



COURT FILE NUMBER
COURT

CV-19-00623276-00CL
ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

JUDICIAL CENTRE

TORONTO
IN THE MATTER OF THE RECEIVERSHIP OF NATIONAL
RECYCLING INC., SCRAPORT INC., AND 2139483
ALBERTA LTD.

PLAINTIFF
DEFENDANTS

ROYAL BANK OF CANADA
NATIONAL RECYCLING INC., SCRAPORT INC., AND
2139483 ALBERTA LTD.

DOCUMENT

**SUPPLEMENT TO THE SECOND REPORT OF
DELOITTE RESTRUCTURING INC. AS THE COURT-
APPOINTED RECEIVER OF NATIONAL RECYCLING
INC., SCRAPORT INC., AND 2139483 ALBERTA
LTD.**

DATED AUGUST 27, 2020

PREPARED BY DELOITTE RESTRUCTURING INC.

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT

Receiver
DELOITTE RESTRUCTURING INC.
Suite 700, 850 - 2nd Street SW
Calgary, AB T2P 0R8
Attention: Bob Taylor / Jordan Sleeth
Tel: 403-267-0501/ 416-775-8858
Email: btaylor@deloitte.ca / jsleeth@deloitte.ca

Legal Counsel
DENTONS CANADA LLP
Toronto Dominion Centre
77 King Street West | Suite 400
Toronto, ON M5K 0A1

Attention: Robert Kennedy / Mark Freake
Tel: 416-367-6756 / 416-863-4456
Email: robert.kennedy@dentons.com /
mark.freake@dentons.com

Table of Contents

Introduction and background	1
Terms of reference	1
Purpose	2
MTL Settlement Agreement	2
Northland Settlement Agreement	2
Conclusion and Recommendation	3

Appendix

Appendix "A"	MTL Settlement Agreement (effective August 12, 2020)
Appendix "B"	Northland Settlement Agreement dated August 27, 2020

Introduction and background

1. On July 12, 2019, (the "**Date of Receivership**"), Deloitte Restructuring Inc. ("**Deloitte**") was appointed by Order of the Superior Court of Ontario (the "**Receivership Order**") as the receiver (the "**Receiver**") of all of the current and future assets, undertakings and properties of National Recycling Inc. ("**NRI**"), Scraport Inc. ("**Scraport**") and 2139483 Alberta Ltd. ("**213**" and together with NRI and Scraport, the "**Debtors**" or the "**Companies**").
2. The Receivership Order was granted pursuant to an application by Royal Bank of Canada ("**RBC**") which holds security over all of the Companies' present and after acquired personal property.
3. NRI, Scraport and 213 are private corporations incorporated in the province of Ontario on July 2, 2008, December 7, 2017 and August 27, 2018, respectively. NRI and Scraport performed recycling and processing of ferrous and non-ferrous metals. 213 appears to be a single purpose entity and owns the land and buildings located at 4688 Taylor Road, Boyle, Alberta from where NRI and Scraport carried on operations (the "**Boyle Property**").
4. NRI and Scraport also conducted office and administration activities from rental premises located at 1 Prologis Blvd in Mississauga, Ontario (the "**Mississauga Premises**"). NRI and Scraport's primary assets include vehicles, equipment, and metal processing equipment (collectively, the "**Assets**").
5. The Companies' primary secured lender is RBC. RBC was owed approximately \$4.68 million by the Companies as at the Date of Receivership (the "**RBC Indebtedness**").
6. On March 2, 2020, the Receiver filed its first report with the Court (the "**First Report**") which described, among other things, the Companies' primary assets and liabilities, the Receiver's activities to date, the proposed liquidation of certain Assets, and the Receiver's interim statement of receipts and disbursements for the period July 12, 2019 to February 21, 2020.
7. On August 12, 2020, the Receiver filed its second report with the Court (the "**Second Report**") which provided, among other things, an update on the Receiver's administration of the receivership, results of the liquidation of the Assets pursuant to the March 6, 2020 Auction Approval Order, information and an update with respect to the Boyle Property, certain litigation matters, a Statement of Receipts and Disbursements and an estimated final distribution of the funds realized by the Receiver.
8. For further background information on the Companies and the receivership proceedings please refer to the Receiver's website: <https://www.insolvencies.deloitte.ca/en-ca/Pages/National-Recycling-Inc.-et-al.-.aspx>.
9. Unless otherwise provided, all capitalized terms not defined herein are as defined in the Receivership Order, the First Report and the Second Report.

