

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

Court File No.: CV-24-718718-00CL

**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

**SECOND SUPPLEMENT TO THIRD REPORT OF
DELOITTE RESTRUCTURING INC.
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER
DATED DECEMBER 3, 2024**

TABLE OF CONTENTS

	Page
I. INTRODUCTION AND PURPOSE OF THIS SUPPLEMENT	4
II. TERMS OF REFERENCE	6
III. BACKGROUND	7
IV. DELIVERY OF IMAGED SERVER.....	11
V. ADDITIONAL INFORMATION REQUESTS	12

APPENDICES

APPENDIX "A"	Email from Sureties to Receiver dated August 19, 2024
APPENDIX "B"	Receiver's Response dated September 6, 2024
APPENDIX "C"	Email from Sureties to Receiver dated October 1, 2024
APPENDIX "D"	Receiver's Response dated October 11, 2024
APPENDIX "E"	November 4 Email
APPENDIX "F"	Email re Copy of Server dated July 1, 2024
APPENDIX "G"	Reply dated October 21, 2024
APPENDIX "H"	Correspondence Related to Delivery of Server
APPENDIX "I"	Information and Document Requests, dated November 20, 2024

I. INTRODUCTION AND PURPOSE OF THIS SUPPLEMENT

1. On November 11, 2024, Deloitte Restructuring Inc., in its capacity as court-appointed receiver and manager (in such capacity, the “**Receiver**”) of Antamex Industries ULC (“**Antamex**”) filed a motion seeking advice and directions (the “**Motion for Directions**”) with respect to the interpretation of paragraph 5 of the Adjournment and Ancillary Relief Order dated March 5, 2024 (the “**Ancillary Relief Order**”) made in these proceedings. The Ancillary Relief Order was made in connection with an adjournment of the initial receivership application granted by the Court at the request of certain sureties who bonded a number of Antamex’s construction contracts (collectively, the “**Sureties**”). Paragraph 5 of the Ancillary Relief Order sets out the circumstances in which the Sureties would be required to pay Antamex’s estate the lesser of the actual disbursements made by Antamex between February 27, 2024 and March 12, 2024 (the “**Adjournment Period**”) and \$2 million. The Receiver and the Sureties disagree on the proper interpretation of this paragraph and the Court’s assistance was sought to resolve the disagreement by way of the Motion for Directions.
2. In support of the Motion for Directions the Receiver filed its Third Report (the “**Third Report**”) to the Court dated November 11, 2024 and Supplement (the “**First Supplement**”) to its Third Report dated November 27, 2024.
3. Capitalized terms not otherwise defined herein have the meanings given to them in the Third Report.
4. The Sureties took the position that they require certain information in order to respond to the Motion for Directions. The Sureties and the Receiver disagree on the relevance of such information. The Receiver and Sureties were unable to resolve this matter consensually

and at the request of the Sureties, on November 25, 2024, the Receiver and the Sureties attended a case conference before Justice Black regarding the production of information by the Receiver (the “**Requested Information**”).

5. The Court directed that a hearing be held on December 3, 2024 in respect of production of the Requested Information. On November 30, 2024, the Sureties served a motion to compel the Receiver to produce the Requested Information (the “**Production Motion**”).
6. On December 2, 2024, the Sureties withdrew the Production Motion. The sole matter before the Court on December 3, 2024 is now the timing for rescheduling the Motion for Directions.
7. As described in greater detail herein, the Receiver disputes the relevance of the foregoing information to the matters at issue in the Motion for Directions. The Sureties take the position they will need an undetermined amount of time to review and assess the information on the imaged server delivered to them in early November (the “**Imaged Server**”).
8. Given the fact that the Requested Information is not relevant to the matters in dispute in the Motion for Directions, the Receiver takes the position that there should be no unnecessary delay in the hearing of the Motion for Directions and requests that the Motion for Directions be scheduled to be heard as soon as reasonably possible.
9. The purpose of this Second Supplement to the Third Report is provide the Court with additional information and context regarding the sequence of events that precipitated the Production Motion which the Receiver believes may be of assistance to the Court in determining how much additional time should be afforded to the Sureties to review the Imaged Server. The Receiver’s position with respect to the interpretation of paragraph 5 of

the Ancillary Relief Order is set out in the Third Report and the First Supplement and is not repeated herein.

II. TERMS OF REFERENCE

10. In preparing this Second Supplement to the Third Report, Deloitte has been provided with, and has relied upon unaudited, draft, and/or internal financial information, the Debtors' books and records, discussions with the Debtors' former management, shareholders, and employees, and information from third-party sources (collectively, the "**Information**"). Except as otherwise described in this Second Supplement to the Third Report:
 - a) Deloitte has reviewed the Information for reasonableness, internal consistency, and use in the context in which it was provided. However, Deloitte has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards ("**CAS**") pursuant to the *Chartered Professional Accountants Canada Handbook*, and accordingly, the Receiver expresses no opinion or other form of assurance contemplated under CAS in respect of the Information.
 - b) Deloitte has filed this Second Supplement to the Third Report solely for the purpose of providing information to this Court. Parties using the Second Supplement to the Third Report other than for the purposes outlined herein are cautioned it may not be appropriate for their purposes.
11. Unless otherwise stated, all dollar amounts contained in this Second Supplement to the Third Report are expressed in Canadian Dollars.

