

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

EXPORT DEVELOPMENT CANADA

Applicant

- and -

ANTAMEX INDUSTRIES ULC

Respondent

**AND IN THE MATTER OF AN APPLICATION UNDER 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**

AIDE MEMOIRE OF SUFFOLK CONSTRUCTION

1. Suffolk Construction Company, Inc. (“**Suffolk**”) retained Antamex Industries ULC (“**Antamex**”) to manufacture and install a modular glass facade (also referred to as a “curtain wall” in the relevant project documents) at two projects currently under construction in Boston, Massachusetts: the “**South Station Project**” and the “**109 Brookline Project**” (together, the “**Projects**”).
2. Suffolk entered into a separate subcontract with Antamex with respect to each Project (each, a “**Subcontract**”).
3. The South Station Project has a budgeted construction cost of more than US\$1 billion and the 109 Brookline Project has a budgeted construction cost of more than US\$201 million.

4. The work performed by Antamex is part of the “critical path” of construction for each Project; any delay in delivery and installation of the curtain wall supplied by Antamex risks delaying completion of the Projects in a timely manner. The magnitude of damages that will result from this delay is not currently known but could be in the tens of millions of dollars.
5. Antamex is in possession of goods that are the property of the owner of each of the Projects in accordance with the applicable Subcontract. These goods must be delivered to avoid delay in the construction of the Projects.
6. Antamex is in default of both Subcontracts, including for granting “liens” (as defined in the Subcontracts) in favour of Export Development Canada (“EDC”) over its accounts receivable from the Projects, and as a result of Antamex’s insolvency.
7. On March 11, 2024, Suffolk terminated the Subcontracts.

EDC’s Proposed Order is Unduly Broad

8. Pursuant to the Endorsement of Justice Black, the Court granted EDC limited relief against Antamex.¹ The Court:
 - (a) appointed a receiver (the “**Partial Receiver**”) over the collateral referred to as the “US Property” only, together with related books and records; and

¹ A copy of this endorsement (the “**Endorsement**”), which is dated February 27, 2024, but was released on March 5, 2024, is at **Tab 1**.

- (b) ordered that, until March 12, 2024, “Antamex may continue to operate in the ordinary course, including performing as required under construction contracts with respect to the ongoing fabrication, supply, and installation of materials.”
9. Suffolk did not learn of EDC’s receivership application until after the appointment of the Partial Receiver. Suffolk received the draft appointment order on March 8, 2024, and advised counsel on March 9, 2024, that it objects to the scope of the stay created by the draft order. A formal order appointing the Partial Receiver has not yet been issued.
10. The form of order proposed by EDC² is unduly broad and is inconsistent with the Endorsement in three respects.

Paragraph 10

11. EDC’s draft order imposes a stay of proceedings against or in respect of Antamex and all “Property”. “Property” is defined broadly to include **all of** Antamex’s property, not just the U.S. Property in respect of which the Partial Receiver has been appointed. Extending the stay of proceedings against or in respect of Antamex and all of Antamex’s Property (rather than just the U.S. Property) is inconsistent with paragraph 3(f) of the Endorsement and the limited appointment of the Partial Receiver. The stay of proceedings in paragraph 10 should be limited to proceedings against or in respect of the U.S. Property only, or proceedings against Antamex that only relate to the U.S. Property.

² A copy of which is attached at **Tab 2**.

Paragraph 11

12. The stay imposed with respect to the exercise of “all rights and remedies against or affecting the Debtor...or the Property” is overly broad. The addition of the sentence: “The applicability of this paragraph to the Property, other than the US Property, is subject to further Order of the Court” does not resolve the issue because the stay of “rights and remedies against or affecting the Debtor” would still apply to limit the rights and remedies of Antamex’s contractual counterparties, like Suffolk. This is inconsistent with paragraph 3(f) of the Endorsement and the limited appointment of the Partial Receiver. The stay against the exercise of rights and remedies in paragraph 11 as it relates to Antamex and the Property should be limited to rights and remedies against or in respect of the U.S. Property only.

Paragraph 12

13. This paragraph enjoins Antamex’s contractual counterparties, like Suffolk, from, among other things, terminating agreements with Antamex that relate to any of the Property, including the U.S Property. Prohibiting such persons from exercising their contractual rights against Antamex that do not relate to the U.S. Property is inconsistent with paragraph 3(f) of the Endorsement and the limited appointment of the Partial Receiver. The stay against the exercise of contractual rights in paragraph 11 should be limited to rights and that relate to the U.S. Property only.

