

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY  
(COMMERCIAL LIST)**

IN THE MATTER OF THE RECEIVERSHIP OF ANTAMEX INDUSTRIES ULC

**BETWEEN:**

**EXPORT DEVELOPMENT CANADA**

Applicant

**- and -**

**ANTAMEX INDUSTRIES ULC**

Respondent

**AND**

Court File No.: CV-24-00718718-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY  
(COMMERCIAL LIST)**

IN THE MATTER OF THE RECEIVERSHIP OF 256 VICTORIA STREET WEST ULC

**BETWEEN:**

**ROYAL BANK OF CANADA**

Applicant

**- and -**

**256 VICTORIA STREET WEST ULC**

Respondent

**FACTUM OF THE RECEIVER  
(Distribution and Ancillary Matters)  
Returnable January 31, 2025**

January 30, 2025

**BLAKE, CASSELS & GRAYDON LLP**

Barristers and Solicitors

199 Bay Street

Suite 4000, Commerce Court West

Toronto, Ontario M5L 1A9

**Linc Rogers**, LSO #43562N

Tel: 416-863-4168

Email: linc.rogers@blakes.com

**Caitlin McIntyre**, LSO #72306R

Tel: 416-863-4174

Email: caitlin.mcintyre@blakes.com

Lawyers for the Receiver

**TO: SERVICE LIST**

## **PART I - OVERVIEW<sup>1</sup>**

1. On March 13, 2024, the Ontario Superior Court of Justice (the “**Court**”) granted the Appointment Order (defined below) appointing Deloitte Restructuring Inc. (“**Deloitte**”) as receiver and manager (in such capacity, the “**Antamex Receiver**”) of all the assets, undertakings and property acquired for or used in connection with the business of Antamex Industries ULC (“**Antamex**”).
2. On April 23, 2024, pursuant to the 256 Appointment Order (defined below), Deloitte was appointed as receiver (in such capacity, the “**256 Receiver**” and together with the Antamex Receiver, the “**Receiver**”) of the property of 256 Victoria Street West ULC (“**256 Victoria**” and together with Antamex, the “**Debtors**”). 256 Victoria is a related party to Antamex which owns the Alliston Premises (defined below) where Antamex was a tenant. The 256 Appointment Order authorized the procedural consolidation of the receivership proceedings in respect of the Debtors.
3. This factum is filed in support of the Receiver’s motion for an order *inter alia*,
  - (a) authorizing and directing the Receiver to make the Distributions to RBC from the estates of 256 Victoria and Antamex to repay all RBC Indebtedness owing to RBC;
  - (b) authorizing the Receiver to maintain the 256 Reserve; and
  - (c) authorizing the Receiver to file assignments in bankruptcy on behalf of Antamex and 256 Victoria.
4. As described herein, the Receiver has fulfilled its primary role of selling the Debtors’ Property for the benefit of both Debtors’ creditors. With this process now complete, the next step

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<sup>1</sup> Capitalized terms not otherwise defined herein have the meanings given to them in the Fourth Report of the Receiver dated January 27, 2025 (the “**Fourth Report**”).

in the receivership proceedings of each Debtor is distribution of the proceeds generated by the Receiver's realization process. The Receiver is therefore seeking this Court's authorization to make distributions which, in the Receiver's view, are appropriate at this stage of the receivership proceedings, and to take steps that are necessary and appropriate prior to the Distributions to ensure that the Distributions are affected in the appropriate manner.

## **PART II – FACTS**

### **A. Appointment of the Receiver**

5. On February 27, 2024, EDC made an application (the “**Application**”) to the Court for an order appointing Deloitte as Receiver of the property, assets, and undertakings of Antamex. Antamex was in the business of designing, engineering, manufacturing and installing customer modular glass façade solutions for multi-story buildings.<sup>2</sup>

6. Antamex operated from two locations: (i) a head office and assembly plant at the Concord Premises, and (ii) the Alliston Premise which was a fabrication manufacturing facility (together the “**Premises**”).<sup>3</sup>

7. On March 5, 2024, the Court granted an order (the “**Partial Receivership Order**”) appointing Deloitte as Receiver of certain priority collateral located primarily in the United States.<sup>4</sup> On March 13, 2024 the Court issued an amended and restated receivership order (the “**Appointment Order**”) expanding Deloitte's appointment as Antamex Receiver to all of the Property of Antamex.<sup>5</sup>

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<sup>2</sup> Fourth Report at para 7.