III. BACKGROUND

12. As set out in the Third Report, the Receiver was appointed over Antamex on March 13, 2024. The Application for appointment of the Receiver was originally scheduled for February 27, 2024. At the request of Antamex and its Sureties, the Application was adjourned, first to March 5, 2024, and ultimately to March 13, 2024, to provide the Sureties with time to consider whether the Sureties wished to fund the business of Antamex.
13. During the Adjournment Period, the Sureties had extensive involvement with and access to Antamex's business. As set out in the Affidavit of Ryan Spurgeon attached to the Third Report as Appendix "D", the Sureties commenced work in Antamex's offices after receiving a funding request from Antamex on February 22, 2024 in order to conduct an extensive books, records and project review. The time needed for the Sureties to familiarize themselves with Antamex's books, records and projects was a driving force behind the Adjournment Request.
14. During this time period, the Receiver understood that the Sureties took a mirror copy of Antamex's server. On April 8, 2024, the Receiver also entered into a Surety and Advisor Access Agreement with the Sureties to provide the Sureties and their advisors with access to certain Antamex records and employees, including the ability to obtain information from the Jonas system.
15. As set out in the Third Report, after its appointment, the Receiver reviewed a report prepared by Antamex employees of the disbursements made from Antamex's bank accounts in the Adjournment Period and determined that such disbursements exceeded \$2 million. The Receiver sought the assistance of Antamex's employees to obtain certain

information from Antamex's Jonas software (a specialized construction software) and to categorize the disbursements made from Antamex's bank accounts.

16. On April 25, 2024, after it was appointed, the Receiver's counsel, Blakes, wrote to the Sureties to request payment of \$2 million into the Receiver's trust account pursuant to paragraph 5 of the Ancillary Relief Order.
17. On April 30, 2024, the Sureties requested substantiating documentation for expenditures and disbursements. The same day, the Receiver provided the Sureties with Antamex's account statements showing the expenditures and disbursements, which information was attached to the Third Report as Appendix "U" and updated as part of the First Supplement.
18. On August 19, 2024, the Sureties first requested the information sought in the Production Motion. Attached hereto as **Appendix "A"** is a copy of the correspondence from the Sureties requesting such information.
19. On September 6, 2024, the Receiver responded denying most of the Sureties' requests on the basis that the Receiver understood that the Sureties had mirrored Antamex's complete server immediately prior to the Receiver's appointment, which mirrored server would have contained most of the information sought by the Sureties. Moreover, the Receiver understood that the Sureties had specifically requested and received information on accounts receivable, accounts payable, receipts and disbursements from Antamex employees after the Surety and Advisor Access Agreements were executed.
20. The Receiver therefore understood that the Sureties were already in possession of most of the information they requested. The Receiver denied the Sureties' request for

communications with EDC on the basis of relevance, and advised that it would work on obtaining the cash disbursements journal and general ledger requested by the Sureties. Attached hereto as **Appendix “B”** is a copy of the Receiver’s correspondence.

21. On October 1, 2024, almost a month later, the Sureties wrote back to the Receiver. The Sureties advised for the first time that the server they mirrored in the pre-appointment period was incomplete, corrupt or unreadable. The Receiver understood that the Sureties were in possession of the compromised mirrored server for approximately 7 months prior to raising this concern.
22. With respect to the requested communications with EDC, the Sureties again requested such communications on the basis that “Given the Receiver’s role as an officer of the Court, there must be complete transparency in order to ensure fairness, impartiality and equal treatment of all stakeholders” and on the basis that the Sureties wished to assert that the Funding Proposal was rejected by EDC. The Sureties also added, without explanation, a request for definitive documentation in respect of a payment made by Suffolk after the Receiver’s appointment. A copy of this communication is attached hereto as **Appendix “C”**.
23. On October 11, 2024, the Receiver replied providing a detailed explanation for its position on the Sureties’ information requests. Such reply is attached hereto as **Appendix “D”**. As set out therein the Receiver took the following positions:
 - a) Relevance: The majority of the information requested by the Sureties has no relevance to the determination of whether the Sureties are required to make payment under the Ancillary Relief Order. To the extent such information relates

to deposits or receipts, the Receiver, on the Motion for Directions, is asking the Court to determine whether or not deposits or receipts are relevant to the interpretation of the Ancillary Relief Order (which makes no reference to deposits or receipts). The quantum of such deposits and receipts is not relevant until this threshold determination has been made. The Receiver also articulated that whether or not the Sureties' funding proposal constituted necessary and sufficient funding to Antamex is an objective question on which EDC's communications with the Receiver had no bearing. The Receiver confirmed its view that in the absence of legal relevance, parties communicating with a proposed receiver or receiver (including sureties), have a reasonable expectation of confidentiality in such communications.

- b) Previous Access: The Receiver reiterated that the Sureties had extensive access to Antamex's business and records during the Adjournment Period and that the Receiver understood that the Sureties had all information needed in their possession. The Receiver also noted that the Sureties had entered into Surety and Advisor Access Agreements following the Receiver's appointment to give the Sureties access to Antamex's facilities, vault servers and personnel. Such access was provided to the Sureties whenever requested until the Receiver decommissioned Antamex's server in late June 2024 on notice to the Sureties.
- c) Information already provided: The Receiver provided the Sureties with account statements showing disbursements made during the Adjournment Period. Such account statements also show deposits and receipts, the quantum of which is not at issue on the Motion for Directions.

d) Cost of Production: The Receiver noted the significant cost of the production requests made by the Sureties and the time and cost that would be required for the Receiver to locate, organize and compile the information requested. While the Receiver initially agreed to provide the cash disbursements journal and general ledger, the Receiver was unable to identify this information without restarting Antamex's decommissioned server and expending time and resources to locate the information.

24. On November 4, 2024, the Sureties expressed their disagreement with the Receiver's response and reiterated their information request. A copy of this correspondence (the "**November 4 Email**") is attached hereto as **Appendix "E"**.

