

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, Settlement Approval and Ancillary Matters)  
Returnable July 2, 2025**

June 30, 2025

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**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 the Receiver to enter into a proposed settlement agreement with GEN in respect of the US Glass Equipment (the “**GEN Settlement**”);
  - (b) authorizing the Receiver to make certain interim distributions (the “**Interim Distributions**” to EDC; and
  - (c) approving the activities and fees of the Receiver and its counsel as set out in the Third Report, Fourth Report, Fifth Report and Sixth Report.

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<sup>1</sup> Capitalized terms not otherwise defined herein have the meanings given to them in the Sixth Report of the Receiver dated June 25, 2025 (the “**Sixth Report**”).

## **PART II – FACTS**

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

4. 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>

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

6. 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>

7. On April 23, 2024, RBC brought 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>

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

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

<sup>4</sup> Sixth Report at paras 10-12.

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

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

8. 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**

### ***Bankruptcy of the Debtors***

9. On January 31, 2024, the Receiver sought and obtained the Distribution and Ancillary Relief Order which, among other things, authorized and directed the Receiver to file assignments in bankruptcy in respect of the Debtors pursuant to the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3.<sup>8</sup>

10. On March 18, 2025, the Receiver filed assignments in bankruptcy on behalf of both Antamex and 256 Victoria, and B. Riley Farber Inc., LIT was appointed as Trustee in Bankruptcy (the “**Trustee**”).<sup>9</sup>

### ***Sureties***

11. On February 18, 2024, the Court released its endorsement directing the Sureties to make payment of the \$2 million payable under the Ancillary Relief Order along with interest thereon from April 25, 2024, and costs.<sup>10</sup>

12. The Receiver has now received full payment from the Sureties, including costs and interest and is holding such funds pending this Court's authorization to distribute such amounts.<sup>11</sup>

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

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

<sup>9</sup> Sixth Report at para 17.

<sup>10</sup> Sixth Report at para 19.

<sup>11</sup> Sixth Report at para 20.

13. As described below, two of the Sureties have filed Notices of Dispute with the Receiver with respect to the Notices of Disallowance sent on May 27, 2025, in relation to the purported Trust Claims (defined below) filed by the Sureties in the Claims Process (defined below).<sup>12</sup>

### ***Trust Claims***

14. On March 19, 2025, the Receiver filed a motion seeking the Court’s approval of a process (the “**Claims Process**”) to solicit and evaluate potential trust claims against Antamex under the *Construction Act*, similar legislation, or any other law (statutory or common law) providing for trust rights in favour of a claimant (“**Trust Claims**”). On March 26, 2025, the Court issued the Trust Claims Process Order providing for such Claims Process.<sup>13</sup>

15. In total, the Receiver received 32 Proofs of Claim filed prior to the Claims Bar Date on April 25, 2025, some of which included claims on multiple projects or unsecured claims that were not specific to any project. The Receiver also received 1 late claim.<sup>14</sup>

16. The Receiver issued 29 Notices of Disallowance to all claimants whose claims were either disallowed, partially disallowed or revised by the Receiver. The deadline to file a Notice of Dispute with the Receiver is fourteen calendar days after the Receiver sends the Notice of Disallowance (the “**Dispute Period**”). The Dispute Period in respect of all Notices of Disallowance will expire on or before July 1, 2025.<sup>15</sup>

17. On June 10, 2025, the Receiver received Notices of Dispute from two of the Sureties, Aviva Insurance Company of Canada (“**Aviva**”) and Nationwide Mutual Insurance Company

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<sup>12</sup> Sixth Report at para 21.

<sup>13</sup> Sixth Report at para 23.

<sup>14</sup> Sixth Report at para 25.

<sup>15</sup> Sixth Report at para 26.

(“**Nationwide**”) disputing the Receiver’s assessment of their claims (the “**Surety Dispute Notices**”). The Receiver is in the process of reviewing and evaluating the Surety Dispute Notices and intends to engage with both Aviva and Nationwide to attempt to reach a consensual resolution of matters raised therein.<sup>16</sup>

18. The Receiver received three additional Dispute Notices from Subcontractors on Projects where the Receiver is not holding any funds for distribution, and one additional Dispute Notice from an individual who filed an unsecured claim in respect of a general, non-project specific cost of Antamex. The Receiver has clarified with the parties and understands these Dispute Notices to be resolved.<sup>17</sup>

19. On June 26, 2025, after service of the Sixth Report, the Receiver received one additional Notice of Dispute from a claimant on the 520 Matteo project located in California. The Receiver continues to evaluate this Notice of Dispute.