<sup>3</sup> Fourth Report at para 8.

<sup>4</sup> Fourth Report at para 10.

<sup>5</sup> Fourth Report at para 12.

8. On April 23, 2024, RBC made an application to appoint Deloitte as Receiver of all of the assets, undertakings and properties of 256 Victoria. 256 Victoria operated as a real estate holding company and was the owner of the Alliston Premises. Antamex leased the Alliston Premises from 256 Victoria and guaranteed 256 Victoria's obligations to RBC.<sup>6</sup>

9. On April 23, 2024, pursuant to an order (the "**256 Appointment Order**") of the Court, Deloitte was appointed as the 256 Receiver. The Court also granted an order procedurally consolidating the Antamex and 256 Victoria receivership proceedings.<sup>7</sup>

## **B. Receiver's Activities**

### ***Auction***

10. On May 22, 2024, the Court granted an Order (the "**Auction Services and Ancillary Relief Order**"), among other things, approving an Auction Services Agreement (the "**ASA**") with Platinum Asset Services Inc. ("**Platinum**") with respect to an auction of assets at the Premises.<sup>8</sup>

11. The Sale Process in respect of the Concord Premises concluded on July 31, 2024. The auction in respect of Property located at the Alliston Premises concluded on September 1, 2024. The Receiver is currently holding the Proceeds, being \$2,273,455 (the "**Auction Proceeds**"), in trust pending distribution.<sup>9</sup>

### ***Lien Claims***

12. After its appointment, the Receiver was contacted by a number of subcontractors who wish to advance, among other things, lien claims and/or breach of trust claims against Antamex

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<sup>6</sup> Fourth Report at paras 13-14.

<sup>7</sup> Fourth Report at para 15.

<sup>8</sup> Fourth Report at para 16.

<sup>9</sup> Fourth Report at paras 18-19.

pursuant to the *Construction Act*, R.S.O. 1990, c. C.30 (the “**Construction Act**”). In order to ensure potential trust claims are preserved, the Receiver has deposited all project-specific receipts receipted by it into segregated trust accounts.<sup>10</sup>

13. The Receiver is in the process of developing an orderly process for the submission and evaluation of lien claims. The Receiver intends to seek approval of such process from this Court at a later date.<sup>11</sup>

### *Sale of the Alliston Premises*

14. As set out in the Second Report, following execution of the Listing Agreement, CBRE executed its detailed marketing plan for the Alliston Premises. The Receiver ultimately accepted a bid from 2834150 Ontario Inc. (the “**Original Purchaser**”). On August 14, 2024, the Receiver and the Purchaser entered into an Agreement of Purchase and Sale in respect of the Alliston Premises (the “**APS**”).<sup>12</sup>

15. On October 2, 2024, this Court granted an Approval, Vesting and Ancillary Relief Order in respect of the Transaction contemplated by the APS (the “**AVO**”). On December 19, 2024, the Purchaser and the Receiver executed an amendment to the APS (the “**APS Amendment**”) to correct a typographical error in the identity of the purchaser.<sup>13</sup>

16. On December 19, 2024, the Original Purchaser delivered an Assignment and Assumption Agreement of Purchase and Sale (the “**Assignment and Assumption Agreement**”) to the Receiver advising that it had assigned its rights and obligations under the APS to its affiliate, 256

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<sup>10</sup> Fourth Report at para 27.

<sup>11</sup> Fourth Report at para 28.

<sup>12</sup> Fourth Report at para 29.

<sup>13</sup> Fourth Report at paras 30-32.

Victoria Alliston Inc. On December 20, 2024, the Court issued an Amended and Restated AVO identifying the purchaser as 256 Victoria Alliston Inc.<sup>14</sup>

17. The Transaction closed on December 31, 2024. The Receiver is now holding the net proceeds of sale, being approximately \$7,900,000 pending distribution (the “**256 Proceeds**”).

