receiver's legal counsel regarding the matters described herein;
  - f. responding to queries from creditors and various interested parties and brokers, including AIM;

- g. corresponding with Canada Revenue Agency regarding the Debtors' liabilities to the Crown and outstanding tax reporting due;
- h. working with the Debtors and the Debtors' accounting firm to coordinate the updating of the Debtors' financial records and completing outstanding tax returns. As set out earlier in this First Report, liens have been registered on the Real Property on the basis of notional assessments triggered by the incomplete filing and reporting by the Debtors of corporate income tax and HST returns. This has resulted in late filings and reporting of three years to which the Receiver has attended;
- i. reviewing the secured claims of AIM and BDC;
- j. consulting with legal counsel to the Receiver, legal counsel to AIM, legal counsel to the Debtors and legal counsel to NASG with respect to various matters;
- k. attending to interim funding matters;
- l. arranging commercial general liability insurance effective June 5, 2018; and
- m. preparing this First Report.

#### **INTERIM RECEIPTS & DISBURSEMENTS**

27. The Receiver was granted authority in the Receivership Order to borrow up to \$75,000 for the purpose of funding the exercise of the powers and duties conferred upon the Receiver, including interim expenditures. In that regard the Receiver borrowed \$26,000 from AIM via a Receiver's Borrowing Certificate as provided for in the Receivership Order. Attached as **Appendix "I"** is the Receiver's actual interim statement of receipts and disbursements as of July 31, 2018.

#### **RECEIVER'S FEES AND DISBURSEMENTS**

28. Pursuant to paragraph 19 of the Receivership Order, the Receiver and the Receiver's legal counsel, Aird & Berlis LLP ("**A&B**"), are required to pass their accounts from time to time.

The Receiver and A&B have maintained detailed records of their time and costs relating to the receivership proceedings.

29. The Receiver has incurred fees and disbursements in the amount of \$110,381.04, plus HST of \$14,142.70, for the period to July 31, 2018. A copy of the detailed billings of the Receiver, supported by the Affidavit of Paul Denton sworn August 2, 2018, is attached hereto as **Appendix "J"**.
30. A&B has incurred fees and disbursements in the amount of \$51,251.63, plus HST of \$6,653.37, for the period to July 31, 2018. A copy of A&B's detailed billings, supported by the Affidavit of Jeremy Theodore Nemers, sworn August 1, 2018, is attached hereto as **Appendix "K"**.

#### **RECOMMENDATIONS**

31. The Receiver respectfully requests that this Honourable Court make an order granting the relief sought by the Receiver, as summarized at paragraph 5 of this First Report.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 3RD DAY OF AUGUST, 2018.**

**A. Farber & Partners Inc.,  
in its capacity as Court-appointed Receiver  
of Waxman Realty Company Inc. and 1340923 Ontario Inc.,  
and not in its personal or corporate capacity**

Per: \_\_\_\_\_



Name: Paul J. Denton  
Title: Managing Director

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