20. The Receiver is seeking authorization from the Court to distribute trust funds to the appropriate claimant, as determined by the Trust Funds Claims Process. Any funds over which a dispute exists (including all funds held on the South Station Project, as all such funds are subject to a dispute by the Sureties, and the 520 Matteo Project in the amount of the disputed claim discussed above) will be held back from such distribution.<sup>18</sup>

### ***Tracing Results***

21. In order to ensure that potential Trust Claims were preserved, the Receiver deposited all Project-specific receipts into segregated accounts. The Receiver undertook the task of determining

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<sup>16</sup> Sixth Report at para 27.

<sup>17</sup> Sixth Report at paras 28-29.

<sup>18</sup> Sixth Report at para 30.

whether any funds in Antamex's possession on its appointment could be traced to a specific Project, such that Trust Claims could be maintained over such funds.<sup>19</sup>

22. As a result of this analysis, the Receiver identified pre-appointment Project-specific funds available for distribution on the following Projects:

- (a) South Station (Massachusetts);
- (b) 109 Brookline (Massachusetts);
- (c) University of Toronto - Academic Wood Tower (Ontario);
- (d) University of Toronto SIRC/Ellisdon (Ontario);
- (e) The Well Building - Podium (Ontario);
- (f) NTCH Toronto Court House (Ontario); and
- (g) 140 Yorkville/ TMG Builders (Ontario).<sup>20</sup>

23. On the basis of the foregoing, as contemplated by the Trust Claims Process Order, the Receiver denied all Trust Claims filed in respect of a Project where no funds were available for distribution.<sup>21</sup>

### ***Stuart Olson***

24. The Receiver is party to a Project Material Agreement dated April 19, 2024 (the "**Project Material Agreement**") with Stuart Olson, pursuant to which all materials related to the York University project were released to Stuart Olson upon payment by Stuart Olson of outstanding accounts receivable related to the York University project. Stuart Olson disputed that certain amounts forming part of the accounts receivable are payable to Antamex. Pursuant to the Project

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<sup>19</sup> Sixth Report at paras 35-37.

<sup>20</sup> Sixth Report at paras 38.

<sup>21</sup> Sixth Report at para 39.



Material Agreement, the Receiver is obligated to hold the disputed amount (the "**Disputed Amount**"), being \$562,893.44, in trust for Stuart Olson pending a resolution of the parties' entitlement. As set out therein, the Disputed Amount was paid to the Receiver in trust to facilitate a commercial resolution and immediate release and pick-up by Stuart Olson of certain materials urgently needed and in Antamex's possession.<sup>22</sup>

25. The Receiver has reviewed the Proof of Claim filed by Stuart Olson and the agreements between Stuart Olson and Antamex and confirmed that (i) Stuart Olson has a valid contractual right to set off its damages against its accounts payable to Antamex on the date of the Receiver's appointment, and (ii) Stuart Olson has sustained damages that exceed the Disputed Amount. The Receiver therefore seeks this Court's authorization to return the Disputed Amount to Stuart Olson.<sup>23</sup>

26. The Receiver understands that one claimant, Alumicor, through counsel, has objected to the return of the Disputed Amount to Stuart Olson and takes the position that the Disputed Amount should be made available to subcontractors on the YorkU Project. In the Receiver's view, the Disputed Amount was paid to the Receiver pursuant to an express reservation of rights and agreement to return the Disputed Amount to Stuart Olson if Stuart Olson's claims were validated. Stuart Olson's claims were validated through the Claims Process. Accordingly, in the Receiver's view, it is obligated to return the Disputed Amount to Stuart Olson. In the Receiver's view, the Trust Claims Process Order has no effect on Alumicor's ability to pursue its lien claim filed on the YorkU Project or any claim it may have against Stuart Olson directly. The Receiver takes no

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<sup>22</sup> Sixth Report at para 31.

<sup>23</sup> Sixth Report at para 32.

position on the dispute between Alumicor and Stuart Olson, and will follow this Court's direction regarding the appropriate distribution of the Disputed Amount.<sup>24</sup>

### **C. GEN Settlement Agreement**

27. The Receiver was initially appointed in respect of certain US Collateral constituting the priority collateral of EDC pursuant to the Partial Appointment Order. The US Collateral consists primarily of certain glass manufacturing equipment (the “**US Glass Equipment**”) located in Norwich, Connecticut. Antamex asserted ownership of the US Glass Equipment.<sup>25</sup>

28. The US Glass Equipment is stored at a property (the “**Norwich Premises**”) formerly leased to Antamex’s affiliate, Naverra LLC (“**Naverra**”) by Norwich 40 TCGI, LLC (the “**Norwich Landlord**”). Naverra ceased operations and was evicted from the Norwich Premises in November 2023, jeopardizing the US Glass Equipment.<sup>26</sup>

