

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

B E T W E E N :

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**

**REPORT OF A. FARBER & PARTNERS INC.,
IN ITS CAPACITY AS PROPOSED RECEIVER OF WAXMAN REALTY
COMPANY INC. AND 1340923 ONTARIO INC.
(April 17, 2018)**

INTRODUCTION

1. This report (this “**Report**”) is filed by A. Farber & Partners Inc. (“**Farber**”), in its capacity as the proposed court-appointed receiver (in such capacity, the “**Proposed Receiver**”), of all of the assets, undertakings and properties of Waxman Realty Company Inc. (“**Waxman**”) and 1340923 Canada Inc. (“**134Co**”, and together with Waxman, the “**Debtors**”, and each a “**Debtor**”), 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. American Iron & Metal Company Inc. (“**AIM**”) has brought an application seeking the appointment of Farber as the Proposed Receiver. The purpose of this Report is to provide the recommendations of the Proposed Receiver, should it be appointed by this Court, with respect to the following additional substantive relief that is being sought on the return of AIM’s application:
 - (a) an Order approving a stalking horse sale process for the marketing and eventual sale of the Debtors’ respective interests in certain real property and related assets (the “**Sale Process**”), including approving the asset purchase agreement executed by AIM and appended to the AIM Affidavit (as defined herein) (the “**Stalking Horse Agreement**”), granting a charge in favour of AIM over the Debtors’ respective interests in the real property to secure the Break Fee (as defined in the Stalking Horse Agreement) and authorizing the Proposed Receiver to conduct the Sale Process, execute the Stalking Horse Agreement and perform the Proposed Receiver’s obligations under the Sale Process and the Stalking Horse Agreement;
 - (b) an Order sealing the Confidential Exhibit “1” to this Report; and
 - (c) such further and other relief as the Proposed Receiver may advise and this Court may permit.

DISCLAIMER

3. This Report has been prepared for the use of the Court and the Debtors’ stakeholders, in the event that Farber is appointed as the Proposed Receiver, as general information

relating to the Debtors in connection with the substantive relief proposed at paragraph 2 of this Report. Accordingly, the reader is cautioned that this Report may not be appropriate for any other purpose. Neither Farber nor the Proposed Receiver will assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this Report for any other purpose.

4. In preparing this Report, the Proposed Receiver has relied upon certain unaudited financial information provided by parties who had knowledge of the affairs of the Debtors, including AIM and the Debtors. The Proposed 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 Proposed Receiver expresses no opinion or other form of assurance with respect to such information.
5. All references to dollars in this Report are in Canadian currency unless otherwise noted.

BACKGROUND

6. The Proposed Receiver understands from AIM that 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 (as defined below).
7. AIM and one of the Debtors (Waxman) are registered on title as being tenants in common and each holding a one-half ownership interest in the real property located at 4350 Harvester Road, Burlington, Ontario (the “**Burlington Real Property**”). Similarly, the

other Debtor (134Co) and AIM are registered on title as being tenants in common and each holding a one-half ownership interest in the real property located at 143 Adams Boulevard, Brantford, Ontario (the “**Brantford Real Property**”, and together with the Burlington Real Property, the “**Real Property**”).

8. In addition to its ownership interests in the Real Property, AIM is also registered on title to both the Burlington Real Property and the Brantford Real Property as a mortgagee in the principal amount of \$3,000,000 (the “**AIM Mortgages**”, and each an “**AIM Mortgage**”). The Proposed Receiver is in receipt of an independent legal opinion from its counsel, Aird & Berlis LLP, with respect to the security granted by the Debtors to AIM, including the AIM Mortgages. Subject to the usual assumptions and qualifications of an opinion of such nature, the opinion concludes that the Debtors’ indebtedness to AIM is secured by valid and enforceable security interests in certain personal property of the Debtors and the AIM Mortgages. As set out in the Affidavit of Kamila Wirpszo sworn April 11, 2018 (the “**AIM Affidavit**”), the Debtors’ combined secured indebtedness to AIM presently outstanding is approximately \$2.3 million.
9. In the case of the Burlington Real Property, and apart from municipal bylaws, notices and plan references, the applicable AIM Mortgage is registered on title behind only a notice of lease in favour of Waxman Industrial Services Corp. (“**WIS**”). The Proposed Receiver understands that the Burlington Real Property is now leased to 9934308 Canada Inc. (“**993**”) as successor and assign to WIS, and that WIS and 993 are wholly-owned subsidiaries of AIM. Other registered interests on title to the Burlington Real Property,

which are registered behind the applicable AIM Mortgage, are notices of a charge of lease and accompanying security interest in favour of Royal Bank of Canada and liens in favour of the Crown (Canada Revenue Agency). A copy of the Burlington parcel register is attached as Exhibit “M” to the AIM Affidavit.

