



COURT FILE NUMBER	1603-20704
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	EDMONTON
PLAINTIFF(S)	ROYAL BANK OF CANADA
DEFENDANTS	ELEMENTS WEST INC., DAMEN TRUCKING LTD., PETER DAMEN, DAVID DAMEN, ANDREW DAMEN, and KAREN DAMEN
DOCUMENT	SECOND REPORT OF THE RECEIVER
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Counsel Dentons Canada LLP 2900 Manulife Place 10180 101 Street Edmonton, Alberta T5J 3V5 Attention: Ray Rutman Telephone: 780-423-7246 Email: ray.rutman@dentons.com Deloitte Restructuring Inc. 2000 Manulife Place 10180 101 Street Edmonton, Alberta T5J 4E4 Attention: Gordon Smith Telephone: 780-421-3863 Fax: 780-421-3782 Email: gosmith@deloitte.ca

Introduction

1. On December 2, 2016, Elements West Inc. and Damen Trucking Ltd. (individually referred to hereafter as "**Elements**" and "**Damen**", respectively, and as the "**Companies**" collectively) were placed into receivership pursuant to an Order (the "**Receivership Order**") issued by the Court of Queen's Bench of Alberta (the "**Court**"). Deloitte Restructuring Inc. ("**Deloitte**") was appointed as receiver (the "**Receiver**").
2. The Companies are incorporated under the laws of Alberta and carried on business from leased premises located at 51517 Range Road 275, Stony Plain, AB (the "**Head Office**") and its primary business was hauling and trucking. The directors of the Companies are Peter Damen, David Damen, and Andrew Damen.

Purpose of this report

3. The purpose of the Receiver's Second Report is to:
 - 3.1. Provide an update to the Court on the Receiver's activities since the First Report of the Receiver dated January 31, 2017 (the "**First Report**") and the Receiver's Supplemental Report to the First Report of the Receiver dated February 10, 2017 (the "**First Supplemental Report**"); and
 - 3.2. Respectfully recommend that this Honourable Court approve the Receiver's proposed distribution to creditors further described in this report.

Terms of reference

4. In developing this Second Report, the Receiver has relied upon unaudited financial information prepared by the Companies' management, the Companies' books and records and discussions with its management. The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants Canada Handbook. The Receiver expresses no opinion or other form of assurance with respect to the accuracy of any financial information presented in this Second Report, or relied upon by the Receiver in preparing this Second Report.

Chattel sales and remaining property

Chattels

5. The Receiver has completed the sale to EW Transport Inc. described in the First Supplemental Report and substantially all of the chattels of the Companies have now been sold. Any chattels not sold by the Receiver have been released to the appropriate secured creditors. An updated list showing the disposition of each chattel is attached as Appendix "A".
6. The only remaining unrealized chattel is a 2008 Bobcat S300. On August 9, 2016, Elements sold the 2008 Bobcat S300 bearing serial number A5GP20817 (the "**Bobcat**") worth approximately \$25,000 to settle a debt with a trade creditor. The Receiver was of the position that the sale was preferential and requested that the creditor return the Bobcat, which the creditor has refused to do. The Receiver is evaluating the remedies it may have to recover the Bobcat.

Accounts receivable

7. At the date of the Receiver's appointment, the Companies' records reflected outstanding accounts receivable totaling \$1,139,209 of which \$940,345 was owing by one large customer ("**Key Customer**") to Elements. Subsequent to its appointment, the Receiver facilitated the invoicing of some work-in-progress that had not been invoiced. Excluding amounts due from the Key Customer, the Receiver has realized \$74,811.77 and \$141,448.28 from the collection of Elements' and Damen's accounts receivable, respectively.
8. The work performed by Elements for the Key Customer was in connection with construction projects; however, Elements had not taken steps to register builders' liens to protect its interest. The Receiver had some initial discussions with the Key Customer and discovered that approximately \$566,899.62 of the \$940,345 of work was performed in connection with three construction projects that the Key Customer had registered builders' liens for its own interests. The Receiver has taken the position that the amounts due to Elements are subsumed within the amounts due to the Key Customer and subject to the Key Customer's builders' liens. The Receiver has taken steps to advance trust claims against the lien fund, but collectability of these amounts remain uncertain. With respect to the other \$373,445.38 due from the Key Customer, the Receiver believes collectability will be challenging as the Key Customer is financially challenged.