### **C. Proposed Bankruptcy**

18. Based on the Debtors’ books and records, the Receiver understands that there are approximately \$790,000 of potential HST claims against Antamex and \$20,973.22 of potential HST claims against 256 Victoria.

19. The Receiver is bringing a motion for an order (the “**Bankruptcy Order**”) authorizing and directing the Receiver to file assignments in bankruptcy in respect of the Debtors pursuant to the *Bankruptcy and Insolvency Act* and naming Farber as trustee in bankruptcy and authorizing and empowering Farber to act in this capacity. The proposed Bankruptcy Order contemplates, among other things, that all proceeds of the Property of the Debtors that are realized by the Receiver prior to, on or after the commencement of the bankruptcy proceedings in respect of the Debtors will continue to be maintained by the Receiver in a segregated account, separate and apart from the bankrupt estate, to be distributed by the Receiver as directed by the Court.

### **D. Proposed Distributions to RBC and Reserve**

20. Pursuant to the Facility Letter, 256 Victoria is indebted to RBC in the amount of \$7,517,443.13 (together with all interest and applicable costs incurred up to the date of the Distributions, the “**RBC Indebtedness**”).

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<sup>14</sup> Fourth Report at paras 33-36.

21. 256 Victoria's obligations under the Facility Letter are secured by a first-registered security interest on the personal property of 256 Victoria and by a Charge/Mortgage on the Alliston Premises. Antamex has guaranteed the obligations of 256 Victoria to RBC pursuant to the Guarantee and RBC holds a first-registered secured interest over the Property of Antamex.<sup>15</sup>

22. The Receiver is requesting authorization from the Court to distribute the 256 Proceeds (subject to the 256 Reserve) to RBC in satisfaction of the RBC Indebtedness. The Receiver intends to maintain the 256 Reserve of \$650,000 from the 256 Proceeds pending final accounting of matters in connection with the estate of 256 Victoria, including certain confirmatory discussions with the CRA regarding potential tax issues.<sup>16</sup>

23. The Receiver expects that following payment of certain fees and expenses associated with the Transaction from the 256 Proceeds and maintenance of the 256 Reserve, there will be a shortfall in recovery to RBC following the 256 Distribution.<sup>17</sup> To the extent that the 256 Proceeds are insufficient to satisfy the full RBC Indebtedness, the Receiver is also requesting authorization from the Court to make a distribution from the Auction Proceeds to repay the balance of the RBC Indebtedness.<sup>18</sup>

24. As set out above, Antamex has guaranteed the obligations of 256 Victoria to RBC and RBC holds a first registered secured interest over the Property of Antamex. In the Receiver's view, it is in the best interest of Antamex's estate and creditors to make the Distributions to RBC as soon as

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<sup>15</sup> Fourth Report at paras 50-53.

<sup>16</sup> Fourth Report at para 55.

<sup>17</sup> Fourth Report at para 56.

<sup>18</sup> Fourth Report at para 54.



possible to cease the ongoing accrual of interest on RBC's debt, which is eroding value that may otherwise be used to satisfy the claims of other creditors.<sup>19</sup>

25. The Auction Proceeds are not project specific funds and would not be subject to lien claims under the Construction Act. The Receiver has also confirmed that there are sufficient funds in Antamex's estate to satisfy all priority payables and any amounts that may have priority to RBC's claim under the Construction Act notwithstanding the Antamex Distribution. In the Receiver's view, therefore, there will be no prejudice to any lien claimant from the Antamex Distribution. The Receiver has served all known lien claimants with its motion record.<sup>20</sup>

26. To the extent that the Antamex Distribution is made on account of the Guarantee, Antamex will hold a subrogated claim to that of RBC against 256 Victoria. The Receiver is seeking an Order from the Court that, following resolution of final accounting matters in connection with the 256 Victoria estate, the Antamex Receiver shall hold the remaining amount of the 256 Reserve for the benefit of Antamex's estate up to the amount of Antamex's subrogated claim. The distribution of any residual amount in the 256 Reserve shall be determined by further order of the Court.<sup>21</sup>

### **PART III – ISSUES AND THE LAW**

27. This factum addresses the following issues:

- (a) Should the Court grant the Bankruptcy Order?
- (b) Should the Court authorize the Receiver to make the Distributions and to maintain the 256 Reserve?