10. In the case of the Brantford Real Property, and apart from plan references and an easement, the applicable AIM Mortgage is registered on title behind a mortgage in favour of Business Development Bank of Canada (“**BDC**”) in the principal amount of \$2,050,000 (the “**BDC Mortgage**”) and an accompanying notice of assignment of rents (together with the BDC Mortgage, the “**BDC Registrations**”). There are no other registered interests on title to the Brantford Real Property. It is proposed in the Stalking Horse Agreement that, should the transaction contemplated thereunder be consummated, the BDC Registrations will remain on title as permitted encumbrances, to be assumed exclusively by AIM (or paid in full by AIM). A copy of the Brantford parcel register is attached as Exhibit “L” to the AIM Affidavit.
11. The Proposed Receiver also understands that two claims have been commenced in the Ontario Superior Court of Justice (defined in the AIM Affidavit as the “**Waxman Action**” and the “**NASG Action**”) asserting, amongst other things, a constructive trust over some or all of the Real Property. No notice (whether for a certificate of pending litigation or otherwise) of either the Waxman Action or the NASG Action has been registered on title to the Real Property. The Proposed Receiver understands from the AIM Affidavit that the Debtors have obtained the consent of the plaintiffs in the Waxman

Action to the sale of the Debtors' interests in the Real Property by a court-appointed receiver, subject to such plaintiffs reserving any right they may have to assert a claim in respect of the net cash proceeds of sale. The Proposed Receiver further understands that the NASG Action was commenced approximately 18 months after the AIM Mortgages were registered on title.

12. Further particulars regarding the background of the Real Property, the Debtors and their creditors and other stakeholders are set out in the AIM Affidavit.

THE PROPOSED SALE PROCESS, STALKING HORSE AGREEMENT AND BREAK FEE

13. The Proposed Receiver has sought the input of the Debtors, AIM and each of their respective legal counsel to formulate the proposed Sale Process. In this regard, the Proposed Receiver also commissioned appraisals of the Real Property and related value of the Debtors' registered interest therein from Altus Group Limited ("**Altus**"). Copies of the appraisal reports provided by Altus in respect of the Real Property (one for the Burlington Real Property and one for the Brantford Real Property) dated February 13, 2018 (the "**Altus Appraisals**") are attached as **Confidential Appendix "1"** to this Report. As the Altus Appraisals contain commercially sensitive information, the Proposed Receiver believes that the public dissemination of the Altus Appraisals would be prejudicial to the integrity and effectiveness of the Sale Process. Accordingly, the Proposed Receiver recommends that the Altus Appraisals be sealed pending further Order of this Court.

14. AIM has submitted to the Proposed Receiver a proposed stalking horse bid to be used in the proposed Sale Process for the purchase of the Debtors' interests in the Real Property and related assets (the "**Stalking Horse Bid**"), which is reflected in the Stalking Horse Agreement. A redacted copy of the Stalking Horse Agreement is attached as Exhibit "P" to the AIM Affidavit. As both a mortgagee and other registered owner of the Real Property, AIM has advised the Proposed Receiver that it is concerned about the negative market impact of disclosing publicly the proposed purchase price and allocation in the Stalking Horse Bid until and unless such time as the proposed Sale Process is approved by this Court. In this regard, the Proposed Receiver understands that AIM will be filing an unredacted copy of the Stalking Horse Agreement with the Court. Provided that the proposed Sale Process is approved by this Court, the Receiver recommends that the unredacted Stalking Horse Agreement then immediately be disclosed publicly to permit the commencement of the Sale Process.
15. The Purchase Price (as defined in the Stalking Horse Agreement) is comprised of:
- (a) a cash deposit in the amount of \$360,000 (the "**Deposit**"), which is proposed in the Stalking Horse Agreement to be delivered to the Proposed Receiver within two business days of the date of acceptance of the Stalking Horse Agreement;
 - (b) a credit in the amount of \$2,336,007.10 (the "**Credit Bid Amount**"), 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 Proposed Receiver or this Court as recoverable by AIM from the Debtors for the discharge of the Debtors' obligations under the BDC Registrations (which, as stated earlier, are proposed to remain on title under the Stalking Horse Agreement as permitted encumbrances until paid in full by AIM) (collectively, the "**BDC Credit Amount**"); and