29. Third-party possession of the US Glass Equipment by the Norwich Landlord was a primary motivation for granting the Partial Appointment Order and the stay of proceedings contained therein.<sup>27</sup>

30. On March 14, 2024, the Norwich Landlord confirmed that it had leased the Norwich Premises to Glass Enterprises Northeast LLC (“**GEN**”). On May 6, 2024, the Receiver and its counsel received a letter from counsel to GEN (the “**GEN Letter**”) setting out the basis of GEN’s purported ownership interest in the US Glass Equipment and enclosing documentation not previously made available to the Receiver.<sup>28</sup>

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<sup>24</sup> Sixth Report at paras 33-34.

<sup>25</sup> Sixth Report at paras 40-41.

<sup>26</sup> Sixth Report at para 42.

<sup>27</sup> Sixth Report at para 43.

<sup>28</sup> Sixth Report at para 44.

31. GEN and the Norwich Landlord dispute that the US Glass Equipment was owned by Antamex, and, instead, contend that the US Glass Equipment was owned by Naverra. The Receiver reviewed the documentation provided by GEN and determined that there is uncertainty regarding whether the owner of US Glass Equipment was Antamex or Naverra. The Receiver takes the position, however, that notwithstanding the uncertainty regarding Antamex's ownership interest, Antamex maintained a valid, registered security interest in the US Glass Equipment and that any acquisition of the US Glass Equipment by GEN would be subject to this security interest. GEN disputes this position.<sup>29</sup>

32. The Receiver has continued to engage with GEN in an effort to arrive at a consensual resolution of this issue. Communications over the course of several months culminated in a settlement agreement (the "**GEN Settlement Agreement**"), whereby the Receiver on behalf of Antamex, GEN, its affiliate Norwich Equipment Finance, LLC ("**NEF**") and the Norwich Landlord have agreed, subject to substantially the same terms and conditions contained in the GEN Settlement Agreement, to settle their disputes in relation to the US Glass Equipment.<sup>30</sup> The Receiver requests this Court's approval of the GEN Settlement Agreement. The Receiver intends to enter into the GEN Settlement Agreement, subject to final minor amendments, subject to this Court's approval thereof.<sup>31</sup> In particular, the parties continue to discuss the priority and scope of the security interest that GEN and its affiliate, NEF, will grant to the Receiver under the GEN Settlement Agreement.

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<sup>29</sup> Sixth Report at paras 45-46.

<sup>30</sup> Sixth Report at para 47.

<sup>31</sup> Sixth Report at paras 48-49.

#### **D. Proposed Interim Distributions**

33. At the time the Antamex Receiver was appointed, EDC was owed the amount of \$10,462,962.93 by Antamex pursuant to a Credit Facility Agreement dated November 5, 2021 among EDC as lender, Antamex as borrower, and Naverra as guarantor (as amended, the "**Credit Agreement**"). Interest has continued to accrue on this amount since appointment of the Antamex Receiver. Antamex is now indebted to EDC in the estimated amount of \$10.9 million (together with all interest and applicable costs incurred up to the date of the Interim Distributions, the "**EDC Indebtedness**"). The amount of the EDC Indebtedness will be verified by the Receiver through receipt of a statement of account from EDC prior to any distribution on account of the EDC Indebtedness.<sup>32</sup>

34. Antamex's obligations under the Credit Agreement are secured by a charge on the personal property of Antamex derived from the General Security Agreement dated November 5, 2021 by Antamex in favour of EDC (the "**EDC GSA**"). EDC's security interest was registered after registrations by HSBC Bank Canada (now RBC) and certain equipment lessors.<sup>33</sup>

35. Following a review by the Receiver's counsel, Blake, Cassels & Graydon LLP ("**Blakes**"), Blakes provided the Receiver with an opinion that, subject to standard assumptions and qualifications, pursuant to the applicable security documentation, EDC created a valid security interest against the Property of Antamex.<sup>34</sup>

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<sup>32</sup> Sixth Report at para 50.

<sup>33</sup> Sixth Report at para 51.

<sup>34</sup> Sixth Report at para 52.