IV. DELIVERY OF IMAGED SERVER

25. In June 2024, the Receiver engaged in a discussion with the Sureties regarding decommissioning Antamex's server and what records the Sureties might need access to in connection with their bond obligations. This discussion was unrelated to the Motion for Directions and Ancillary Relief Order.

26. On July 1, 2024, the Receiver informed the Sureties that a copy could be made of Antamex's imaged, pre-appointment server for the Sureties so long as the Sureties were prepared to cover the cost of producing the copy. A copy of this correspondence is attached hereto as **Appendix "F"**.

27. The Receiver did not receive a reply to this offer for nearly 4 months, until October 21, 2024, when the Sureties, again in connection with their bond obligations and not in connection with the Motion for Directions, advised that they were prepared to cover the

cost of preparing a copy of the Imaged Server. A copy of this correspondence is attached hereto as **Appendix “G”**.

28. As part of the November 4 Email, the Sureties advised for the first time that they required the Imaged Server urgently to search the data for the information requested in connection with the Motion for Directions. The Imaged Server was delivered to the Sureties on November 8, 2024 and prior to the receipt of payment of the cost of such imaging.
29. On November 13, 2024, the Sureties informed the Receiver that certain information appeared to be missing from the Imaged Server. The Receiver worked to rectify this issue, delivering further information to the Sureties on November 19, 2024. Late in the evening of November 19, 2024, the Sureties informed the Receiver that they were having difficulty using the Imaged Server due to hardware issues. The Sureties delivered the Imaged Server back to the Receiver in the morning of November 20, 2024. The Receiver resolved the hardware issue and returned the Imaged Server to the Sureties that same morning. A copy of correspondence between counsel to the Sureties and counsel to the Receiver setting out this chain of events is attached hereto as **Appendix “H”**.

V. ADDITIONAL INFORMATION REQUESTS

30. On November 20, 2024, the Sureties wrote to counsel for the Receiver to deliver a new, lengthy list of additional information and documentary requests. A copy of this correspondence is attached hereto as **Appendix “I”**. At the same time, the Sureties indicated that their accounting consultant, Matson, Driscoll & Damico LLP (“**MDD**”), was having difficulties reconciling certain disbursements. This was the first time the Sureties indicated that any of the disbursements were specifically disputed.

31. The Receiver agreed that the overall quantum of disbursements from the Antamex accounts during the Adjournment Period is a relevant consideration for the Motion for Directions. Over the course of the next week, the Receiver worked to understand and resolve the discrepancies identified by MDD. The Receiver served the First Supplement on November 27, 2024 which provided an adjusted breakdown of disbursements in the Adjournment Period. The information contained in the First Supplement was also directly provided to the Sureties.
32. On November 28, 2024, the Sureties requested that the Receiver provide source documentation reviewed to address the discrepancies. The Receiver provided such source documentation, which was obtained from the same Imaged Server which was provided to the Sureties on November 8, 2024. Additionally, the Receiver provided copies of cheque images pulled from Antamex's bank statements which cheque copies were provided to the Sureties.
33. The Receiver notes that MDD has raised the possibility of additional discrepancies in the Receiver's Revised Disbursement Summary (as defined in the Affidavit of Robert Teska sworn November 29, 2024 (the "**Teska Affidavit**"). Given the lateness of the Sureties' delivery of their motion materials, the Receiver has not had an opportunity to fully assess or address the alleged discrepancies. Upon a preliminary review, the Receiver notes the following:
 - a) In the Teska Affidavit, Mr. Teska asserts that the Receiver has erroneously included a \$500,000 payment in the Receiver's Revised Disbursement Summary that was in fact an intercompany transfer and not a payment to a third party. The alleged


additional \$500,000 intercompany payment, however, was not included in the Receiver's Revised Disbursement Summary. The account statements reflect a disbursement and subsequent cancellation, and both a debit and credit of \$500,000. The Receiver has determined that Antamex attempted to transfer \$500,000 between two of its accounts, but that such transfer was rejected by its bank and the funds returned to the sending account. As the transaction was never completed, it was excluded from the Receiver's Revised Disbursement Summary.

- b) Mr. Teska asserts that a disbursement of \$56,984 was erroneously included in the Receiver's Revised Disbursement Summary as it was an intercompany transfer. The amount in question relates to a payment to third parties that had to be made by 256 Victoria, a related party to Antamex. The Receiver understands that such third party payments were funded by Antamex. Accordingly, the payment made on behalf of 256 Victoria was included in the Receiver's Revised Disbursement Summary.
- c) Mr. Teska asserts that a supplier payment of \$236,672.83 was disbursed by Antamex outside the Adjournment Period and thus should not have been included in the Receiver's Revised Disbursement Summary. The Receiver has concluded that the amount was disbursed by Antamex during the Adjournment Period but only cleared Antamex's account on March 13, 2024. In the Receiver's view, this is a disbursement made by Antamex in the Adjournment Period.
- d) Critically, even if all the alleged discrepancies identified by Mr. Teska in the Teska Affidavit are accepted, the total disbursements in the Adjournment Period exceed

\$2 million. Accordingly, none of the alleged discrepancies make a difference to the application of the Ancillary Relief Order or impact the \$2 million payment threshold.