- (d) the balance to be paid in cash on closing.
16. As 134 only holds a 50% registered ownership position in the Brantford Real Property, the Proposed Receiver's preliminary determination at the time of finalizing this Report is that, all other things being equal, the BDC Credit Amount in favour of AIM for discharging 134's obligations under the BDC Registrations should be 50% of the total outstanding indebtedness secured by the BDC Registrations as at the date of the Proposed Receiver's appointment, plus any necessary adjustments from the Proposed Receiver's appointment to closing. This preliminary determination is subject to, amongst other things, the Proposed Receiver being satisfied as to the validity and enforceability of the BDC Registrations and the underlying indebtedness owing to BDC. The Proposed Receiver understands from AIM that the total outstanding indebtedness secured by the BDC Registrations as at the date of this Report is between approximately \$500,000 and \$600,000.
17. The proposed Sale Process will involve canvassing the market for one or more superior bid(s) to the Stalking Horse Bid, and is attached as **Appendix "A"** to this Report. A summary of the significant terms of the Sale Process is set out below:
- (a) the Proposed Receiver is to compile a list of interested parties in consultation with the Debtors and the Farber network of advisors and investors in the real estate sector in advance of the Proposed Receiver's appointment;
 - (b) the Proposed Receiver is to send an interest solicitation letter (the "**Teaser**") and confidentiality agreement ("**CA**") to all parties identified by Farber and the

Debtors as potentially having an interest in the Purchased Assets (as defined in the Stalking Horse Agreement) within two business days of this Court approving the Sale Process (the “**Sale Process Order**”);

- (c) information pertaining to the opportunity will be posted within two business days of issuance of the Sale Process Order on the Proposed Receiver’s website, which will include copies of:
- the Stalking Horse Agreement;
 - the Sale Process and related terms and conditions;
 - the Sales Process Order; and
 - the Teaser;
- (d) the Proposed Receiver shall advertise the Purchased Assets and the Sale Process in *The Globe & Mail* (National Edition) within five business days of issuance of the Sale Process Order;
- (e) interested parties expressing an interest in participating in the Sale Process will be required to execute the CA, after which they will receive available information in respect of the Purchased Assets, including access to the Proposed Receiver’s virtual data room, which will also include a Confidential Information Memorandum (“**CIM**”), setting out the opportunity. In addition, parties wishing to undertake further due diligence will be provided with an opportunity to conduct site visits and review further additional information not available from the virtual

data room. Any such sites visits are to be coordinated through the Proposed Receiver;

- (f) interested parties will have until 4:00 p.m. (Toronto time), on Tuesday, May 22, 2018 (the “**Bid Deadline**”) to submit a competing bid (a “**Competing Bid**”), which must be pursuant to the Sale Process procedures and, amongst other matters, must include a cash deposit equal to 10% of the Competing Bid (the “**Deposit**”). The Deposit will be refunded in the event that its corresponding Competing Bid is not ultimately accepted. Competing Bids are to be made using the Stalking Horse Agreement as a template, and are to be without conditions other than the approval of this Court;
- (g) in the event there is no Superior Bid (as defined in the Stalking Horse Agreement) lodged with the Proposed Receiver prior to the Bid Deadline, the Stalking Horse Bid shall be declared to be the Winning Bid (as defined in the Stalking Horse Agreement);
- (h) in the event one or more Superior Bid(s) is lodged with the Proposed Receiver prior to the Bid Deadline, the Proposed Receiver will distribute the following documents by no later than 5:00 p.m. (Toronto time) on May 24, 2018 to AIM and each party that has made a Superior Bid:
- an invitation to an auction of the Purchased Assets to be held on or before 5:00 p.m. (Toronto time) on May 25, 2018 (the “**Auction**”);

- a copy of the bid that the Proposed Receiver, in its sole and unfettered discretion, believes to be the most favourable bid as between the Stalking Horse Bid and all of the Superior Bids (the “**Lead Bid**”); and
- a copy of a set of rules for the Auction established by the Proposed Receiver acting in its sole and unfettered discretion with a view of maximizing the purchase price for the Purchased Assets,

and the Winning Bid shall be determined at the Auction (and an agreement of purchase and sale entered into in respect of the Winning Bid);