36. In accordance with the Distribution and Ancillary Matters Order dated January 31, 2025 (the "**RBC Distribution Order**"), distributions were made to RBC from the estates of 256 Victoria and Antamex in full satisfaction of RBC's debt.<sup>35</sup>

37. All leased equipment was returned to equipment lessors early on in these proceedings and, as described in greater detail below, the amounts the Receiver seeks to distribute to EDC do not constitute the proceeds of sale of such equipment.<sup>36</sup>

38. Accordingly, the Receiver is requesting authorization from the Court to make the following interim distribution (the "**Interim Distribution**") to EDC in respect of the EDC Indebtedness from the following sources:

(a) Auction Proceeds: As set out in the Receiver's Fourth Report, following the court-approved auction in respect of Antamex's Property located on the Premises, the Receiver was holding \$2,273,455 in proceeds (the "**Auction Proceeds**"). In accordance with the RBC Distribution Order, a portion of the Auction Proceeds were used to satisfy the balance of RBC's claim against the Debtors. The Receiver continues to hold \$2,011,991 of Auction Proceeds.

(b) 256 Reserve: In accordance with the RBC Distribution Order, \$650,000 was held back by the Receiver from the proceeds of the real property transaction in the 256 Victoria estate pending final accounting of matters in connection with the estate of 256 Victoria. The Receiver has completed such final accounting in connection with the estate of 256 Victoria and, in accordance with the RBC Distribution Order, Antamex has a subrogated claim to

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<sup>35</sup> Sixth Report at para 53.

<sup>36</sup> Sixth Report at para 54.

that of RBC against 256 Victoria in the amount of \$618,544.32 (the "**Subrogated Claim**"), which amount may be distributed to Antamex for the benefit of its creditors.

- (c) Ancillary Relief Order Funds: As set out above, the Receiver is holding approximately \$2,200,000 (the "**Ancillary Relief Order Funds**") in relation to the payment made by the Sureties under the Ancillary Relief Order, as directed by the Court in its February 18, 2025 endorsement.
- (d) Project Funds: The Receiver is seeking authorization to distribute to EDC any funds that have been finally determined not to be funds held in trust for a Subcontractor or other trust claimant. As noted above, any funds over which a dispute exists, including all funds on the South Station Project and 520 Matteo Project, will be held back from such distribution.
- (e) GEN Settlement Funds: The Receiver seeks the Court's authorization to distribute settlement funds received under the GEN Settlement Agreement to EDC on a periodic basis upon their receipt without further order of the Court.<sup>37</sup>

39. The Receiver has confirmed that there are sufficient funds in Antamex's estate to satisfy all priority payables, including employee amounts, notwithstanding the proposed Interim Distribution.<sup>38</sup>

#### **E. Approval of Fees and Activities**

40. Pursuant to the Appointment Orders, the fees and disbursements of the Receiver and the fees and disbursements of its legal counsel were authorized to be paid on a periodic basis based on the fees and expenses incurred for the administration of these receivership proceedings.<sup>39</sup>

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<sup>37</sup> Sixth Report at para 55.

<sup>38</sup> Sixth Report at para 57.

<sup>39</sup> Sixth Report at para 58.

41. The Receiver is seeking approval of its fees and those of its counsel in connection with the performance of their duties in the Receivership Proceedings in the following amounts:

- (a) the Receiver in the amount of CAD \$487,705.00, plus HST and disbursements for the period of September 1, 2024 to May 30, 2025;
- (b) counsel to the Receiver, Blakes, in the amount of CAD \$614,469.50, plus HST and disbursements for the period of September 1, 2024 to May 31, 2025;
- (c) US counsel to the Receiver, Perkins Coie LLP ("**Perkins**"), in the amount of USD \$72,637.60, plus disbursements for the period of September 1, 2024 to May 31, 2025; and
- (d) Delaware counsel to the Receiver, Chipman Brown Cicero & Cole, LLP ("**Chipman**") in the amount of USD \$6,960.00, plus disbursements for the period of July 24, 2024 to May 31, 2025.<sup>40</sup>

### **PART III – ISSUES AND THE LAW**

42. This factum addresses the following issues:

- (a) Should the Court approve the GEN Settlement Agreement?
- (b) Should the Court authorize the Interim Distributions?
- (c) Should the Court approve the Receiver's activities and fees and the fees of its counsel?

43. For the reasons set out herein, the Receiver submits that the answer to the foregoing questions is "yes".

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<sup>40</sup> Sixth Report at para 59.

**A. The GEN Settlement Agreement should be approved**

44. Pursuant to subparagraphs 3(g) and (i) of the Antamex Receivership Order, the Receiver is specifically empowered to settle, extend or compromise any indebtedness owing to the Debtor and any proceeding with respect to the Debtor.<sup>41</sup> The Receiver has agreed to enter into the GEN Settlement Agreement in accordance with the above-noted powers and is seeking court-approval of same.