Terms of reference

10. In preparing this report, the Receiver has relied upon unaudited financial information prepared by the Debtors' management ("**Management**"), the Debtors' books and records, and discussions with 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* and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the information. The Receiver may refine or alter its observations as further information is obtained or brought to its attention after the date of this report.
11. All dollar amounts in this report are in Canadian dollars, unless otherwise indicated.

Purpose

12. The purpose of this supplement to the Second Report of the Receiver (the “**Supplemental Report**”) is to provide the Court with the following:
 - a. An update in respect of the MTL Alberta Ltd. (“**MTL**”) settlement agreement (the “**MTL Settlement Agreement**”);
 - b. Additional information and an update in respect of the rent dispute and other claims of Northland Forest Products Ltd. (“**Northland**”); and
 - c. Respectfully recommend that this Honourable Court make an order approving and authorizing the proposed settlement agreement between the Receiver and Northland (the “**Northland Settlement Agreement**”), and approving the payment of the amount of \$100,000 from the remaining cash in the receivership estate to Northland, as set out in the Northland Settlement Agreement.
13. The Supplemental Report should be read in conjunction with the Second Report filed on August 12, 2020.

MTL Settlement Agreement

14. In the Second Report, the Receiver and MTL had negotiated a form of settlement agreement. Details in respect of the MTL Settlement Agreement were described in paragraphs 20 to 26 of the Second Report.
15. Subsequent to the filing of the Second Report, the MTL Settlement Agreement was finalized (subject to obtaining the Court’s approval) and the executed MTL Settlement Agreement is attached hereto as **Appendix “A”**.

Northland Settlement Agreement

16. In the Second Report, the Receiver set out its interaction with Northland and Northland’s alleged claim on certain equipment and rent proceeds relating to the Boyle Property.
17. Details of Northland’s claims were described in paragraphs 27 to 42 of the Second Report.
18. Subsequent to the filing of the Second Report, the Receiver and its legal counsel continued to engage in dialogue with Northland and arrived at the Northland Settlement Agreement on August 24, 2020, subject to obtaining Court approval of same, whereby Northland will be paid \$100,000 from the remaining cash in the receivership estate (the “**Northland Distribution**”). The Northland Settlement Agreement is attached hereto as **Appendix “B”**.
19. The Receiver is of the view that the Northland Settlement Agreement and the proposed Northland Distribution is reasonable and appropriate in the circumstances. Moreover, the Northland Settlement Agreement is acceptable to RBC.

Conclusion and Recommendation

20. The Receiver is of the view that the terms of the MTL Settlement Agreement and the Northland Settlement Agreement and proposed Northland Distribution are reasonable in the circumstances.
21. Accordingly, the Receiver respectfully recommends that the Court:
- a. Approve and authorize the Receiver to enter into the MTL Settlement Agreement between the Receiver and MTL; and
 - b. Approve and authorize the Receiver to enter into the Northland Settlement Agreement between the Receiver and Northland and approve the Northland Distribution as set out therein.

* * *

All of which is respectfully submitted at Calgary, Alberta this 27th day of August, 2020.

DELOITTE RESTRUCTURING INC.,
solely in its capacity as Court-appointed Receiver
of National Recycling Inc., Scraport Inc., and 2139483 Alberta Inc.,
and not in its personal or corporate capacity

Per:

Per:



Bob Taylor, FCPA, FCA, CIRP, LIT
Senior Vice-President



Jorden Sleeth, LIT
Senior Vice-President

Appendix "A"

MTL Settlement Agreement (effective August 12, 2020)

SETTLEMENT OF LIEN CLAIM

BETWEEN:

DELOITTE RESTRUCTURING INC., solely in its capacity as receiver and manager of National Recycling Inc., Scraport Inc., 2139483 Alberta Ltd., and not in its personal capacity

- and -

MTL RECYCLING (ALBERTA) LTD.