Priority creditors and proposed distribution

9. The Canada Revenue Agency (the "**CRA**") has completed an audit of employee payroll source deductions and GST for Elements. The Receiver is in receipt of a letter from the CRA advising of a deemed trust claim in the amount of \$36,633.21 for payroll source deductions and \$5,451.94 for GST.
10. The CRA has also conducted a trust audit for Damen and found that there is a potential refund for EI and CPP contributions inadvertently deducted from the payroll of Damen's directors. The CRA is in the process of providing a ruling to determine if the refund should be paid and has performed a followup audit. The Receiver is unaware of any GST liability in Damen.
11. All employees owed unpaid wages were employed by Elements and have filed proofs of claim with the Receiver. The super-priority afforded to the employees by s. 81.4(1) of the *Bankruptcy and Insolvency Act* totals \$15,153.01.
12. The Workers' Compensation Board of Alberta has advised of a secured interest in the property of Elements in the amount of \$7,393.92 by virtue of s. 129 and s. 130 of the *Workers' Compensation Act*.
13. Subject to the above priority creditors' interests totaling \$64,632.08, and as discussed in the First Report, the Receiver has obtained an independent legal opinion confirming that Royal Bank of Canada (the "**RBC**") has a perfected security interest in the amount of \$1,971,318, plus accruing interest and costs, that ranks ahead of subsequent security registrations by Canadian Western Bank and Trailer Wizards Ltd.
14. The estate balances for Elements and Damen are \$636,963.66 and \$81,289.82, respectively, and the Receiver has sufficient funds to make an interim distribution to the priority creditors and the RBC as set out in the proposed distribution schedule attached as Appendix "**B**".

Conclusion and recommendation

15. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court make an Order:
- Permitting the Receiver to make an interim distribution to pay the priority creditors, plus interest, and RBC pursuant to the proposed distribution schedule attached as Appendix "B"; and
 - Permitting the Receiver to make further distributions to RBC as the Receiver sees fit when funds are available, but in no event shall total distributions to RBC exceed \$1,971,318 without further Order of the Court.

All of which is respectfully submitted this 3rd day of May, 2017.

DELOITTE RESTRUCTURING INC.,

In its capacity as Court-appointed Receiver of
Elements West Inc. and Damen Trucking Ltd.
and not in its personal capacity



Gordon Smith, CPA, CA, CIRP, LIT, CFE, CBV
Senior Vice-President

CHATELS LIST

as of May 3, 2017

APPENDIX "A"