The Stay Should Be Limited

14. Limiting the stay of proceedings and the exercise of rights and remedies, including contractual rights, to only the U.S. Property is also consistent with other “partial

receiverships”. For example, in *Caisse v River*,³ a receiver was appointed over certain receivables and real property of the debtor. The definition of “Property” in the Court’s order (appended to its reasons) was limited to the collateral at issue (see [paragraphs 2 and 13-14](#)). There was no comprehensive stay against the Debtor (see [paragraph 14](#)). There was no prohibition against contractual counterparties exercising their rights *except* against “any Debtor in respect of or related to the Property”, as defined (see [paragraph 16](#)).

15. Paragraphs 10-12 of the draft order should be revised. A redline reflecting the revisions to paragraphs 10-12 of the draft order proposed by Suffolk is attached at **Tab 3**.

All of which is respectfully submitted.

March 11, 2024

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Lawyers for Suffolk Construction Co., Inc.

³ [Caisse v River, 2013 ONSC 6809](#).

TAB 1



SUPERIOR COURT OF JUSTICE

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00715153-00CL

DATE: February 27, 2024

NO. ON LIST: 2

TITLE OF PROCEEDING: EXPORT DEVELOPMENT CANADA v. ANTAMEX INDUSTRIES ULC

BEFORE: JUSTICE BLACK

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

| Name of Person Appearing | Name of Party | Contact Info |
|--------------------------------------|------------------------------|--|
| BROTMAN, STUART STEPHENSON, MITCH | EXPORT DEVELOPMENT CANADA | sbrotman@fasken.com mstephenson@fasken.com |

For Defendant, Respondent, Responding Party:

| Name of Person Appearing | Name of Party | Contact Info |
|--------------------------------|------------------------|--|
| ROSTOM, WAEL SPURGEON, RYAN | ANTAMEX INDUSTRIES ULC | wael.rostom@mcmillan.ca rspurgeon@antamex.com |

For Other, Self-Represented:

| Name of Person Appearing | Name of Party | Contact Info |
|-----------------------------------|-------------------------------|--|
| SALMAS, JOHN | HSBC BANK CANADA | john.salmas@dentons.com |
| PUNZO, ANDREW MACLELLAN, JAMES | EULER HERMES ALLIANZ TRADE | apunzo@blg.com jmaclellan@blg.com |
| ROGERS, LINC | DELOITTE RESTRUCTURING INC | Link.rogers@blakes.com |
| BANBROUGH, DENISE | AVIVA NATIONWIDE | dbambrough@blg.com |

ENDORSEMENT OF JUSTICE BLACK:

- [1] The parties were before me on February 27, 2024. At that time, as my endorsement from that hearing reflects, it was my impression that the parties were in the early part (or at most the midst) of a discussion about a potential resolution. Accordingly, I directed that the parties continue that discussion and report back to me on March 4, 2024.
- [2] The parties did so. While they did not reach a full agreement, it appears from the reports delivered on March 4 on behalf of EDC and Antamex/Sureties, respectively, that there are items on which the parties agree, and a potential basis for a way forward.
- [3] Based on the submissions that I heard on February 27, 2024, and the contents of the parties' reports about their negotiations, I order as follows:
- a. Deloitte is appointed, effective immediately, as a receiver over the EDC Collateral (also referred to in places as the U.S. Collateral) and the related books and records, including the books and records of Antamex. The parties, acting reasonably, are to agree on a form of Order, that I will approve, relative to this partial receivership;
 - b. The Sureties are to pay an amount up to \$2 million CAD into the Deloitte trust account immediately following March 12, 2024 in the event the Sureties do not commit, by March 12, 2024, to providing necessary and sufficient financial support to Antamex;
 - c. In addition to this payment, and regardless of the outcome, the Sureties are to reimburse EDC directly for all professional fees and expenses reasonably incurred during the "adjournment period" between February 27 and March 12, 2024 (which reimbursement is not conditional on the Sureties funding decision or any other matter, and will include the fees incurred by EDC's legal counsel and the proposed receiver and its legal counsel);
 - d. Antamex will pay the next regular payment to EDC under the EDC Loan, on the date that that next payment falls due;
 - e. Subject to any material unanticipated developments between now and March 12, 2024, or an agreement between the parties, Antamex and/or the Sureties will not make any further requests for an adjournment beyond March 12, 2024; and
 - f. During the period between now and March 12, 2024, Antamex may continue to operate in the ordinary course, including performing as required under construction contracts with respect to the ongoing fabrication, supply, and installation of materials.
- [4] Antamex and the Sureties have suggested that the appointment of Deloitte as a partial receiver – over the EDC Collateral – be delayed inasmuch as the required activities in that regard will cause distraction from the Sureties' focus on assessing their potential funding of the Antamex business.
- [5] While I accept that that may be somewhat the case, I am also concerned, particularly in light of correspondence from the landlord of the facility in Norwich, Connecticut, that it is imperative for a receiver to be appointed immediately to address the circumstance with the Norwich landlord and to attempt to achieve a resolution of that dispute which protects EDC's interest in the EDC Collateral.