WHEREAS:

- A. On July 12, 2019, pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**"), Deloitte Restructuring Inc. was appointed as receiver (the "**Receiver**"), without security, of all of the assets, undertakings and properties of National Recycling Inc. ("**NRI**"), Scraport Inc. ("**SI**"), and 2139483 Alberta Ltd. ("**213**") pursuant to section 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 (the "**Receivership Proceedings**");
- B. On June 22, 2019, 213 and MTL Recycling (Alberta) Ltd. ("**MTL**") entered into a lease agreement (the "**Lease**"), for the lease of lands located at 4688 Taylor Road, Boyle, Alberta (the "**Lands**"). Pursuant to the Lease, MTL agreed to pay 213 monthly rent in the amount of \$41,633 (the "**Rent**");
- C. On June 20, 2019, 213 and MTL entered into a storage agreement (the "**Storage Agreement**"). Pursuant to the Storage Agreement, 213 agreed to pay a monthly storage rate of \$20,0000, plus applicable taxes to MTL;
- D. MTL has paid Rent to the Receiver for the period of August 2019 to January 2020. Commencing February 2020, MTL asserted that it was no longer paying Rent to the Receiver without being paid the past due storage fees accrued since the date the Storage Agreement commenced (June 2019), and asserted a right of set-off (the "**Storage Claim**");
- E. On March 6, 2020, the Receiver obtained an auction approval order (the "**Auction Approval Order**") pursuant to which the Receiver was authorized to retain an auctioneer to market and sell specific pieces of NRI and SI equipment (collectively, the "**Equipment**");
- F. Following the granting of the Auction Approval Order and prior to the auctioneer's sale of the Equipment, MTL asserted a lien right against the Equipment for the non payment of storage fees (the "**Asserted Lien Claim**");
- G. On May 14, 2020, the Receiver and MTL entered into a letter agreement with respect to MTL's payment of Rent for the period of February 2020 rolling forward (the "**Rent Arrears**") to its solicitors trust account, FIJLaw LLP (the "**MTL's Solicitors**"), and the Receiver's agreement to hold net sale proceeds from the sale of the Equipment (the "**Net Sale Proceeds**"), until the earlier of: (i) a further agreement between the Receiver and MTL in relation to the release and payment of the Rent Arrears and the Net Sale Proceeds, or (ii) a Court Order;
- H. There is a dispute in relation to the validity and enforceability of the Storage Agreement and the Asserted Lien Claim (collectively, the "**Claim Dispute**"); and
- I. The Receiver and MTL have resolved to settle Claim Dispute, on the terms set out herein;

NOW THEREFORE in consideration of the mutual covenants contained herein including, without limitation, the agreement by the Receiver to the payment of the amount of \$75,000.00 (inclusive of applicable taxes) to MTL from the Rent Arrears held by MTL's Solicitors (the "**Payment**"), on the terms and conditions set out herein, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

ARTICLE 1
SETTLEMENT

- 1.1 The Receiver and MTL hereby agree as follows:
- (a) the Receiver hereby agrees to the Payment to MTL in respect of the Storage Claim and the Asserted Lien Claim, upon the granting of the Approval Order (as defined herein); and
 - (b) MTL hereby agrees to provide the release pursuant to Article 2 hereof.
- 1.2 In order to facilitate the delivery of the Payment and the Rent Arrears to the Receiver, the parties hereby irrevocably direct MTL's Solicitors as follows (upon the granting of the Approval Order):
- (a) the Receiver hereby irrevocably directs MTL's Solicitors to immediately deliver the Payment to MTL; and
 - (b) MTL hereby irrevocably directs MTL's Solicitors to immediately deliver the balance of the Rent Arrears (net of the Payment), to the Receiver.

ARTICLE 2
RELEASE

- 2.1 Subject to Article 3, by virtue of the execution and delivery of this Settlement Agreement and the delivery of the Payment by the Receiver to MTL, MTL hereby releases any and all claims, whether known or unknown, which it may have ever had, may have, or at any time hereafter can, shall or may have or advanced in respect of the Storage Claim pursuant to the Storage Agreement, the Asserted Lien Claim, and any other claims that may be asserted by MTL in respect of the Net Sale Proceeds and the Rent Arrears.

ARTICLE 3
COURT APPROVAL

- 3.1 The effectiveness of this Settlement Agreement remains subject to obtaining a Court Order in the Receivership Proceedings: (i) approving the terms of this Settlement Agreement and confirming that the Rent Arrears form part of the Receivership Proceedings, (ii) authorizing and directing the parties to the Settlement Agreement to take all steps necessary to give effect to the terms of this Settlement Agreement which, for greater certainty, shall include the delivery of the Rent Arrears to the Receiver, and (iii) authorizing and directing the Receiver to make the Payment to MTL (the "**Approval Order**").