Elements West Inc				
Unit #	Description	Serial Number	Specific PPSA creditor	Disposition / Note
201	2014 Lode King SDE53	2LDS533XEE057620	RBC	Sold to EW
202	2014 Lode King SDE53	2LDS5331EE057621		Sold to EW
203	2014 Lode King SDE53	2LDS5333EE057622		Sold to EW
102	2014 Peterbilt Truck 389	1XPXD49X7ED243426		Sold to EW
103	2014 Peterbilt Truck 389	1XPXD49X9ED243427		Sold to EW
104	2014 Peterbilt Truck 389	1XPXD49XDED243428		Sold to EW
204	2014 Lode King SDE 53-3	2LDS5335EE057623		Sold to EW
205	2014 Lode King SDE 53-3	2LDS5337EE057624		Sold to EW
301	2015 Temisko 51' Semi-Trailer End-Loader	2TMFX513XFN751401		Sold to EW
302	2015 Temisko 51' Semi-Trailer End-Loader	2TMFX5131FN751402		Sold to EW
105	2016 Peterbilt Conventional 389	1XPXD49X8GD340623		Sold to EW
706	2014 GMC Sierra 1500	3GTU2UEC2EG385568	Tricor Lease & Finance Corp	Released to secured creditor
701	2013 GMC Sierra 3500HD	1GD423CG8DF109729		
208	2016 Manac Super B Flatdeck	2M513097XG1156068	CWB	Sold to EW
209	2016 Manac Super B Pup	2M5120854G1156070		Sold to EW
101	2004 Mack Vision 600	?	N/A	Sold to EW
206	2015 SWS 24' Deck Trailer	4UGFH2425FD027727	N/A	Sold to EW
?	2008 Bobcat Model S300	A5GP20817	N/A	1
N/A	Miscellaneous Parts and Shop Tools	N/A	N/A	Sold to EW
Damen Trucking Ltd.				
006	2010 Peterbilt 387	1XPWD49X4AD113190	RBC	Sold to EW
?	2010 Peterbilt 389	1XPXD49X6AD107203		Sold to EW
703	2009 Chevrolet K1500	1GNFK26389R234033	Ally Credit Canada Ltd.	Secured creditor paid out and sold to EW
?	2000 Wabash 53FT Tridem Reefer	1JJV533W6YL713124	Wells Fargo	Secured creditor paid out and sold to EW
207	1995 Wabash 53FT Tridem Stepdeck	2M5131619S1035479		
?	1995 Jeep Easy Ride T/A Trailer	2N9MGE72XSE016121	N/A	Sold to EW
?	2004 GMC Sierra 2500	1GTHK29U84E303132		
?	2005 GMC Sierra 2500	1GTHKZ355F955001	N/A	Sold to EW
2	2002 Freightliner Classic XL	1FUJAPCG73LL66438	N/A	Sold to EW

Notes

1) This asset was transferred to a creditor prior to the receivership. The Receiver is assessing its remedies to recover the asset.

**In the Matter of the Receivership of Elements West Inc and Damen Trucking Ltd.
Interim Statement of Receipts and Disbursements as at May 3, 2017**

APPENDIX "B"

	<u>Elements West Inc.</u>	<u>Damen Trucking Ltd.</u>	<u>Total</u>
Receipts:			
Sale of Equipment	\$506,795.83	\$0.00	
Accounts Receivable	\$93,736.77	\$141,448.28	
Cash On Hand	\$27,201.77	\$467.14	
GST Collected	\$26,954.17	\$0.00	
GST Refund	\$0.00	\$3,814.90	
Refunds:			
Income Tax	\$0.00	\$25,619.98	
Service AB Motor Vehicles	\$10,795.50	\$0.00	
WCB	\$0.00	\$3,511.76	
SGI Insurance	\$20.00	\$3,182.68	
Quickcard Innovative Benefits Solutions	\$449.32	\$0.00	
Canada Post	\$0.00	\$282.44	
Miscellaneous Income	\$2,871.00	\$0.00	
Total Receipts	<u>\$668,824.36</u>	<u>\$178,327.18</u>	<u>\$847,151.54</u>
Disbursements:			
Receiver's Fees	\$0.00	\$80,106.00	
GST On Receiver's Fees	\$0.00	\$4,005.30	
Payments to Secured Creditors	\$22,500.00	\$5,674.70	
Legal Fees	\$8,850.66	\$3,218.44	
GST On Legal Fees	\$440.04	\$160.92	
Insurance	\$0.00	\$3,802.00	
Filing Fees paid to the Official Receiver	\$70.00	\$70.00	
Total Disbursements	<u>\$31,860.70</u>	<u>\$97,037.36</u>	<u>\$128,898.06</u>
Amount available for distribution	<u>\$636,963.66</u>	<u>\$81,289.82</u>	
Interim Dividends:			
RBC	\$500,000.00	\$0.00	
Canada Revenue Agency - deemed trust	\$42,085.15	\$0.00	
Service Canada - WEPP	\$15,153.01	\$0.00	
WCB	\$7,393.92	\$0.00	
Total Dividends:	<u>\$564,632.08</u>	<u>\$0.00</u>	<u>\$564,632.08</u>
Funds on hand:	<u>\$72,331.58</u>	<u>\$81,289.82</u>	<u>\$153,621.40</u>