[6] I expect the parties to be able to agree on the necessary form of Order to implement my findings above; if not I may be spoken to early in a day later this week.

Black J

TAB 2

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) TUESDAY, THE 5TH
JUSTICE BLACK) DAY OF MARCH, 2024

B E T W E E N :

EXPORT DEVELOPMENT CANADA

Applicant

- and -

ANTAMEX INDUSTRIES ULC

Respondent

AND IN THE MATTER OF AN APPLICATION UNDER 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

**ORDER
(Appointing Receiver Over US Property Only)**

THIS APPLICATION made by the applicant, Export Development Canada (“**EDC**”), for an order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”) appointing Deloitte Restructuring Inc. (“**Deloitte**”) as receiver and manager (in such capacity, the “**Receiver**”) without security, of all of the assets, undertakings and properties of the respondent, Antamex Industries ULC (the “**Debtor**”) acquired for, or used in relation to a

business carried on by the Debtor, was heard on February 27, 2024 by videoconference at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Adam Smith sworn February 21, 2024 and the Exhibits thereto (the “**Smith Affidavit**”), the affidavit of Connie Deng sworn February 26, 2024 and the Exhibits thereto, the report of counsel for EDC dated March 4, 2024 and the attachments thereto, the report of counsel for the Debtor and counsel for Euler Hermes North America Insurance Company, Aviva Insurance Company of Canada and Nationwide Mutual Insurance Company (collectively, the “**Sureties**”) dated March 4, 2024 and the attachments thereto, and on hearing the submissions of counsel for EDC, counsel for the proposed Receiver, counsel for Norwich 40 TGCI LLC (the “**Landlord**”), and counsel for the Sureties and such other parties listed on the participant information form, no one else appearing although duly served as appears from the Lawyer’s Certificates of Service of Montana Licari dated February 22 and February 26, 2024, and on reading the consent of Deloitte to act as the Receiver, filed,

SERVICE & DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the notice of application, the application record and the supplementary application record is hereby abridged and validated so that this application was properly returnable on February 27, 2024 and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used but not otherwise defined herein have the meanings given to them in the Smith Affidavit.

APPOINTMENT

3. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, Deloitte is hereby appointed Receiver, without security, of all right, title and interest of the Debtor in and to the EDC Priority Collateral and the Leased Equipment, as described in **Schedule “A”** attached hereto, and all leases and other agreements, books and records of the Debtor relating thereto, including all proceeds thereof (the “**US Property**”). For greater clarity, Antamex may continue to operate in the ordinary course, including by performing as required under its construction contracts with respect to the ongoing fabrication, supply, and installation of

materials, subject to the terms of this Order and any further order of this Court. The Receiver is not appointed over any of the assets or undertakings of Antamex in Canada, other than the EDC Priority Collateral, if any, and the books and records relating to the US Property.

RECEIVER'S POWERS

4. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the US Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable, in each case solely as it relates to the US Property:

- (a) to take possession of and exercise control over the US Property and any and all proceeds, receipts and disbursements arising out of or from the US Property;
- (b) to receive, preserve, and protect the US Property, or any part or parts thereof, including, but not limited to, the changing of security codes on the US Property, the relocating of US Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories of the US Property and the placement of such insurance coverage as may be necessary or desirable;
- (c) to exercise all rights, powers, entitlements and remedies of the Debtor under and in respect of to the US Property (the “**US Business**”), including the powers to enter into any agreements, incur any obligations in the ordinary course of business, or disclaim or cease to perform any contracts of the Debtor in respect of the US Property;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, insurance brokers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets necessary to preserve and/or operate the US Property;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor in respect of the US Property and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor in respect of the US Property;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor under or in respect of the US Property;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the US Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the in relation to the US Property (including in the name of the Debtor) or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the US Property, including advertising and soliciting offers in respect of the US Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the US Property or any part or parts thereof out of the ordinary course of business,

- (a) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
- (b) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case, if applicable, notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required.