- (i) the Proposed Receiver will bring a motion to Court to approve the Winning Bid and obtain an approval and vesting order in favour of the purchaser thereunder;
- (j) closing of the Winning Bid is to take place on or prior to June 20, 2018; and
- (k) in the event that the Winning Bid is not from AIM and that AIM is not in default under the Stalking Horse Agreement, it is proposed that AIM be paid the Break Fee of \$500,000. In light of AIM’s unique position as both a mortgagee and partial owner of the Real Property (and therefore the underlying complexity of not only negotiating the Stalking Horse Agreement and the Sale Process, but also the ongoing requisite involvement of and negotiations by AIM with any third-party purchaser of the Debtors’ interests in the Real Property should the Stalking Horse Bid not be declared the Winning Bid), the Stalking Horse Agreement provides an acknowledgment that the Break Fee represents a fair and reasonable estimate of the costs and damages which would be incurred by AIM if the Stalking Horse Bid is not consummated. The Break Fee is not intended to be punitive in nature or to

discourage competitive bidding in the Sale Process. As the Break Fee would only be payable from cash proceeds upon closing of a Winning Bid by a third-party that is superior to the Stalking Horse Bid, the Proposed Receiver does not believe that the Break Fee (or the charge sought by AIM to secure the Break Fee) is prejudicial to stakeholders.

A chart summarizing the material deadlines for the Sales Process is set out below

Milestone	Date
Court Approval of Sale Process	Sale Process Order Approval - Targeted April 20, 2018
Begin Marketing to Interested Parties	Within two business days of issuance of Sale Process Order
Publish Notice in the <i>Globe & Mail</i> (national edition)	Within five business days of issuance of Sale Process Order
Bid Deadline	By 4:00 p.m. on May 22, 2018
Selection of Winning Bid	On or prior to 5:00 p.m. on May 25, 2018
Court approval of Winning Bid and Issuance of Approval and Vesting Order	On or prior to 5:00 p.m. on June 8, 2018
Closing of Winning Bid	On or prior to June 20, 2018

18. Overall, the proposed Sale Process provides in excess of four weeks to market the opportunity and canvass the market for one or more Superior Bid(s) to the Stalking Horse Bid. The Sale Process contemplates a thorough marketing effort as well as providing a forum and a deadline to permit and encourage any serious competing bidders to come forward with firm purchase offers in order obtain the maximum value for the Debtors' interests in the Real Property and any related ancillary assets. Once the Sale Process has been completed, the Winning Bid selected and the net sale proceeds confirmed, the Proposed Receiver would then be in a position to recommend how such net sale proceeds

should be distributed amongst the Debtor's stakeholders and/or propose a process for determining same.

19. The Proposed Receiver has had the benefit of review of the Altus Appraisals and confirms that the Stalking Horse Bid is acceptable to the Proposed Receiver as a stalking horse bid. The Proposed Receiver is also of the view that the Sale Process, as proposed, would be less expensive to administer than if a listing agent/broker were involved, and that the benefit of such listing agent/broker would be outweighed by its cost (as a result of, amongst other things, the quantum of the Stalking Horse Bid and the unique fact that AIM already has a 50% registered ownership interest in the Real Property).
20. If the Stalking Horse Agreement and the Sale Process Order are approved by this Court, the Proposed Receiver will immediately execute the Stalking Horse Agreement and proceed to implement the Sale Process. In anticipation of these events, the Proposed Receiver has been, as of the date of this Report, in the process of compiling a list of potentially interested parties, drafting a CIM and assembling further documentation related to the Purchased Assets to populate a virtual data room, such that the Sale Process may be implemented immediately should this Court approve same.

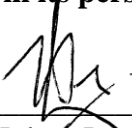
RECOMMENDATIONS

21. The Proposed Receiver respectfully recommends that the Sale Process be approved by this Court, on the basis that it is the most effective and commercially-reasonable strategy to maximize the value of the Debtors' assets for stakeholders, and therefore requests that

the Proposed Receiver be authorized to conduct the Sale Process, execute the Stalking Horse Agreement and perform the Proposed Receiver's obligations under the Sale Process and the Stalking Horse Agreement.

22. The Proposed Receiver respectfully requests that this Court accept this Report and the recommendations contained herein.

**A. Farber & Partners Inc., in its capacity as
the proposed court-appointed receiver of
Waxman Realty Company Inc. and 1340923 Ontario Inc.,
and not in its personal capacity**

Per: 
Name: Hylton Lewy
Title: Partner

AMERICAN IRON ORE AND METAL LP

- and -

WAXMAN REALTY COMPANY INC. and 1340923 CANADA INC.

Applicant

Respondents

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceedings commenced at Toronto**

**REPORT OF THE
PROPOSED RECEIVER**

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