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<sup>19</sup> Fourth Report at para 57.

<sup>20</sup> Fourth Report at paras 58-59.

<sup>21</sup> Fourth Report at para 60.

28. For the reasons set out herein, the Receiver submits that the answer to the foregoing questions is “yes”.

**A. The Bankruptcy Order should be granted**

29. As set out above, the Receiver seeks an Order authorizing and directing the Receiver to make assignments in bankruptcy on behalf of the Debtors under the *Bankruptcy and Insolvency Act* and naming Farber as the trustee in bankruptcy.

30. It is well settled that the Court possesses the jurisdiction to authorize a receiver, in its capacity as a court-appointed officer, to file an assignment in bankruptcy on behalf of debtor companies over which the receiver exercises supervision and control.<sup>22</sup>

31. The primary role of the Receiver on its appointment was to sell the Debtors’ Property for the benefit of both Debtors’ creditors. With the conclusion of the Sale Process and closing of the sale of the Alliston Premises, this process is now complete. The next step in the receivership proceedings is distribution of the proceeds generated from the Sale Process and the Alliston Premises to creditors.<sup>23</sup>

32. The Debtors are insolvent shells and ceased meeting their liabilities as they came due before the appointment of the Receiver. The Debtors are now dormant companies that are no longer carrying on business and no longer own material realizable assets. In these circumstances, the requirements of the *BIA* in respect of an assignment in bankruptcy are met and the process, remedies and priority regime under the *BIA* appropriately apply.<sup>24</sup> The bankruptcy process and

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<sup>22</sup> *Bank of Montreal v Owen Sound Golf and Country Club*, [2012 ONSC 557](#) at para 7; *Royal Bank v Sun Squeeze Juices Inc.*, [1994 CarswellOnt 266](#), [1994] O.J. No. 567 (Gen. Div. [Commercial List]) at para 6, aff’d [1994 CanLII 8771](#) (ONCA); *RBC v Gustin*, [2019 ONSC 5370](#) at para 15.

<sup>23</sup> Fourth Report at para 46.

<sup>24</sup> *Mastronardi (In Bankruptcy) (Re)*, [2000 CanLII 17002](#) (ONCA) at para 28.

priority regime will provide certainty for the distribution of the Debtors' funds realized within the receivership proceedings.

33. In such priority regime, the potential HST claims against Antamex and 256 Victoria rank behind the claims of secured creditors. The Receiver has served the CRA with this motion, putting it on notice of the requested relief.<sup>25</sup> This Court has previously recognized that it is not improper to seek a bankruptcy order for the purpose of reversing a statutory priority.<sup>26</sup> More specifically, courts have found it appropriate to empower a Receiver to file an assignment in bankruptcy where the purpose is to reverse statutory priorities, including in respect of a CRA HST claim.<sup>27</sup> The effect of reversing priorities is statutorily permitted and courts have held that this is a proper use of the bankruptcy process:

While, in the ordinary course outside of at bankruptcy, unremitted HST may result in a deemed trust claim by the Crown pursuant to section 222(1) of the *Excise Tax Act*, I note that such deemed trust would not survive in a bankruptcy, which is proposed and intended here in any event. The Court of Appeal for Ontario has held that a bankruptcy order may be sought with the express purpose of affecting priorities.<sup>28</sup>

34. In consideration of the foregoing, the Receiver respectfully submits that this Court should grant the Bankruptcy Order.

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<sup>25</sup> Lawyer's Certificate of Service of Caitlin McIntyre dated January 28, 2025.

<sup>26</sup> *Ivaco Inc., Re*, [2006 CanLII 34551](#) (ONCA) at para 76; *Bank of Nova Scotia v. Huronia Precision Plastics Inc.*, [2009 CanLII 2319](#) (ONSC) at para 13.