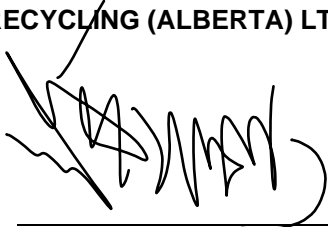
ARTICLE 4
GENERAL

- 4.1 The recitals to this Settlement Agreement form part of this Settlement Agreement.

- 4.2 All monetary amounts referred to in this Settlement Agreement shall be in CAD currency.
- 4.3 This Settlement Agreement shall be governed by and construed in accordance with the laws of Alberta.
- 4.4 Any amendment to this Settlement Agreement shall be made in writing and shall be duly executed by all parties.
- 4.5 The parties hereby covenant and agree to do such further and other things that any other party may reasonably request to give full or better effect to the provisions of this Settlement Agreement.
- 4.6 This Settlement Agreement may be executed in counterparts and delivered via facsimile or email (pdf), and all counterparts, when taken together, shall constitute one Settlement Agreement.

IN WITNESS WHEREOF the parties hereto have executed these presents effective August 12, 2020.

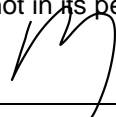
MTL RECYCLING (ALBERTA) LTD.



Per: _____

Name: Chongning (Johnny) Xu

DELOITTE RESTRUCTURING INC., solely in its capacity as Court appointed receiver of National Recycling Inc., Scraport Inc., and 2139483 Alberta Ltd. and not in its personal capacity



Per: _____

Name: Robert J. Taylor

Appendix "B"

Northland Settlement Agreement dated August 27, 2020

SETTLEMENT AGREEMENT

BETWEEN:

DELOITTE RESTRUCTURING INC., solely in its capacity as receiver of National Recycling Inc., Scraport Inc., 2139483 Alberta Ltd., and not in its personal capacity

- and -

NORTHLAND FOREST PRODUCTS LTD.

WHEREAS:

- A. On July 12, 2019, pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "**Receivership Order**"), Deloitte Restructuring Inc. was appointed as receiver (the "**Receiver**"), without security, of all of the assets, undertakings and properties of National Recycling Inc. ("**NRI**"), Scraport Inc. ("**SI**"), and 2139483 Alberta Ltd. ("**213**") pursuant to section 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 (the "**Receivership Proceedings**");
- B. On or about October 5, 2018, 213 acquired the lands municipally described as 4688 Taylor Road, Boyle, Alberta (the "**Lands**") from Northland. The sale of the Lands from Northland to 213 was financed by a vendor take back mortgage facility in the principal sum of \$7,000,000 dated October 5, 2018 (the "**Mortgage**"). The Mortgage was registered on title to the Lands;
- C. On June 22, 2019, 213 and MTL Recycling (Alberta) Ltd. ("**MTL**") entered into a lease agreement (the "**Lease**"), for the lease of the Lands. Pursuant to the Lease, MTL agreed to pay 213 monthly rent in the amount of \$41,633 (the "**Rent**");
- D. Immediately following the Receivership Order, MTL paid the Rent to the Receiver for the period of August 2019 to January 2020 (the "**Paid Rent**"). Commencing February 2020, MTL asserted that it was no longer paying Rent to the Receiver without being paid the past due storage fees accrued pursuant to a storage agreement, and asserted a right of set-off (the "**Storage Claim**");
- E. On May 14, 2020, the Receiver and MTL entered into a letter agreement (the "**Letter Agreement**") with respect to MTL's payment of Rent for the period of February 2020 rolling forward (the "**Rent Arrears**") to its solicitors trust account, FIJLaw LLP, and the Receiver's agreement to hold net sale proceeds from the sale of NRI and SI equipment (the "**Net Sale Proceeds**"), until the earlier of: (i) a further agreement between the Receiver and MTL in relation to the release and payment of the Rent Arrears and the Net Sale Proceeds, or (ii) a Court Order. The Receiver and MTL have now entered into a settlement agreement, subject to approval of the Court;
- F. There is a dispute between Northland and the Receiver in relation to the entitlement of the Paid Rent and Rent Arrears currently held in the receivership estate by the Receiver and pursuant to the Letter Agreement negotiated between the Receiver and MTL (the "**Rent Entitlement Dispute**");
- G. On August 12, 2020, the Receiver filed a motion in the Receivership Proceedings for a Distribution and Discharge Order whereby, among other things, the Receiver sought an Order to authorize and approve a distribution of all funds in the receivership estate, subject to the payment of priority claims, to Royal Bank of Canada (the "**Bank**");
- H. On August 12, 2020, Northland filed a motion in the Receivership Proceedings for an Order, among other things, declaring that the Paid Rent and Rent Arrears (collectively, the "**Receivership Rent**")

are the property of Northland, and declaring that certain motor vehicles, as described in Schedule "A" herein (collectively, the "**Vehicles**") are the property of Northland (the "**Northland Motion**"); and

