



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 **FIRST REPORT OF THE RECEIVER**

**ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT**

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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 First Report is to:
 - 3.1. Advise the Court on the Receiver's activities to date; and
 - 3.2. Respectfully recommend that this Honourable Court approve the proposed sales process of the chattels of the Companies.

Terms of reference

4. In developing this First 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 First Report, or relied upon by the Receiver in preparing this First Report.

Activities of the receiver

5. On December 2, 2016, a representative of the Receiver attended the Companies' Head Office and met with the Companies' directors to serve the Receivership Order on the Companies and to obtain information in respect of the Companies' assets, books and records, and operations.
6. Subsequent to attendance at the Head Office, the Receiver undertook the following activities:
 - 6.1. Took an inventory of the Companies' property situated at the Head Office;
 - 6.2. Took possession of the Companies' records with respect to accounts receivable;
 - 6.3. Obtained access to the Companies' electronic accounting software;
 - 6.4. Filed the Notice and Statement of Receiver with the Superintendent of Bankruptcy;
 - 6.5. Sent the Notice and Statement of Receiver to all known creditors; and
 - 6.6. Notified the Companies' insurance provider of the receivership and requested the addition of the Receiver to the Companies' insurance policy as a named insured and loss payee.
7. The Receiver did not take possession of the Head Office as it is also the personal residence of Peter Damen who has agreed to store the property of the Companies free of charge until such time that a sales process may be undertaken.

Property

Chattels

8. Attached as Schedule 1 to this report is a schedule of the Companies' chattels and creditors' respective specific first security interests. The chattels are all being stored at the Head Office with the exception of two assets, the disposition of which follow below.
9. A 2008 Bobcat S300 bearing serial number A5GP20817 (the "**Bobcat**") was transferred to a trade creditor shortly before the appointment of the Receiver. The arrangement between Elements and the creditor was that in the event Elements was unable to pay the debt owing, the creditor would be able to sell the Bobcat to satisfy the debt. The Receiver estimates that the Bobcat is worth approximately \$25,000. The Receiver has requested the return of the Bobcat.
10. A 2009 Chevrolet K1500 bearing serial number 1GNFK26389R234033 ("K1500") is in possession of a former employee of the Companies. The employee has agreed to surrender the K1500 to the Receiver. The Receiver had not yet taken possession of the vehicle as he was waiting a payout value from the secured creditor, Ally Credit Canada Ltd. ("**Ally Credit**"), to ascertain any realizable value for the receivership. The Receiver has recently received a payout statement from Ally Credit and will sell the K1500 to the employee or make arrangements to transport it as part of the sales process proposed in this report.

Accounts receivable

11. The Companies' records reflect outstanding accounts receivable totaling \$1,139,209 of which \$940,345 are owing by one customer ("**Key Customer**"). The Key Customer is claiming that adjustments are required to this balance and that it does not have the financial ability to make immediate payment of the remaining balance. The Receiver has requested that the Key Customer provide support for the claimed adjustments and particulars supporting their inability to make immediate payment. To date the Receiver has collected \$164,527 from other customers and is reviewing whether other pre-receivership services should be invoiced to customers.

Security opinion and priority interests

12. The Receiver has received a legal opinion that Royal Bank of Canada ("**RBC**"), Tricor Lease and Finance Corp. ("**Tricor**"), Canadian Western Bank ("**CWB**") and Wells Fargo Equipment Finance Company ("**Wells Fargo**") are the priority secured creditors for those assets where their names are ascribed on Schedule 1.
13. The Receiver has redeemed the security of Wells Fargo (\$5,008) as the cost to redeem their security was less than the estimated realizable value of assets secured by Wells Fargo.
14. Ally has not yet proven their security position. Should their claim be proven to the satisfaction of the Receiver, the Receiver plans to redeem their security (estimated claim is \$600) as the estimated realizable value of this asset exceeds their claim.
15. The amounts owing to Tricor and CWB exceeds what the Receiver anticipates will be realized on the sale of assets secured by them.
16. RBC is owed approximately \$1,971,318 by the Companies plus accruing interest and costs. The Receiver has obtained a legal opinion that RBC's security:
 - 16.1. Constitutes legal, valid and binding obligations on the Companies;
 - 16.2. Has been duly registered, filed or recorded in Alberta; and;
 - 16.3. Creates in favour of RBC a first registered security interest against all present and after acquired property of the Companies, subject to the specific security interests shown in Schedule 1.
17. The Receiver requested proof of security from Trailer Wizards Ltd. ("**Trailer Wizards**") by way of a letter sent by registered mail on December 29, 2016. To date the Receiver has not received the requested information. Regardless, even if this information is provided, RBC will have priority security over assets secured by Trailer Wizards.