- (l) to apply for any vesting order or other orders necessary to convey the US Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such US Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the US Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor, in respect of the US Property;
- (o) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have relating to or affecting the US Property; and
- (p) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver takes any such actions or steps, it shall: (i) not unreasonably interfere with the ordinary course operations of Antamex; but (ii) be otherwise exclusively

authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. **THIS COURT ORDERS** that (a) the Debtor, (b) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (c) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Receiver of the existence of any US Property in such Person’s possession or control, shall grant immediate and continued access to the US Property to the Receiver, and shall deliver all such US Property to the Receiver upon the Receiver’s request.

6. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the US Property or the affairs of the Debtor as they relate specifically to the US Property, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person’s possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 6 or in paragraph 7 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the

information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records, or any books and records of the Debtor, without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

8. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

9. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

10. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the present and future assets, undertakings and properties of the Debtor acquired for, or used in relation to a business of the Debtor, including all proceeds thereof (the "**Property**", which for clarity, includes the US Property) shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the US Property are hereby stayed and suspended pending further Order

of this Court. The applicability of this paragraph to the Property, other than the US Property, is subject to further Order of the Court.

NO EXERCISE OF RIGHTS OR REMEDIES

11. **THIS COURT ORDERS** that all rights and remedies against or affecting the Debtor, the Receiver, or the Property are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any “eligible financial contract” as defined in the BIA, and further provided that nothing in this paragraph shall (a) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (b) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (c) prevent the filing of any registration to preserve or perfect a security interest, or (d) prevent the registration of a claim for lien. The applicability of this paragraph to the Property, other than the US Property, is subject to further Order of the Court.

NO INTERFERENCE WITH THE RECEIVER

12. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver as it relates to the US Property or leave of this Court as it relates to the Property other than the US Property.

CONTINUATION OF SERVICES

13. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment

practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

14. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever and relating to the US Property, including without limitation the sale of all or any of the US Property or any settlement or other agreement entered into with any party who may assert an interest in the US Property, shall be deposited into one or more new accounts to be opened by the Receiver (the “**Post Receivership Accounts**”) and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

15. **THIS COURT ORDERS** that all employees of the Debtor shall remain employees of the Debtor unless and until such time as the Debtor may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act* (“**WEPPA**”). For the purpose of the definition of “eligible wages” under WEPPA, subject to further Order of the Court, the appointment of the Receiver solely with respect to the US Property is not an appointment of “a receiver in relation to [the Debtor]” as that phrase is used in the noted definition.

PIPEDA

16. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver may disclose personal information of identifiable individuals to prospective purchasers or bidders for the US Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the US Property (each, a “**Sale**”). Each prospective purchaser or

bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of the US Property shall be entitled to continue to use the personal information provided to it, and related to the US Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of Property (including the US Property) that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver’s duties and powers under this Order, be deemed to be in Possession of any of the Property (including the US Property) within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER’S LIABILITY

18. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order

shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

19. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the “**Receiver’s Charge**”) on the US Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver’s Charge shall form a first charge on the US Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

20. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

21. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

22. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable (the “**Receiver’s Borrowings**”), provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures and the fees and

expenses of the Receiver and its counsel. The whole of the US Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver’s Borrowings Charge**”) as security for the payment of the Receiver’s Borrowings, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

23. **THIS COURT ORDERS** that neither the Receiver’s Borrowings Charge nor any other security granted by the Receiver in connection with the Receiver’s Borrowings under this Order shall be enforced without leave of this Court.

24. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule “B”** hereto (the “**Receiver’s Certificates**”) for any Receiver’s Borrowings pursuant to this Order.

25. **THIS COURT ORDERS** that the Receiver’s Borrowings from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver’s Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver’s Certificates.

FOREIGN REPRESENTATIVE

26. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

27. **THIS COURT ORDERS** that, without limiting the generality of paragraph 26:

- (a) the Receiver is hereby authorized and empowered, but not obligated, to act as the foreign representative (the “**Foreign Representative**”) in respect of the within proceedings for the purposes of having these proceedings recognized in a jurisdiction outside of Canada with respect to any matter relating to the US Property; and

- (b) the Foreign Representative is hereby authorized to apply for foreign recognition of these proceedings, as necessary, in any jurisdiction outside of Canada, including the United States pursuant to Chapter 15 of Title 11 of the United States Code 11 U.S.C. §§ 101 -1532.