<sup>27</sup> *CIBC v. 1340182 Ontario Limited et al.*, [2024 ONSC 3658](#) at para 14; *2403177 Ontario Inc. v Bending Lake iron Group Limited*, [2016 ONSC 199](#) at paras 113-123).

<sup>28</sup> *American General Life Insurance Company et al v Victoria Avenue North Holdings Inc et al*, [2023 ONSC 3322](#) at para 17, citing *Grant Forest Products Inc v The Toronto Dominion Bank*, [2015 ONCA 570](#); see also *CIBC Mortgages Inc (Firstline Mortgages) v Chartrand*, [2010 ONCA 456](#) at para 8.

## **B. This Court should authorize the Distributions and 256 Reserve**

### ***Distributions***

35. As set out above, the Receiver seeks authorization from this Court to (i) subject to the maintenance of the 256 Reserve, make a distribution to RBC from the estate of 256 Victoria up to the amount of the RBC Indebtedness, and (ii) make a distribution from the Auction Proceeds to RBC in respect of the balance of the RBC Indebtedness, such that RBC will be fully repaid.

36. The powers and abilities of the Receiver are derived from the *BIA*, the Appointment Order and the 256 Appointment Order. The Receiver's power and ability to make distributions is not addressed by the *BIA*, Appointment Order or the 256 Appointment Order. Accordingly, it is "practically necessary for the accomplishment of the objectives of the legislation" for the Receiver to obtain an order from this Court authorizing the proposed Distributions.<sup>29</sup> Such orders are routinely granted in the context of insolvency proceedings.<sup>30</sup>

37. In granting orders approving distributions, receivership courts commonly consider certain factors favouring a distribution set out in *AbitibiBowater* which include whether the payees's security is valid and enforceable and whether the distribution would result in interest savings.<sup>31</sup>

38. The *AbitibiBowater* criteria support making the Distributions. The Receiver requested that Blake, Cassels & Graydon LLP ("**Blakes**"), as its counsel, conduct a review of the security granted

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<sup>29</sup> *Forjay Management Ltd. v 625536 B.C. Ltd.*, [2019 BCCA 368](#) at para 26.

<sup>30</sup> *Re Windsor Machine & Stamping Ltd.*, [2009 CanLII 39772](#) (ONSC) at para 13; *AbitibiBowater Inc., (Re)*, [2009 QCCS 6461](#) at paras 70-75 [*AbitibiBowater*]; *Ontario Securities Commission v. Bridging Income Fund L.P.*, [2022 ONSC 4472](#) at para 12; *GE Canada Real Estate Financing Business Property Company v. 1262354 Ontario Inc.*, [2014 ONSC 1173](#) at para 53; *Dorr Capital Corporation v. Highview Building Corp Inc.*, (September 29, 2023) Ont. S.C.J. [Commercial List], [Court File No. CV-23-00698632-00CL \(Endorsement of Justice Conway\)](#) at para. 4; *Farm Credit Canada v. Whyte's Foods Inc./Les Ailments et. al.*, (November 6, 2023) Ont. S.C.J. [Commercial List], [Court File No. CV-23-00707205-00CL \(Endorsement of Justice Steele\)](#) at paras. 19-21 [*Whyte's Food*].

<sup>31</sup> *AbitibiBowater*, *supra* at paras 70-75. While *AbitibiBowater* was a CCAA proceeding, it has been cited by courts in the context of distributions under a receivership: see, for example, *Whyte's Food*, *supra* at paras 19-21.

by the Debtors to RBC. Following its review, Blakes provided the Receiver with an opinion that, subject to standard assumptions and qualifications, pursuant to the applicable security documentation, RBC created valid security interests or charges, as applicable, against the Property of Antamex and 256 Victoria.<sup>32</sup>