45. There is an overriding public interest that favours the settlement of disputes. Courts encourage and facilitate such settlements because it is sound judicial policy which contributes to the effective administration of justice.<sup>42</sup>

46. In the context of an insolvency proceeding, the Court will consider the following factors in assessing whether to approve a settlement agreement:

- (a) Whether the settlement is fair and reasonable;
- (b) Whether it provides substantial benefits to other stakeholders; and
- (c) Whether it is consistent with the purpose and spirit of the relevant insolvency legislation.<sup>43</sup>

47. In the context of a receivership proceeding, Courts will also often take into consideration the factors set out by the Court of Appeal in *Royal Bank of Canada v Soundair Corp* when considering approval of a settlement agreement:

- (a) Whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;

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<sup>41</sup> Export and Development Canada v Antamex Industries ULC (CV-24-00715153-00CL), [Amended and Restated Order \(Appointing Receiver\) dated March 13, 2025](#), paras 3(g) and (i).

<sup>42</sup> *Sable Offshore Energy Inc. v Ameron International Corp.*, [2013 SCC 37](#) at paras 11-12.

<sup>43</sup> *Maple Bank GmbH, Re*, [2016 ONSC 7218](#) at para 8 (“*Maple Bank*”); *Labourers’ Pension Fund of Central and Eastern Canada v Sino-Forest Corp.*, [2013 ONSC 1078](#) at para 49; *Robertson v ProQuest Information & Learning Co.*, [2011 ONSC 1647](#) at para 22.



- (b) Whether the interests of all parties have been considered;
- (c) The efficacy and integrity of the process by which offer were obtained; and
- (d) Whether there has been unfairness in the working out of the process.<sup>44</sup>

48. To satisfy the *Soundair* criteria in the settlement context, the Receiver must consider the available information and use its expertise to determine how to maximize the value of the rights subject to the settlement. When the Receiver wishes to settle a claim for or against the estate, it will meet its obligations so long as the proposed compromise is commercially reasonable.<sup>45</sup>

49. It is also appropriate for Courts to take into account the business judgment of the court officer that was involved in the negotiation of the settlement where that settlement raises complex issues or where the receiver is otherwise in a better position to evaluate the merits of the settlement.<sup>46</sup>

50. The Receiver respectfully submits that the foregoing criteria are satisfied for the following reasons:

- (a) **Sufficient effort was made to obtain the best price:** The GEN Settlement Agreement was negotiated by sophisticated parties represented by legal counsel. In the Receiver's view, it has achieved a favourable result, and further negotiations would not have produced a better outcome. The GEN Settlement Agreement eliminates further time and legal costs associated with prosecuting an action against GEN (and any potential appeals thereof).
- (b) **The interests of all parties have been served:** The GEN Settlement Agreement provides for the best possible outcome in the circumstances for all parties with an economic interest in these proceedings. It reflects the extensive efforts to resolve issues with GEN to date,

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<sup>44</sup> *Royal Bank of Canada v Soundair Corp.*, [1991 CanLII 2727](#) (ON CA) ("*Soundair*").

<sup>45</sup> *IWHL Inc., Re*, 2011 [ONSC 5672](#) at para 6 ("*IWHL*").

<sup>46</sup> *Maple Bank* at para 9; *Nortel Networks Corp., Re*, [2010 ONSC 1096](#) (Commercial List) at paras 34-35.

and the advice of the Receiver's legal counsel. Antamex's primary economic stakeholder, EDC, is supportive of the GEN Settlement Agreement. The Receiver, in its business judgment, has determined that the resolution of the dispute with GEN on substantially the same terms set out in the GEN Settlement Agreement is in the best interest of Antamex and its creditors. The GEN Settlement Agreement offers immediate value proposition and certainty.

(c) **The settlement negotiations were conducted with integrity:** The settlement negotiations were conducted with integrity, due diligence, and in good faith. The Receiver engaged in communications with GEN over several months in an effort to arrive at a consensual resolution. The Receiver has not received any objections or concerns regarding the GEN Settlement Agreement.

(d) **There was no unfairness:** In the Receiver's view, there has been no unfairness in the conduct of the settlement negotiations. The negotiations were robust and achieved a consensual resolution to the dispute with GEN. The GEN Settlement Agreement reflects a fair assessment of the Receiver's view of potential litigation risk in connection with the further litigation of disputes in connection with the US Glass Equipment, and the location and nature of the US Glass Equipment.<sup>47</sup>

51. For the foregoing reasons, the Receiver requests that this Court approve the GEN Settlement Agreement.

**B. This Court should authorize the Interim Distributions**

52. As set out above, the Receiver seeks authorization from this Court to make the following interim distributions, subject to maintaining sufficient funds in Antamex's estate to satisfy all

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<sup>47</sup> Sixth Report at para 47

priority payables and to cover remaining recovery efforts, and subject to a holdback of any Project funds in respect of which an unresolved Notice of Dispute has been filed.:

- (a) a distribution from the Auction Proceeds to EDC;
- (b) a distribution in respect of Antamex's subrogated claim from the 256 Reserve to EDC;
- (c) a distribution from the Ancillary Relief Order Funds to EDC;
- (d) a distribution of Project funds to the appropriate Subcontractor, as determined through the Trust Claims Process, and a distribution of any Project funds that have finally been determined not to be fund held in trust for any Subcontractor or other trust claimant to EDC; and
- (e) authorization to distribute settlement funds received under the GEN Settlement Agreement to EDC on a periodic basis upon their receipt without further order of the Court.<sup>48</sup>

53. The powers and abilities of the Receiver are derived from the *BIA*, the Appointment Order and the 256 Appointment Order, none of which provide the Receiver with the explicit power to make distributions. 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 Interim Distribution.<sup>49</sup>

54. Orders authorizing a receiver to make an interim distribution to stakeholders are commonly granted in insolvency proceedings.<sup>50</sup> The Court's discretion to make such an Order is squarely

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<sup>48</sup> Sixth Report at para 55.

<sup>49</sup> *Forjay Management Ltd. v 625536 B.C. Ltd.*, [2019 BCCA 368](#) at para 26.

<sup>50</sup> *Re Windsor Machine & Stamping Ltd.*, [2009 CanLII 39772](#) (ONSC) at para 13; *Abitibowater Inc., (Re)*, [2009 QCCS 6461](#) at paras 70-75 [*Abitibowater*]; *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*].

within its jurisdiction to do what “justice dictates” and “practicality demands” pursuant to Section 243(1)(c) of the *Bankruptcy and Insolvency Act*.<sup>51</sup>

55. The Alberta Court of the King’s Bench has stated that a Court must consider “the advantages disadvantages and potential prejudice of [...] an interim distribution to all the stakeholders of the debtor entity.”<sup>52</sup> Courts will also consider the validity and enforceability of the relevant security and interest savings, and liquidity of the debtor (after making the distribution) in exercising its discretion to grant an interim distribution.<sup>53</sup> While such *AbitibiBowater* factors were analyzed in the context of a *Companies’ Creditors Arrangement Act* proceeding, they can be similarly applied to these receivership proceedings.

56. The factors contemplated in *AbitibiBowater* are satisfied in the instant case. The Receiver’s counsel, Blakes, conducted a review of the security granted by Antamex to EDC. Following its review, Blakes provided the Receiver with an opinion that, subject to standard assumptions and qualifications, pursuant to the applicable security documentation, EDC created a valid security interest against the Property of Antamex.<sup>54</sup> An interim distribution to EDC will substantially reduce the EDC Indebtedness, resulting in a significant interest savings.

57. As noted above, the Receiver intends to maintain a reserve from the Ancillary Relief Order Funds to cover its ongoing recovery efforts, including resolving disputed trust claims and to fund the investigation of potential fraudulent conveyances or transfers at undervalue by the Trustee. The Receiver has confirmed that there are sufficient funds in Antamex’s estate to satisfy all priority payables, including employee amounts, notwithstanding the proposed Interim Distribution. In the

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<sup>51</sup> *Bankruptcy and Insolvency Act*, [RSC 1985 c B-3](#) at s 243(1)(c); *Third Eye Capital Corporation v Ressources Dianor Inc/Dianor Resources Inc.*, [2019 ONCA 508](#) at para 57.

<sup>52</sup> *Re SemCanada Crude Company (Companies’ Creditors Arrangement Act)*, [2009 ABQB 90](#) at para 27.

<sup>53</sup> *AbitibiBowater* at para 75.

<sup>54</sup> Sixth Report at para 52.

Receiver's view, there will be no prejudice to any party as a result of the proposed Interim Distributions and the requested order authorizing the Interim Distributions should be granted.

**C. The Court should approve the Receiver's activities and fees and the fees of its counsel**

58. In *Target Canada*, the Court noted that there are good policy and practical reasons to grant the approval of Monitor's reports and activities, including (a) allowing the Monitor to bring its activities before the Court; (b) allowing an opportunity for stakeholders' concerns to be addressed; (c) enabling the Court to satisfy itself that the Monitor's activities have been conducted in prudent and diligent manners; (d) providing protection for the Monitor not otherwise provided by the *Companies' Creditors Arrangement Act*; and (e) protecting creditors from delay that may be caused by re-litigation of steps or potential indemnity claims by the Monitor.<sup>55</sup> Recently, the principles set out in *Target Canada* were reaffirmed by Chief Justice Morawetz in *Laurentian University*.<sup>56</sup>

59. These comments and the policy considerations identified by the Court apply with equal force to Receivership Proceedings, and motions seeking approval of a receiver's reports and activities described therein.<sup>57</sup>

60. This Court has jurisdiction to review and approve the activities of a receiver. If the receiver has met the objective test of demonstrating that it has acted reasonably, prudently, and not arbitrarily, the court may approve the activities set out in its report.<sup>58</sup>

61. The Receiver respectfully submits that it has met the aforementioned objective test in respect of the activities set out in the Third Report, Fourth Report, Fifth Report and Sixth Report.