All of which is respectfully submitted at Toronto, Ontario this 3rd day of December, 2024

DELOITTE RESTRUCTURING INC.,
solely in its capacity as Court-Appointed
Receiver of Antamex Industries ULC and
256 Victoria Street West ULC,
and without personal or corporate liability

Per: 

Phil Reynolds, Sr. Vice-President

APPENDIX “A”

McIntyre, Caitlin

From: Borgo, Mark <MBorgo@blg.com>
Sent: Monday, August 19, 2024 9:22 AM
To: Rogers, Linc; McIntyre, Caitlin
Cc: Bambrough, Denise L.; Punzo, Andrew
Subject: Aviva/Nationwide/Euler - Antamex | Request for Information [BLG-DOCUMENTS.FID9281305]
Attachments: Antamex HSBC USD 440 - 2.27.24 - 3.13.24.pdf; Antamex HSBC USD 070 - 2.27.24 - 3.13.24.pdf; Antamex HSBC CAD 001 - 2.27.24 - 3.13.24.pdf

• External Email | Courrier électronique externe •

Hi Linc and Caitlin,

Further to our previous exchange of correspondence regarding the application of the Adjournment and Ancillary Relief Order, we will require the following information in order to prepare our clients' materials for the motion for directions:

1. Full particulars of all payments received by the Receiver in connection with amounts owing to Antamex on its bonded and unbonded projects, together with supporting documents;
2. All communications between the Receiver and EDC in connection with the Sureties' financing proposals;
3. For all deposits reflected in the attached account statement excerpts, please provide the corresponding pay application or other similar documentation that identifies the source of the deposit and the job or jobs it is associated with;
4. For all vendor payments reflected in the attached account statement excerpts, please provide copies of the invoices that support each payment and identification of the job it is associated with, if applicable;
5. For all payroll payments reflected in the attached account statement excerpts, please provide payroll detail that shows how payroll is allocated to each job;
6. Please provide the cash disbursements journal for the period 2/27/24 – 3/13/24; and
7. Please provide the general ledger detail for the period 2/27/24 – 3/13/24.

Best regards,



Mark A. Borgo

Senior Associate

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Borden Ladner Gervais LLP

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APPENDIX “B”

McIntyre, Caitlin

From: McIntyre, Caitlin
Sent: Friday, September 6, 2024 11:27 AM
To: Borgo, Mark; Rogers, Linc
Cc: Bambrough, Denise L.; Punzo, Andrew
Subject: RE: Aviva/Nationwide/Euler - Antamex | Request for Information [BLG-DOCUMENTS.FID9281305]

Mark,

With respect to the documents requested by you at items 1, 3 and 4, this information is included in the server mirrored by the sureties at the outset of the receivership proceeding and is therefore in the sureties' possession. With respect to the communications requested at item 2, in addition to considerations regarding privilege, such communications are not relevant to the issue at hand. The information requested at item 5 is not available to the Receiver; payroll was not, historically, allocated by Antamex on a per job basis.

The Receiver is working to gather the information requested at items 6 and 7.

Additionally, we would like to propose the following litigation timetable in respect of this motion. Please let us know your thoughts on the dates and steps set out below.

Deadline for Delivery of Receiver's Motion Record	November 5, 2024
Deadline for Delivery of Sureties' Reply Record	November 12, 2024
Deadline for Delivery of Receiver's Factum	November 19, 2024
Deadline for Delivery of Sureties' Reply Factum	November 26, 2024
Deadline for Delivery of Receiver's Reply Factum (if any)	November 29, 2024

Regards,
Caitlin

Caitlin McIntyre (she, her, hers)
Associate
caitlin.mcintyre@blakes.com
T. +1-416-863-4174
C. +1-905-746-6711

From: Borgo, Mark <MBorgo@blg.com>
Sent: Monday, August 19, 2024 9:22 AM
To: Rogers, Linc <linc.rogers@blakes.com>; McIntyre, Caitlin <caitlin.mcintyre@blakes.com>
Cc: Bambrough, Denise L. <DBambrough@blg.com>; Punzo, Andrew <APunzo@blg.com>
Subject: Aviva/Nationwide/Euler - Antamex | Request for Information [BLG-DOCUMENTS.FID9281305]

• External Email | Courrier électronique externe •

Hi Linc and Caitlin,

Further to our previous exchange of correspondence regarding the application of the Adjournment and Ancillary Relief Order, we will require the following information in order to prepare our clients' materials for the motion for directions:

1. Full particulars of all payments received by the Receiver in connection with amounts owing to Antamex on its bonded and unbonded projects, together with supporting documents;

APPENDIX “C”

McIntyre, Caitlin

From: Borgo, Mark <MBorgo@blg.com>
Sent: Tuesday, October 1, 2024 5:07 PM
To: McIntyre, Caitlin; Rogers, Linc
Cc: Bambrough, Denise L.; Punzo, Andrew
Subject: RE: Aviva/Nationwide/Euler - Antamex | Request for Information [BLG-DOCUMENTS.FID9281305]

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Caitlin,

We have now had an opportunity to consider your email below and make inquiries regarding the Receiver's position that certain information that we requested has already been made available to the Sureties.

With respect to the information requested in item numbers 1, 3 and 4 in our August 19, 2024 email to you, you have asserted that this information is "included in the server mirrored by the sureties at the outset of the receivership proceeding and is therefore in the sureties' possession". Unfortunately, that is not correct.

First, we have confirmed with Ryan Spurgeon and Perini that data was copied from the Antamex server onto external hard drives over the course of a number of days in late February, and that the copying process was completed by March 1, 2024. Accordingly, the hard drives contain no data with respect to any transactions that occurred after March 1, 2024 and they contain incomplete data with respect to transactions that occurred in the days leading up to March 1, 2024, as data was being copied folder by folder. In addition, significant portions of the data that was copied for the Sureties is corrupt or otherwise unreadable in its current form. As a result, the Sureties have very little information available to them regarding the transactions that took place during the Adjournment Period, which is why the information has been requested from the Receiver.