39. As set out above, the RBC Indebtedness exceeds the anticipated distribution from the 256 Victoria estate. The balance of the RBC Indebtedness will be paid from the Auction Proceeds. The Distributions, collectively, will result in the full payout of the RBC Indebtedness, which continues to accrue interest. In the Receiver's view, it is in the best interest of Antamex's estate and creditors to make the Distributions to RBC as soon as possible to cease the ongoing accrual of interest on RBC's debt, which is eroding value that may otherwise be used to satisfy the claims of other creditors.<sup>33</sup>

40. The 256 Reserve will be maintained to address final accounting matters in the 256 Victoria receivership proceeding, including confirmatory discussions with the CRA regarding tax issues. The Auction Proceeds are not subject to any trust or lien claims and the Receiver has confirmed that, notwithstanding the proposed Antamex Distribution, there is sufficient funds in Antamex's estate to pay any claims that may have priority to RBC. In the Receiver's view, there will be no prejudice to any party as a result of the proposed Distributions and the requested order authorizing the Distributions should be granted.<sup>34</sup>

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<sup>32</sup> Fourth Report at para 53.

<sup>33</sup> Fourth Report at para 57.

<sup>34</sup> Fourth Report at paras 55, and 58-59

### **256 Reserve**

41. The Receiver has calculated the maximum potential payable owing in respect of final accounting matters in the 256 Victoria estate and asks that this Court authorize the holdback of the 256 Reserve in respect of this amount. The 256 Reserve will preserve amounts owing in respect of the Receiver's Charge (as defined in the 256 Appointment Order) and amounts sufficient to address potential tax related issues pending confirmatory discussions with the CRA. Similar arrangements have previously been approved in receivership proceedings pending the determination of various matters in receivership proceedings.<sup>35</sup>

42. As set out above, Antamex has guaranteed the obligations of 256 Victoria to RBC and RBC holds a first registered secured interest over the Property of Antamex. In order to cover the balance of the RBC Indebtedness following the 256 Distribution and maintenance of the 256 Reserve, the Receiver is seeking authorization from the Court to make a distribution to RBC from Antamex's estate.<sup>36</sup>

43. It is well accepted that, where a guarantor is called upon to make payment on behalf of the principal debtor, the guarantor becomes subrogated to the rights and claim of the original creditor and will thereafter stand in the place of the original creditor, without any need for a formal transfer of security interest to the guarantor.<sup>37</sup>

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<sup>35</sup> See e.g. *KingSett Mortgage Corp. and Dorr Capital Corp. v. Stateview Homes (Minu Towns) Inc.*, (November 16, 2023), Ont. S.C.J. [Commercial List], [Court File No. CV-23-00698576-00CL \(On the Mark Endorsement\)](#) at pp. 1-2, approving the provisions found in *KingSett Mortgage Corp. and Dorr Capital Corp. v. Stateview Homes (Minu Towns) Inc.*, (September 14, 2023), Ont. S.C.J. [Commercial List], [Court File No. CV-23-00698576-00CL \(Distribution Order \(On the Mark\)\)](#) at para. 9.

<sup>36</sup> Fourth Report at para 57.

<sup>37</sup> *Mercantile Law Amendment Act*, R.S.O. 1990, c. M.10, section 2; *Re Windham Sales Ltd.*, [1979 CanLII 1961](#) (ONSC) at para 5; *White Oak Commercial Finance, LLC v Nygård Enterprises Ltd et al*, [2022 MBQB 48](#) at paras 104-106, aff'd [2023 MBCA 73](#); *Alberta Treasury Branches v. Weatherlok Canada Ltd.*, (sub nom *Trinier v. Shurnaik*) [2011 ABCA 314](#) at paras 32-33; *Canadian Financial Co. v. First Federal Construction Ltd. et al.*, [1982 CanLII 2232](#) (ONCA) at para 18, leave to appeal ref'd 41 N.R. 353.

44. To the extent that the Antamex Distribution is made on account of the Guarantee, Antamex will hold a subrogated claim to that of RBC against 256 Victoria. On account of this subrogated claim, the Receiver is seeking an Order from the Court that, following resolution of final accounting matters in connection with the 256 Victoria estate, the Antamex Receiver shall hold the remaining amount of the 256 Reserve for the benefit of Antamex's estate up to the amount of Antamex's subrogated claim. The distribution of any residual amount in the 256 Reserve shall be determined by further order of the Court.