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<sup>55</sup> *Re Target Canada Co.*, [2015 ONSC 7574](#) [*"Target Canada Co."*] at paras 2, 22-23.

<sup>56</sup> *Re Laurentian University of Sudbury*, [2022 ONSC 2927](#) at paras 13-14; *Target Canada Co.* at paras 2, 22-23.

<sup>57</sup> *Re Hanfeng Evergreen Inc.*, [2017 ONSC 7161](#) at para 15.

<sup>58</sup> *Lang Michener v American Bullion Minerals Ltd.*, [2005 BCSC 684](#) at para 21.

62. Pursuant to the Appointment Order and 256 Appointment Order, the fees and disbursements of the Receiver and its legal counsel are authorized to be paid on a periodic basis subject to any final approval as ordered by this Court.<sup>59</sup>

63. The accounts of the Receiver and that of Blakes, its Canadian counsel, and Perkins and Chipman, its US counsel, meet the technical requirements established by case law:

- (a) the accounts disclose in detail the name of each person who rendered services, the rate charged, the time expended and descriptions of the services rendered;
- (b) the accounts are in a form that can be easily understood by those affected by the receivership or by the judicial officer required to assess the accounts; and
- (c) the accounts are verified by affidavits.<sup>60</sup>

64. The general standard of review for a Court in assessing the accounts of a court-appointed receiver is “whether the amount claimed for remuneration and disbursements incurred in carrying out the receivership are fair and reasonable”.<sup>61</sup>

65. It is not necessary for a court to examine a receiver’s “dockets, hours, the explanations or disbursements, line by line, in order to determine what the appropriate fees are[. ...] [Rather, the court] should consider all the relevant factors, and should award costs (or fees) in a more holistic manner”.<sup>62</sup> This approach has been affirmed by the Ontario Court of Appeal, stating that “the focus of the fair and reasonable assessment should be on what was accomplished, and not on how much time it took”.<sup>63</sup>

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<sup>59</sup> Antamex Appointment Order at paras 19 and 20; 256 Appointment Order at paras 19 and 20.

<sup>60</sup> *Confectionately Yours Inc (Re)*, [2002 CanLII 45059](#) (ONCA) [*Confectionately Yours*] at paras 37-38.

<sup>61</sup> *Confectionately Yours*, *supra* at para 42.

<sup>62</sup> *Bank of Nova Scotia v Diemer*, [2014 ONSC 365](#), *aff’d* [2014 ONCA 851](#) at para 19.

<sup>63</sup> *Bank of Nova Scotia v Diemer*, [2014 ONCA 851](#) [*Diemer ONCA*] at para 45.

66. In *Federal Business Development Bank v Belyea and Fowler*, Stratton J.A. set out a non-exhaustive list of factors to be considered in determining whether a receiver's fees are fair and reasonable.<sup>64</sup> These factors have been endorsed by the Ontario Court of Appeal:

- (a) the nature and extent of the value of the assets handled;
- (b) the complications and difficulties encountered;
- (c) the degree of assistance provided by the company, its officers or employees;
- (d) the time spent;
- (e) the receiver's knowledge, experience and skill;
- (f) the diligence and thoroughness displayed by the receiver;
- (g) the responsibilities assumed;
- (h) results of the receiver's efforts; and
- (i) the cost of comparable services.<sup>65</sup>

67. Deloitte is a licensed insolvency trustee and has staffed this matter with insolvency specialists at various levels of seniority.<sup>66</sup> Likewise, Blakes is a full-service law firm, which has staffed this matter with subject matter experts, including insolvency experts, at various levels of seniority.<sup>67</sup> In the Receiver's view, comparable services in the Toronto market could only be obtained at a comparable cost. Blakes' hourly rates are consistent with the rates charged by other law firms practicing in the area of insolvency in the Toronto market, and the Receiver is of the view that its fees are reasonable and appropriate in the circumstances.

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<sup>64</sup> [1983 CanLII 4086](#) (NBCA) at para 9.

<sup>65</sup> *Diemer ONCA*, *supra* at para 33; *Confectionately Yours*, *supra* at para 42.

<sup>66</sup> Sixth Report at Appendix "I", Reynolds Affidavit.