Super priorities

18. The Receiver has been working with the Companies' bookkeeper to bring the accounting records of the Companies up to date.
19. The Receiver is advised that the Companies have not remitted payroll source deductions to the Canada Revenue Agency since October 15, 2016.
20. GST Returns of the Companies have not been filed for the period of August 1, 2016 to the date of receivership and the status of any liability or refund is unknown. The Receiver will prepare the outstanding GST returns.
21. The Receiver is awaiting a payroll audit by Canada Revenue Agency. Our preliminary estimate is that priority claims for unremitted payroll source deductions and GST as well as secured employee wage claims priorities will approximate \$50,000, however this estimate is subject to change, depending on the outcome of the audit being performed by Canada Revenue Agency.

Proposed sale process

22. The Receiver has commenced a sales process to market the chattels of the Company. In developing the sales process, the Receiver solicited proposals from Ritchie Brothers Auctioneers ("**Ritchie**"), Century Services Inc. ("**Century**"), and Osman Auctions ("**Osman**").
23. The Receiver has received a verbal offer from Ritchie and written proposals from Century and Osman. A summary of the salient terms of the three proposals together with copies of the written proposals (and amendments) are attached to this Report as Schedule 2.
24. The Osman minimum guarantee auction proposal (the "**Proposed Sales Process**") appears to be most favourable as it provides the highest guaranteed values and certainty of recovery balanced with potential upside from a public auction process.
25. The proposals submitted by the auctioneers encompass most of the chattels of the Company.
26. The Receiver has received sufficient information from Osman such that the Receiver is able to assess the individual values of the assets, some of which are subject to specific security interests of secured creditors. Osman has advised the Receiver that it is permissible for the Receiver to exclude certain assets from their offer and that this will not affect the guaranteed value for the remaining assets. The Century proposal does not permit the Receiver to sell some of the assets via alternative means.
27. Both Century and Osman provided amendments to their offers at the request of the Receiver as the Receiver wishes to exclude certain assets from their offer. In particular, a party related to the Companies wishes to acquire three units (miscellaneous parts, unit 006 2010 Peterbilt 388 and unit 2 Freightliner Classic XL) at a price that is superior to what Century and Osman are offering.
28. CWB has priority security over two chattels (unit 208 2016 Manac Super B Flatdeck and unit 209 2016 Manac Super B Pup). CWB has advised the Receiver that they are in agreement with the Receiver's Proposed Sales Process and that they are in agreement with the Receiver withholding ten percent of net auction proceeds as an allocation of their share of super priority claims and the Receiver's administration costs.
29. Tricor Lease has priority security on two chattels (unit 706 2014 GMC Sierra 1500 and unit 701 2013 GMC Sierra 3500 HD). The indebtedness owing to Tricor exceeds the value of the assets that they have security over. The Receiver has requested and is awaiting Tricor's direction as to whether they wish to take possession of the chattels that they have security on, or whether they wish that the assets be disposed in the Receiver's Proposed Sale Process. Regardless as to the choice by Tricor, the Receiver has advised Tricor that the Receiver will seek a Court Order wherein Tricor will pay to the Receiver ten percent of the estimated net sale proceeds of assets secured by them as an allocation of their share of super priority claims and the Receiver's administration costs.

30. The Receiver has consulted with RBC who agrees with the Proposed Sales Process.
31. The Century proposal requires that their offer be sealed by the Court until after the date that they auction the assets.

Conclusion and recommendation

32. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court make an order:
- Permitting the Receiver to sell chattels noted on Schedule 2 for amounts equal to or greater than the Osman guarantee;
 - Permitting the Receiver to release chattels to those secured creditors in priority to RBC (e.g. Tricor) who do not wish for the Receiver to realize on those chattels. In doing so those creditors must pay ten percent of the Osman guarantee net of commission costs within seven days of demand being made by the Receiver, failing which the Receiver will dispose of the assets in the Proposed Sales Process and remit ninety percent of the net realized amount to those creditors; and
 - The sealing of Schedule 2 appended to this report for such time as the Court directs.

All of which is respectfully submitted this 31 day of January, 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