**PART IV – ORDER REQUESTED**

45. For all the reasons above, the Receiver respectfully requests that this Court grant the relief requested in paragraph 3, above, in the form of the draft orders included in the Receiver's Motion Record dated January 27, 2025.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 30<sup>th</sup> day of January, 2025.



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Linc Rogers & Caitlin McIntyre  
Lawyers for the Receiver

## SCHEDULE “A”

### LIST OF AUTHORITIES

| <b><u>Cases</u></b> |   |
|---------------------|---|
| 1.                  | <i>Bank of Montreal v Owen Sound Golf and Country Club</i> , <a href="#">2012 ONSC 557</a> .  |
| 2.                  | <i>Royal Bank v Sun Squeeze Juices Inc.</i> , <a href="#">1994 CarswellOnt 266</a> , [1994] O.J. No. 567 (Ont. Gen. Div. [Commercial List]).  |
| 3.                  | <i>Royal Bank v Sun Squeeze Juices Inc.</i> , <a href="#">1994 CanLII 8771</a> (ONCA).  |
| 4.                  | <i>RBC v Gustin</i> , <a href="#">2019 ONSC 5370</a> .  |
| 5.                  | <i>Mastronardi (In Bankruptcy) (Re)</i> , <a href="#">2000 CanLII 17002</a> (ONCA).   |
| 6.                  | <i>Ivaco Inc., Re</i> , <a href="#">2006 CanLII 34551</a> (ONCA).   |
| 7.                  | <i>Bank of Nova Scotia v. Huronia Precision Plastics Inc.</i> , <a href="#">2009 CanLII 2319</a> (ONSC).  |
| 8.                  | <i>CIBC v. 1340182 Ontario Limited et al.</i> , <a href="#">2024 ONSC 3658</a> .  |
| 9.                  | <i>2403177 Ontario Inc. v Bending Lake iron Group Limited</i> , <a href="#">2016 ONSC 199</a> .   |
| 10.                 | <i>American General Life Insurance Company et al v Victoria Avenue North Holdings Inc et al</i> , <a href="#">2023 ONSC 3322</a> .  |
| 11.                 | <i>Grant Forest Products Inc v The Toronto Dominion Bank</i> , <a href="#">2015 ONCA 570</a> .  |
| 12.                 | <i>CIBC Mortgages Inc (Firstline Mortgages) v Chartrand</i> , <a href="#">2010 ONCA 456</a> .   |
| 13.                 | <i>Forjay Management Ltd. v 625536 B.C. Ltd.</i> , <a href="#">2019 BCCA 368</a> .  |
| 14.                 | <i>Re Windsor Machine &amp; Stamping Ltd.</i> , <a href="#">2009 CanLII 39772</a> (ONSC).   |
| 15.                 | <i>Abitibowater Inc., (Re)</i> , <a href="#">2009 QCCS 6461</a> .   |
| 16.                 | <i>Ontario Securities Commission v. Bridging Income Fund L.P.</i> , <a href="#">2022 ONSC 4472</a> .  |
| 17.                 | <i>GE Canada Real Estate Financing Business Property Company v. 1262354 Ontario Inc.</i> , <a href="#">2014 ONSC 1173</a> .   |
| 18.                 | <i>Dorr Capital Corporation v. Highview Building Corp Inc.</i> , (September 29, 2023) Ont. S.C.J. [Commercial List], <a href="#">Court File No. CV-23-00698632-00CL (Endorsement of Justice Conway)</a> . |