Turning now to the individual information requests, in item 1, we requested that you provide particulars of all payments received by the Receiver in connection with amounts owing to Antamex on its bonded and unbonded projects. As you are aware, the Receiver was not appointed until after March 1, 2024. As a result, the hard drives onto which data was copied from the Antamex server do not contain any information regarding amounts collected by the Receiver.

A similar issue exists with respect to the information requested in items 3 and 4 because the hard drives provided to the Sureties contain incomplete or corrupted information with respect to the period before March 1, 2024 and no information from March 1st onward. We assume that the Receiver has itself conducted the exercise of tracking the sources of all deposits received and the invoices to which the deposits relate, so that it will know which invoices have been satisfied and which remain outstanding, as well as what amounts are otherwise due and owing in connection with all of Antamex's projects.

In item 2 of our information request, we asked that you provide us copies of all communications between the Receiver and EDC in connection with the Sureties' financing proposals. In response, you have asserted that, "in addition to considerations regarding privilege, such communications are not relevant to the issue at hand." We disagree with both assertions.

First, it is our view that because the Receiver is an officer of the Court and has a legal duty to act independently and impartially toward all stakeholders, no communications between the Receiver and just one of the stakeholders can be privileged. Specifically, the fact that EDC is the secured creditor that brought the application to appoint the Receiver does not mean that EDC and the Receiver may have privileged communications about matters that impact other creditors.

Given the Receiver's role as an officer of the Court, there must be complete transparency in order to ensure fairness, impartiality and equal treatment of all stakeholders. We refer you in this regard to the decision of Newbould J. in *Canrock Ventures LLC v. Ambercore Software Inc. et al.*, 2011 ONSC 1138 (CanLII). We are not aware of any legal authority for the Receiver's assertion that its communications with EDC were privileged. Should you be aware of any such authority, please provide us with the same.

As to the Receiver's position regarding relevance, as you are aware, it is the Sureties' position that no amounts are payable under the Adjudgment and Ancillary Relief Order, in part, because the Order contemplated that no amounts would be payable if the Sureties committed, by March 12, 2024, to providing EDC with "necessary and sufficient financial support". As you know, EDC ultimately took the position that no financing proposal would be "sufficient" unless the proposal included payment in full of all amounts owing under the EDC loan; however, EDC's position in this regard was not disclosed to the Court prior to the Sureties requesting the further adjournment that resulted in the Adjudgment and Ancillary Relief Order being made. To the extent that the Receiver had communications with EDC regarding what constituted "necessary and sufficient financial support" from its perspective, such communications would not only be relevant to the interpretation of the Order, but they would be of critical importance to the Court's determination of whether the Order applies in the circumstances.

For the reasons set out above, as well as the Receiver's obligation to permit any creditor to have access to Antamex's books, records and documents pursuant to section 26(3) of the *Bankruptcy and Insolvency Act*, RSC, 1985, c B-3, we request that the Receiver give further consideration to our requests for the information as set out at items 1, 2, 3, and 4 of our email dated August 19, 2024. Please provide us with the Receiver's final position as soon as possible, so that we may consider whether to schedule a further attendance to address these issues well in advance of the return date of the motion for directions.

With respect to item 5 in our email dated August 19th, we requested information regarding how the amounts paid in respect of payroll during the Adjudgment Period were allocated to each project. While you have advised that "payroll was not, historically, allocated by Antamex on a per job basis", we would think that there must be some records indicating which employees were paid and which project(s) they were working on. Otherwise, it wouldn't be possible for Antamex to allocate job costs to any particular project and account for such costs accordingly in determining profit. We therefore request that the Receiver reconsider this request, as we expect that this information is available within Antamex's records, at least to some extent.

With respect to items 6 and 7 in our email, we look forward to receiving the information that the Receiver has agreed to provide at the Receiver's earliest possible opportunity. It would be helpful if you could advise when you anticipate that this information will be received.

Finally, we also require definitive information regarding the nature of and reason for the \$500,000 payment that Suffolk made following negotiations with the Receiver. It is not sufficient to simply advise that the payment represented settled AR without identifying the invoices or claims to which the payment related. Please also provide whatever supporting documentation is available with respect to the original amount claimed to be owing and the basis for the Receiver accepting a settlement of \$500,000.

You have asked us to comment on the timetable that you have proposed for the delivery of material in respect of the motion for directions. However, we require the Receiver's final position regarding whether and when it will provide us with the information that we require to respond to the motion before we are able to commit to a date for delivering our clients' responding materials. In any event, please be advised that we require the Receiver's materials at least three weeks before the deadline for delivering the Sureties' responding materials in order to fairly allocate the remaining time until the hearing date, particularly given the lead time that the Receiver has had since making its demand for payment in April.

Best regards,

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From: McIntyre, Caitlin <caitlin.mcintyre@blakes.com>
Sent: Friday, September 6, 2024 11:27 AM
To: Borgo, Mark <MBorgo@blg.com>; Rogers, Linc <linc.rogers@blakes.com>
Cc: Bambrough, Denise L. <DBambrough@blg.com>; Punzo, Andrew <APunzo@blg.com>
Subject: RE: Aviva/Nationwide/Euler - Antamex | Request for Information [BLG-DOCUMENTS.FID9281305]

Mark,

With respect to the documents requested by you at items 1, 3 and 4, this information is included in the server mirrored by the sureties at the outset of the receivership proceeding and is therefore in the sureties' possession. With respect to the communications requested at item 2, in addition to considerations regarding privilege, such communications are not relevant to the issue at hand. The information requested at item 5 is not available to the Receiver; payroll was not, historically, allocated by Antamex on a per job basis.

The Receiver is working to gather the information requested at items 6 and 7.

Additionally, we would like to propose the following litigation timetable in respect of this motion. Please let us know your thoughts on the dates and steps set out below.