<sup>67</sup> Sixth Report at Appendix "J", Rogers Affidavit.

68. The work performed by Blakes, Perkins and Chipman was commissioned in connection with different aspects of the receivership proceedings, and in the Receiver's view, there is no material overlap or duplication. Blakes is lead counsel and sole Canadian counsel to the Receiver. Antamex's operations were complex and involved a number of projects across Canada and the United States. As a result of positions taken by certain US stakeholders, the Receiver determined that recognition of Antamex's receivership proceeding in the US under the Bankruptcy Code was required. Perkins, a New York-based firm, is lead US counsel to the Receiver. Chipman, a Delaware-based firm, provided the Receiver with specific administrative and local law advice in relation to Antamex's chapter 15 proceeding, commenced in Delaware.<sup>68</sup>

69. For the reasons above, the Receiver is of the view that the fees and disbursements incurred by it and its counsel are fair and reasonable. Accordingly, the Receiver respectfully requests approval of its fees and the fees of its legal counsel as submitted in the Sixth Report.

#### **PART IV – ORDER REQUESTED**

70. 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 June 25, 2025.

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



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Linc Rogers & Caitlin McIntyre  
Lawyers for the Receiver

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<sup>68</sup> Sixth Report at para 65.



**SCHEDULE “A”**  
**LIST OF AUTHORITIES**

<b><u>Cases</u></b>	
1.	<i>Sable Offshore Energy Inc. v Ameron International Corp.</i> , <a href="#">2013 SCC 37</a> .
2.	<i>Maple Bank GmbH, Re</i> , <a href="#">2016 ONSC 7218</a> .
3.	<i>Labourers’ Pension Fund of Central and Eastern Canada v Sino-Forest Corp.</i> , <a href="#">2013 ONSC 1078</a> .
4.	<i>Robertson v ProQuest Information &amp; Learning Co.</i> , <a href="#">2011 ONSC 1647</a> .
5.	<i>Royal Bank of Canada v Soundair Corp.</i> , <a href="#">1991 CanLII 2727</a> (ON CA).
6.	<i>IWHL Inc., Re</i> , 2011 <a href="#">ONSC 5672</a> .
7.	<i>Nortel Networks Corp., Re</i> , <a href="#">2010 ONSC 1096</a> (Commercial List).
8.	<i>Forjay Management Ltd. v 625536 B.C. Ltd.</i> , <a href="#">2019 BCCA 368</a> .
9.	<i>Re Windsor Machine &amp; Stamping Ltd.</i> , <a href="#">2009 CanLII 39772</a> (ONSC).
10.	<i>Abitibowater Inc., (Re)</i> , <a href="#">2009 QCCS 6461</a> .
11.	<i>Ontario Securities Commission v. Bridging Income Fund L.P.</i> , <a href="#">2022 ONSC 4472</a> .
12.	<i>GE Canada Real Estate Financing Business Property Company v. 1262354 Ontario Inc.</i> , <a href="#">2014 ONSC 1173</a> .
13.	<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> .
14.	<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> .
15.	<i>Third Eye Capital Corporation v Ressources Dianor Inc/Dianor Resources Inc.</i> , <a href="#">2019 ONCA 508</a> .
16.	<i>Re SemCanada Crude Company (Companies’ Creditors Arrangement Act)</i> , <a href="#">2009 ABQB 90</a> .

<b><u>Cases</u></b>	
17.	<i>Re Target Canada Co.</i> , <a href="#">2015 ONSC 7574</a> .
18.	<i>Re Laurentian University of Sudbury</i> , <a href="#">2022 ONSC 2927</a> .
19.	<i>Re Hanfeng Evergreen Inc.</i> , <a href="#">2017 ONSC 7161</a> .
20.	<i>Lang Michener v American Bullion Minerals Ltd.</i> , <a href="#">2005 BCSC 684</a> .
21.	<i>Confectionately Yours Inc (Re)</i> , <a href="#">2002 CanLII 45059</a>
22.	<i>Bank of Nova Scotia v Diemer</i> , <a href="#">2014 ONSC 365</a> , aff'd <a href="#">2014 ONCA 851</a>
23.	<i>Federal Business Development Bank v Belyea and Fowler</i> <a href="#">1983 CanLII 4086</a>

**SCHEDULE “B”**

**LIST OF STATUTES**

*Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3

**243 (1)** Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

(a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;

(b) exercise any control that the court considers advisable over that property and over the insolvent person’s or bankrupt’s business; or

(c) take any other action that the court considers advisable.

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**  
**(Distribution, Settlement Approval and Ancillary**  
**Matters)**  
**Returnable July 2, 2025**

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