SERVICE AND NOTICE

28. **THIS COURT ORDERS** that The Guide Concerning Commercial List E-Service (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <https://www.insolvencies.deloitte.ca/en-ca/Pages/default.aspx>.

29. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by email, prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor’s creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next US Business day following the date of forwarding thereof, or if sent by ordinary mail, on the third US Business day after mailing.

GENERAL

30. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

31. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

32. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

33. **THIS COURT ORDERS** that EDC shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of EDC's security or, if not so provided by EDC's security, then on a full indemnity basis to be paid by the Receiver from the US Property with such priority and at such time as this Court may determine.

34. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver, EDC and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

35. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:41 pm (Toronto time) on the date of this Order, and this Order shall be immediately enforceable at such time and thereafter without the need for entry and filing.

SCHEDULE "A"

See attached

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. [●]

AMOUNT \$[●]

36. THIS IS TO CERTIFY that Deloitte Restructuring Inc. ("**Deloitte**"), the receiver (the "**Receiver**") of the assets, undertakings and properties of Antamex Industries ULC (the "**Debtor**") relating to the EDC Priority Collateral and Leased Equipment acquired for, or used in relation to a business carried on by the Debtor and leased and used by Naverra, at the Norwich Glass Plant, including all proceeds thereof (the "**US Property**") appointed by order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 5th day of March, 2024 (the "**Order**") made in an application having Court file number CV-24-00715153-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$[●], being part of the total principal sum of \$500,000 which the Receiver is authorized to borrow under and pursuant to the Order.

37. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the [●] day of each month] after the date hereof at a notional rate per annum equal to the rate of [●] per cent above the prime commercial lending rate of Bank of [●] from time to time.

38. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the US Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such US Property in respect of its remuneration and expenses.

39. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

40. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

41. The charge securing this certificate shall operate so as to permit the Receiver to deal with the US Property as authorized by the Order and as authorized by any further or other order of the Court.

42. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

43. Capitalized terms used but not otherwise defined herein have the meanings given to them in the Order.

DATED the [●] day of [●], 2024.

DELOITTE RESTRUCTURING INC., solely
in its capacity as Receiver of the US Property,
and not in its personal capacity

Per: _____

Name:

Title:

EXPORT DEVELOPMENT CANADA

-and- **ANTAMEX INDUSTRIES ULC**
Applicant

Respondent

Court File No. CV-24-00715153-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at
Toronto

ORDER
(Appointing Receiver Over US Property Only)

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Lawyers for the Applicant

TAB 3

NO PROCEEDINGS AGAINST ~~THE DEBTOR OR THE~~ US PROPERTY

10. **THIS COURT ORDERS** that no Proceeding against or in respect of the ~~Debtor or the present and future assets, undertakings and properties of the Debtor acquired for, or used in relation to a business of the Debtor, including all proceeds thereof (the “Property”, which for clarity, includes the US Property)~~ US Property, or against or in respect of the Debtor solely as such Proceeding relates to the US Property (each a “**US Property Proceeding**”), shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all US Property Proceedings currently under way ~~against or in respect of the Debtor or the US Property~~ are hereby stayed and suspended pending further Order of this Court. ~~The applicability of this paragraph to the Property, other than the US Property, is subject to further Order of the Court.~~

NO EXERCISE OF RIGHTS OR REMEDIES

11. **THIS COURT ORDERS** that all rights and remedies against or affecting ~~the Debtor, the the~~ Receiver, or the US Property are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any “eligible financial contract” as defined in the BIA, and further provided that nothing in this paragraph shall (a) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (b) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (c) prevent the filing of any registration to preserve or perfect a security interest, or (d) prevent the registration of a claim for lien. ~~The applicability of this paragraph to the Property, other than the US Property, is subject to further Order of the Court.~~

NO INTERFERENCE WITH THE RECEIVER

12. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor in respect of or related to the US Property, without written consent of the Receiver ~~as it relates to the US Property or leave of this Court as it relates to the Property other than the US Property.~~

EXPORT DEVELOPMENT CANADA

- and -

ANTAMEX INDUSTRIES ULC

Applicant

Respondent

AND IN THE MATTER OF AN APPLICATION UNDER 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

Court File No.: CV-24-00715153-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

**AIDE MEMOIRE OF SUFFOLK
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