Deadline for Delivery of Receiver's Motion Record	November 5, 2024
Deadline for Delivery of Sureties' Reply Record	November 12, 2024
Deadline for Delivery of Receiver's Factum	November 19, 2024
Deadline for Delivery of Sureties' Reply Factum	November 26, 2024
Deadline for Delivery of Receiver's Reply Factum (if any)	November 29, 2024

Regards,
Caitlin

Caitlin McIntyre (she, her, hers)
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APPENDIX “D”

McIntyre, Caitlin

From: McIntyre, Caitlin
Sent: Friday, October 11, 2024 8:23 PM
To: Borgo, Mark; Rogers, Linc
Cc: Bambrough, Denise L.; Punzo, Andrew
Subject: RE: Aviva/Nationwide/Euler - Antamex | Request for Information [BLG-DOCUMENTS.FID9281305]

Mark,

The Receiver has considered your client's further requests and notes the following: (i) the issue under consideration by the Court, as set forth in the agreed upon Aide Memoire, is the relevance of the materials requested by the sureties to the determination of whether any sum is owing by the sureties under the Adjournment and Ancillary Relief Order. Such relevance has not been determined or decided at this stage and is the subject of an active disagreement, making the sureties request, at best, premature, (ii) significant access and opportunity to obtain any necessary information was provided to the sureties both during the Adjournment Period and after the Receiver's appointment, (iii) based the sureties' already articulated position, the Receiver has provided sufficient information to the sureties to advance their position on December 3rd, and (iv) Antamex's estate should not bear the cost of producing the information requested by the sureties.

(i) Relevance

As set out in greater detail in our letter dated July 12, 2024, it is the Receiver's position that the items requested at #1, 3, 4, 5, 6 and 7 have no relevance to the determination of whether the sureties are required to make payment in accordance with the Adjournment and Ancillary Relief Order. We understand the sureties dispute this position. As a result, the relevance of deposits and receipts is the very matter which the Receiver is seeking the Court's direction on at the December 3 hearing. The sureties' request for such information is premature and is being made prior to the relevance of such information being established. If the Court determines that this information is relevant, the Receiver will further consider this request.

With respect to item #2, this is a proverbial "fishing expedition." As set out in the July 12, 2024 letter, the funding proposal put forward by the sureties was not rejected by Receiver based on EDC's views (whatever they may have been). Whether or not the sureties provided necessary and sufficient funding by the requisite date is an objective question, to be determined by the Court. EDC's views are not relevant to that objective test. Correspondence with EDC in connection with the sureties' financing proposal is, therefore, irrelevant. To be clear, a proposed receiver often has confidential and candid communications with various stakeholders including lenders, customers, suppliers, union officials, contractual counterparties, sureties, and their respective representatives. Such proposed receiver is under no obligation to simply betray that confidence and divulge the content of such communications to an inquisitive party in the absence of legal requirement or evidentiary relevance and if it were to do so, there would be far reaching adverse implications in connection with the preparatory steps taken by putative receivers.

(ii) Previous Access Provided to Sureties

In your email dated October 1, 2024, you state that "data was copied from the Antamex server onto external hard drivers over the course of a number of days in late February and that the copying process was completed by March 1, 2024." This statement ignores the significant access given to the sureties during the Adjournment Period and following the Receiver's appointment, during which the Receiver understands the sureties copied all relevant information in respect of bonded projects.

With respect to the period from February 27-March 13, 2024, the Receiver understands that the sureties were actively engaged with Antamex's management in attempting to craft a funding proposal, and had complete access, during this period, to Antamex's books and records. Furthermore, on April 8, 2024, the sureties and the Receiver entered into a "Surety and Advisor Access Agreement" (the "**Access Agreement**"). The purpose of the Access Agreement was to provide the sureties with access to and consultation with (as applicable) (i) Antamex's facilities, (ii) information technology personnel and staff responsible for technical drawings, (iii) vault servers, and (iv) Ryan Spurgeon. Such access was provided to the sureties and their representatives as, and when, requested. Since this time, the Receiver has decommissioned Antamex's servers. The sureties were aware that this step was being taken by the Receiver, having

engaged in discussions with the Receiver's counsel in late June 2024 regarding this server. The Receiver informed the sureties of the cost of providing a copy of the server and received no response.

The sureties have, accordingly, been provided with ample prior opportunity to obtain the requested information.

(iii) Information Already Provided

In your response letter dated July 19, 2024, the sureties take the position that "it would be inequitable for the Receiver to seek recovery for disbursements made during the Adjournment Period without accounting for significant deposits that were made during that same period." As per the sureties' request, the Receiver has provided the information available to the Receiver regarding the deposits made during the Adjournment Period. It is the relevance of such deposits that is disputed by the Receiver, not their existence. In short, the sureties have been provided what they asked for to make their argument. It is therefore unclear why the additional information requested by the sureties is necessary for the sureties' to advance their position.

(iv) Cost of Production

The information requested by the sureties is not information readily available to the Receiver. While the information is, notionally, located in Antamex's books and records, the Receiver would be required to restart Antamex's server and expend time and professional resources locating, organizing and compiling the information to respond to the sureties' requests. This includes the information requested at items 6 and 7 which the Receiver now understands require Antamex's servers to be restarted to produce. The Receiver cannot incur these costs to the detriment of Antamex's estate.

If the sureties would like to access the requested information, the Receiver will require the sureties to enter into a funding arrangement to cover the professional costs of producing the requested information.