| <b>Cases</b> |   |
|--------------|---|
| 19.          | <i>Farm Credit Canada v. Whyte's Foods Inc./Les Ailments et. al.</i> , (November 6, 2023) Ont. S.C.J. [Commercial List], <a href="#">Court File No. CV-23-00707205-00CL (Endorsement of Justice Steele)</a> .                             |
| 20.          | <i>KingSett Mortgage Corp. and Dorr Capital Corp. v. Stateview Homes (Minu Towns) Inc.</i> , (November 16, 2023), Ont. S.C.J. [Commercial List], <a href="#">Court File No. CV-23-00698576-00CL (On the Mark Endorsement)</a> .           |
| 21.          | <i>KingSett Mortgage Corp. and Dorr Capital Corp. v. Stateview Homes (Minu Towns) Inc.</i> , (September 14, 2023), Ont. S.C.J. [Commercial List], <a href="#">Court File No. CV-23-00698576-00CL (Distribution Order (On the Mark))</a> . |
| 22.          | <i>Re Windham Sales Ltd.</i> , <a href="#">1979 CanLII 1961</a> (ONSC).   |
| 23.          | <i>White Oak Commercial Finance, LLC v Nygård Enterprises Ltd et al</i> , <a href="#">2022 MBQB 48</a> .  |
| 24.          | <i>White Oak Commercial Finance, LLC v Nygård Enterprises Ltd et al</i> , <a href="#">2023 MBCA 73</a> .  |
| 25.          | <i>Alberta Treasury Branches v. Weatherlok Canada Ltd.</i> , (sub nom <i>Trinier v. Shurnaik</i> ) <a href="#">2011 ABCA 314</a> .  |
| 26.          | <i>Canadian Financial Co. v. First Federal Construction Ltd. et al.</i> , <a href="#">1982 CanLII 2232</a> (ONCA).  |

## **SCHEDULE “B”**

### **RELEVANT STATUTES AND RULES**

*Mercantile Law Amendment Act, R.S.O. 1990, c. M.10*

#### **Right of sureties paying the principal debt, etc., to assignment**

**2.** (1) Every person who, being surety for the debt or duty of another or being liable with another for any debt or duty, pays the debt or performs the duty is entitled to have assigned to the person or to a trustee for the person every judgment, specialty or other security that is held by the creditor in respect of the debt or duty, whether the judgment, specialty or other security is or is not deemed at law to have been satisfied by the payment of the debt or the performance of the duty. R.S.O. 1990, c. M.10, s. 2 (1).

#### **Remedies on such assignment**

(2) Such person is entitled to stand in the place of the creditor, and to use all the remedies and, on proper indemnity, to use the name of the creditor in any action or other proceeding in order to obtain from the principal debtor, or any co-surety, co-contractor or co-debtor, indemnification for the advances made and loss sustained by such person, and the payment or performance made by the person is not a defence to such action or other proceeding by the person. R.S.O. 1990, c. M.10, s. 2 (2).

#### **What one co-surety, etc., may recover from another**

(3) No co-surety, co-contractor or co-debtor is entitled to recover from any other co-surety, co-contractor or co-debtor more than the just proportion to which, as between themselves, the last-mentioned person is justly liable. R.S.O. 1990, c. M.10, s. 2 (3).

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

IN THE MATTER OF THE RECEIVERSHIP OF ANTAMEX INDUSTRIES ULC

**EXPORT DEVELOPMENT CANADA**

Applicant

- and -

**ANTAMEX INDUSTRIES ULC**

Respondent

Court File No.: CV-24-00718718-00CL

IN THE MATTER OF THE RECEIVERSHIP OF 256 VICTORIA STREET WEST ULC

**ROYAL BANK OF CANADA**

Applicant

- and -

**256 VICTORIA STREET WEST ULC**

Respondent

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**IN BANKRUPTCY AND INSOLVENCY**  
**(COMMERCIAL LIST)**

Proceeding Commenced at Toronto

**FACTUM OF THE RECEIVER**  
**(Distribution and Ancillary Matters)**  
**Returnable January 31, 2025**

**BLAKE, CASSELS & GRAYDON LLP**  
Barristers and Solicitors  
199 Bay Street  
Suite 4000, Commerce Court West  
Toronto, Ontario M5L 1A9

**Linc Rogers**, LSO #43562N  
Tel: 416-863-4168  
Email: linc.rogers@blakes.com

**Caitlin McIntyre**, LSO #72306R  
Tel: 416-863-4174  
Email: caitlin.mcintyre@blakes.com

Lawyers for the Receiver