- I. The Receiver and Northland have resolved to settle the Rent Entitlement Dispute and the Northland Vehicles claim, on the terms set out hereto;

NOW THEREFORE in consideration of the mutual covenants contained herein including, without limitation, the agreement by the Receiver to the lump sum payment in the amount of \$100,000.00 (inclusive of applicable taxes) to Northland (the "**Northland Distribution**"), on the terms and conditions set out herein, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

ARTICLE 1 **SETTLEMENT**

- 1.1 The Receiver and Northland hereby agree as follows:

- (a) the Receiver hereby agrees to, upon the granting of the Approval Order (as defined herein):
 - (i) the delivery of the Northland Distribution in respect of the Rent Entitlement Dispute and in respect of the Northland Motion, to be completed within 15 days following the granting of the Approval Order; and
 - (ii) the release of the Receiver's interest in the Vehicles, and the payment of the net sale proceeds resulting from the auction sale of a 1990 Ford gravel truck, model no. L9000, serial no. 1FDU90W5LVA19324, within 15 days following the granting of the Approval Order;
- (b) Northland hereby agrees to an Order dismissing the Northland Motion, on a without costs basis, and to provide the release pursuant to Article 2 hereof.

- 1.2 Upon the granting of the Approval Order, the Receiver shall take all reasonable steps necessary to direct MTL to deliver and pay Rent pursuant to the Lease effective September 1, 2020, to Northland.

ARTICLE 2 **RELEASE**

- 2.1 Subject to Article 3, by virtue of the execution and delivery of this Settlement Agreement and the delivery of the Northland Distribution by the Receiver to Northland and the Receiver's release of its interest in respect of the Vehicles:
 - (a) Northland hereby releases the Receiver from any and all claims, whether known or unknown, which it may have ever had, may have, or at any time hereafter can, shall or may have or advanced in respect of the Rent Entitlement Dispute, the Receivership Rent and those claims set forth in the Northland Motion.

ARTICLE 3
COURT APPROVAL

3.1 The effectiveness of this Settlement Agreement remains subject to obtaining a Court Order in the Receivership Proceedings: (i) approving this Settlement Agreement, (ii) authorizing and directing the parties to the Settlement Agreement to take all steps necessary to give effect to the terms of this Settlement Agreement, and (iii) authorizing and directing the Receiver to deliver the Northland Distribution to Northland (the "Approval Order").

ARTICLE 4
GENERAL

- 4.1 The recitals to this Settlement Agreement form part of this Settlement Agreement.
- 4.2 All monetary amounts referred to in this Settlement Agreement shall be in CAD currency.
- 4.3 This Settlement Agreement shall be governed by and construed in accordance with the laws of Ontario.
- 4.4 Any amendment to this Settlement Agreement shall be made in writing and shall be duly executed by all parties.
- 4.5 The parties hereby covenant and agree to do such further and other things that any other party may reasonably request to give full or better effect to the provisions of this Settlement Agreement.
- 4.6 This Settlement Agreement may be executed in counterparts and delivered via facsimile or email (pdf), and all counterparts, when taken together, shall constitute one Settlement Agreement.

IN WITNESS WHEREOF the parties hereto have executed these presents effective August 27, 2020.

NORTHLAND FOREST PRODUCTS LTD.

Per: _____

Name: *Howard Ewashka*

DELOITTE RESTRUCTURING INC., solely in its capacity as Court appointed receiver of National Recycling Inc., Scraport Inc., and 2139483 Alberta Ltd. and not in its personal capacity

Per: _____

Name: Robert J. Taylor

SCHEDULE "A"
Vehicles

- 1980 Caterpillar grader, model no. 140G serial no. 81V01030;
- 2010 Caterpillar forklift, model no. 928H, serial no. CXK00791;
- 2004 Caterpillar forklift, model no. 938G, serial no. OEM00881;
- 1978 International "Navistar" fuel truck, serial no. CF255JHA10306;