The Receiver notes that you have cited section 26(3) of the *Bankruptcy and Insolvency Act* as a basis for your request. Section 26(3) relates to books and records in relation to the administration of a bankrupt's estate. The records requested by the sureties do not relate to the administration of Antamex's estate and, by and large, relate to periods prior to the Receiver's appointment. Furthermore, the obligations set out thereunder are obligations of a trustee in bankruptcy. The Receiver is not a trustee in bankruptcy in relation to Antamex.

With respect to your comments on the proposed litigation timetable, the proposed timetable is, in the Receiver's view, fair and reasonable. The Receiver will not agree to provide the sureties' with its materials three weeks prior to the deadline for the sureties' delivering responding materials. The timelines suggested by the Receiver are far in excess of the requirements of the Rules of Civil Procedure. The sureties are well aware of the position the Receiver intends to put forth at the December 3 hearing, as such position was set out in detail in our letters dated April 25, 2024 and July 12, 2024. Accordingly, the sureties have the benefit of the same "lead time" to prepare materials as the Receiver.

Regards,
Caitlin

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From: Borgo, Mark <MBorgo@blg.com>
Sent: Tuesday, October 1, 2024 5:07 PM
To: McIntyre, Caitlin <caitlin.mcintyre@blakes.com>; Rogers, Linc <linc.rogers@blakes.com>
Cc: Bambrough, Denise L. <DBambrough@blg.com>; Punzo, Andrew <APunzo@blg.com>
Subject: RE: Aviva/Nationwide/Euler - Antamex | Request for Information [BLG-DOCUMENTS.FID9281305]

APPENDIX “E”

McIntyre, Caitlin

From: Borgo, Mark <MBorgo@blg.com>
Sent: Monday, November 4, 2024 1:23 PM
To: McIntyre, Caitlin; Rogers, Linc
Cc: Bambrough, Denise L.; Punzo, Andrew; MacFarlane, Alex; MacLellan, James
Subject: RE: Aviva/Nationwide/Euler - Antamex | Request for Information [BLG-DOCUMENTS.FID9281305]

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Caitlin,

Further to our email exchange below, the Sureties continue to dispute the Receiver's position regarding the relevance of the information that we have requested on behalf of the Sureties. While the Sureties collected certain information during the Adjournment Period, their focus during that time was to collect information which would 1) inform the Sureties' funding proposal, and 2) assist the Sureties in performing their obligations under the Bonds. The Sureties were certainly not aware at any time prior to the appointment of the Receiver that the Receiver would months later pursue payment of \$2 million from the Sureties notwithstanding the fact that the delayed issuance of the receivership order ultimately benefitted EDC.

In any event, we don't intend to further debate, through correspondence, the basis for the Receiver's refusal to provide the Sureties with the information that they have requested to respond to the Receiver's motion for directions. The fact remains that the Receiver, who is an officer of the court, has access to all the information that the Sureties have requested, and the Receiver is withholding this information to the prejudice of the Sureties. In doing so, the Receiver purports to be able to dictate what evidence the Sureties should or should not rely upon in support of the arguments that they will be advancing in response to the Receiver's motion for directions. This is notwithstanding the fact that the Sureties have incurred significant losses as a result of the receivership, and collectively account for Antamex's largest creditors. This is also notwithstanding the clear requirements of section 26(3) of the *Bankruptcy and Insolvency Act*, which we will be relying upon at the hearing of the motion for directions. It will be the Sureties' position on the motion for directions that section 26(3) does indeed apply to the Receiver, which is a licensed insolvency trustee. If the motion for directions does not relate to the administration of Antamex's estate, then we invite the Receiver to explain why the \$2 million payment is being pursued by the Receiver, rather than by EDC. In all the circumstances, we will be asking Justice Black to draw an adverse inference from the Receiver's refusal to provide any of the information requested.

That being said, we note that you informed us almost two months ago, on September 6th, that the Receiver would provide us with items 6 and 7 of our original request, being the cash disbursements journal for the period 2/27/24 – 3/13/24 and the general ledger detail for the period 2/27/24 – 3/13/24, and that the Receiver was "working to gather" that information. We trust that the Receiver is not reneging on this agreement, and we therefore request that this information be provided forthwith.

In addition, we reiterate our request for definitive information regarding the nature of and reason for the \$500,000 payment that Suffolk made following its negotiations with the Receiver. It is not sufficient to simply advise that the payment represented settled AR without identifying the invoices or claims to which the payment related. As the settlement was negotiated by the Receiver, we trust that this information is readily available and can be provided forthwith. Please also provide whatever supporting documentation is available with respect to the original amount claimed to be owing and the basis for the Receiver accepting a settlement of \$500,000.

Finally, we informed you almost two weeks ago, on October 21st, in the context of collecting information with respect to The Well project, that Aviva was prepared to pay the \$5,500 amount demanded for creating a further copy of the

imaged server. Would you therefore please let us know as soon as possible when we can expect to receive the requested copy. While the request was not made in connection with the Receiver's motion for directions, the Sureties intend to search the data to be provided for the information requested in order to respond to the motion for directions and we therefore require the copy on an urgent basis.

Should the above information not be provided in a timely fashion, we may be instructed to request an adjournment of the motion for directions. In any event, we will require sufficient time following the receipt of this information to complete and deliver our clients' responding materials. We note in this regard that the parties have yet to agree upon a timetable for the delivery of materials.

We look forward to hearing from you at your earliest opportunity.