SCHEDULE 1

CHATELS LIST

SCHEDULE 1

Elements West Inc					
Unit #	Description	Serial Number	Specific PPSA creditor	Note	
201	2014 Lode King SDE53	2LDSD533XEE057620	RBC		
202	2014 Lode King SDE53	2LDSD5331EE057621			
203	2014 Lode King SDE53	2LDSD5333EE057622			
102	2014 Peterbilt Truck 389	1XPXD49X7ED243426			
103	2014 Peterbilt Truck 389	1XPXD49X9ED243427			
104	2014 Peterbilt Truck 389	1XPXD49XDED243428			
204	2014 Lode King SDE 53-3	2LDSD5335EE057623			
205	2014 Lode King SDE 53-3	2LDSD5337EE057624			
301	2015 Temisko 51' Semi-Trailer End-Loader	2TMFX513XFN751401			
302	2015 Temisko 51' Semi-Trailer End-Loader	2TMFX5131FN751402			
105	2016 Peterbilt Conventional 389	1XPXD49X8GD340623			
706	2014 GMC Sierra 1500	3GTU2UEC2EG385568		Tricor Lease & Finance Corp	
701	2013 GMC Sierra 3500HD	1GD423CG8DF109729		Tricor Lease & Finance Corp	
208	2016 Manac Super B Flatdeck	2M513097XG1156068		CWB	
209	2016 Manac Super B Pup	2M5120854G1156070			
101	2004 Mack Vision 600	?	N/A		
206	2015 SWS 24' Deck Trailer	4UGFH2425FD027727	N/A		
?	2008 Bobcat Model S300	A5GP20817	N/A	1	
N/A	Miscellaneous Parts and Shop Tools	N/A	N/A		
Damen Trucking Ltd.					
006	2010 Peterbilt 388	1XPWD49X4AD113190	RBC		
?	2010 Peterbilt 389	1XPXD49X6AD107203		2	
703	2009 Chevrolet K1500	1GNFK26389R234033	Ally Credit Canada Ltd.	3	
?	2000 Wabash 53FT Tridem Reefer	1JJV533W6YL713124	Wells Fargo		
207	1995 Wabash 53FT Tridem Stepdeck	2M5131619S1035479			
?	1995 Jeep Easy Ride T/A Trailer	2N9MGE72XSE016121			
?	2004 Dodge Ram 2500	1GTHK29U84E303132	N/A		
2	2003 Freightliner Classic XL	1FUJAPCG73LL66438	N/A		

Notes

- 1) This asset was transferred to a third party prior to the receivership. The Receiver is determining whether the transfer is void against the Receiver.
- 2) The Receiver is advised that this vehicle was in an accident and written off in early 2016 with the insurance proceeds paid to RBC.
- 3) This vehicle is in possession of a former employee of Damen Trucking Ltd. The employee has agreed to surrender the vehicle. The Receiver is in the process of verifying the realizable value of the vehicle to determine its next steps.

SCHEDULE 2

SCHEDULE 2 REMOVED

BOOKING PROCEDURES IN CALGARY AND EDMONTON FOR THE COMMERCIAL/DUTY LIST

- (1) All matters must be **pre-booked** with the respective Commercial Coordinator, Keri Stevenson (Calgary) at (403) 476-4804 or Sharon Hinz (Edmonton) at (780) 644-7389 who update the commercial schedule twice daily, first thing in the morning and during the lunch hour.
- (2) To book a time:
 - (a) Verify with the Commercial Coordinator that the desired time is available; and
 - (b) Confirm the booking by letter forwarded by fax to either (403) 297-2752 in the case of Calgary or (780) 427-5622 in the case of Edmonton.
 - (c) The booking letter must provide the **date of the booking, the time and duration of the booking, the name of the assigned justice, a description of the application along with copies of relevant material, a list of material to be relied upon and briefs if necessary, filed or to be filed, the names of opposite or interested counsel and the action number if any.** In order to hold the booking, the Commercial Coordinator must receive the **confirming letter within forty-eight (48) hours of the verification of availability.** While there may be some applications where it is impossible to provide relevant material in advance, the reasons why this is not possible shall be disclosed in the confirming letter and the material must be provided as soon as possible to the assigned Justice.
- (3) If Counsel no longer required their confirmed booked time, they must cancel the booked time with the appropriate Commercial Coordinator. **DO NOT CANCEL THE BOOKED TIME WITH THE ASSISTANT TO THE ASSIGNED JUSTICE.**
- (4) Counsel **CANNOT** transfer confirmed booked times unless they confirm this with the Commercial Coordinator and new counsel provides a confirming letter with the detail outlined in paragraph 2 within forty-eight (48) hours of notice of the assignment to the Commercial Coordinator.
- (5) **Relevant Material: Please review the QB commercial Practice Note No. 1**
- (6) Effective August 1, 2016, all parties with matters booked on the Commercial Duty List are directed to provide courtesy hard copies and electronic (pdf) copies of all material that will be relied upon, including copies of any materials filed in an earlier application, in the event that you intend to rely upon those materials at the hearing. Hard copies are to be delivered to the presiding Justice (if booking in Calgary) or to the Edmonton Commercial Coordinator (if booking in Edmonton). Electronic copies of the material must be provided to the Commercial Coordinators at the following e-mail addresses by noon on the Friday preceding the hearing:

In Calgary: CommercialCoordinator.QBCalgary@albertacourts.ca

In Edmonton CommercialCoordinator.QBEdmonton@albertacourts.ca