Best regards,



Mark A. Borgo

Senior Associate

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Borden Ladner Gervais LLP

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From: McIntyre, Caitlin <caitlin.mcintyre@blakes.com>

Sent: Friday, October 25, 2024 12:57 PM

To: Borgo, Mark <MBorgo@blg.com>; Rogers, Linc <linc.rogers@blakes.com>

Cc: Bambrough, Denise L. <DBambrough@blg.com>; Punzo, Andrew <APunzo@blg.com>

Subject: RE: Aviva/Nationwide/Euler - Antamex | Request for Information [BLG-DOCUMENTS.FID9281305]

Mark,

In response to the two issues raised in your email below:

1. The Receiver is not seeking directions regarding the information requested by the Sureties. As set out in the agreed upon Aide Memoire dated August 15, 2024, the Receiver is seeking the Court's assistance to determine the proper interpretation and application of paragraph 5 of the Adjournment and Ancillary Relief Order and whether any amount is properly owing by the Sureties to Antamex. The specific issues that the Receiver will ask the Court to address are, likewise, set out in the Aide Memoire at paragraph 12. The issues are (i) the proper characterization and relevance of receivables collected during the Adjournment Period, and (ii) the correct interpretation of "commit, by March 12, 2024, to providing necessary and sufficient financial support to the Debtor." The Receiver will ask that, if the Court agrees with the Receiver's interpretation of paragraph 5 of the Adjournment and Ancillary Relief Order, that the Court make an Order requiring payment.
2. The Receiver intends to advance the position that the determination of whether the proposal constituted "necessary and sufficient funding of Antamex" is an objective question.

Caitlin McIntyre (she, her, hers)

Associate

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From: Borgo, Mark <MBorgo@blg.com>
Sent: Wednesday, October 23, 2024 6:09 PM
To: McIntyre, Caitlin <caitlin.mcintyre@blakes.com>; Rogers, Linc <linc.rogers@blakes.com>
Cc: Bambrough, Denise L. <DBambrough@blg.com>; Punzo, Andrew <APunzo@blg.com>
Subject: RE: Aviva/Nationwide/Euler - Antamex | Request for Information [BLG-DOCUMENTS.FID9281305]

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Caitlin,

Further to your email below, would you please confirm that, at the hearing on December 3rd, the Receiver only intends to seek directions as to whether the information that the Sureties have requested is relevant to the determination of whether any sum is owing by the Sureties under the Adjournment and Ancillary Relief Order, and that the Receiver will not be seeking an Order requiring payment to be made at that time.

Would you also please confirm that the Receiver intends to advance the position that it was for the Receiver, and not EDC, to determine whether the Sureties' funding proposal constituted necessary and sufficient funding of Antamex, even though the Receiver had not yet been appointed.

We look forward to hearing from you regarding the two issues above at your earliest opportunity.

Thank you,



Mark A. Borgo

Senior Associate

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From: McIntyre, Caitlin <caitlin.mcintyre@blakes.com>
Sent: Friday, October 11, 2024 8:23 PM
To: Borgo, Mark <MBorgo@blg.com>; Rogers, Linc <linc.rogers@blakes.com>
Cc: Bambrough, Denise L. <DBambrough@blg.com>; Punzo, Andrew <APunzo@blg.com>
Subject: RE: Aviva/Nationwide/Euler - Antamex | Request for Information [BLG-DOCUMENTS.FID9281305]

Mark,

The Receiver has considered your client's further requests and notes the following: (i) the issue under consideration by the Court, as set forth in the agreed upon Aide Memoire, is the relevance of the materials requested by the sureties to the determination of whether any sum is owing by the sureties under the Adjournment and Ancillary Relief Order. Such relevance has not been determined or decided at this stage and is the subject of an active disagreement, making the sureties request, at best, premature, (ii) significant access and opportunity to obtain any necessary information was provided to the sureties both during the Adjournment Period and after the Receiver's appointment, (iii) based the sureties' already articulated position, the Receiver has provided sufficient information to the sureties to advance their position on December 3rd, and (iv) Antamex's estate should not bear the cost of producing the information requested by the sureties.

(i) **Relevance**

As set out in greater detail in our letter dated July 12, 2024, it is the Receiver's position that the items requested at #1, 3, 4, 5, 6 and 7 have no relevance to the determination of whether the sureties are required to make payment in accordance with the Adjournment and Ancillary Relief Order. We understand the sureties dispute this position. As a result, the relevance of deposits and receipts is the very matter which the Receiver is seeking the Court's direction on at the December 3 hearing. The sureties' request for such information is premature and is being made prior to the relevance of such information being established. If the Court determines that this information is relevant, the Receiver will further consider this request.

With respect to item #2, this is a proverbial "fishing expedition." As set out in the July 12, 2024 letter, the funding proposal put forward by the sureties was not rejected by Receiver based on EDC's views (whatever they may have been). Whether or not the sureties provided necessary and sufficient funding by the requisite date is an objective question, to be determined by the Court. EDC's views are not relevant to that objective test. Correspondence with EDC in connection with the sureties' financing proposal is, therefore, irrelevant. To be clear, a proposed receiver often has confidential and candid communications with various stakeholders including lenders, customers, suppliers, union officials, contractual counterparties, sureties, and their respective representatives. Such proposed receiver is under no obligation to simply betray that confidence and divulge the content of such communications to an inquisitive party in the absence of legal requirement or evidentiary relevance and if it were to do so, there would be far reaching adverse implications in connection with the preparatory steps taken by putative receivers.

(ii) Previous Access Provided to Sureties

In your email dated October 1, 2024, you state that "data was copied from the Antamex server onto external hard drives over the course of a number of days in late February and that the copying process was completed by March 1, 2024." This statement ignores the significant access given to the sureties during the Adjournment Period and following the Receiver's appointment, during which the Receiver understands the sureties copied all relevant information in respect of bonded projects.

With respect to the period from February 27-March 13, 2024, the Receiver understands that the sureties were actively engaged with Antamex's management in attempting to craft a funding proposal, and had complete access, during this period, to Antamex's books and records. Furthermore, on April 8, 2024, the sureties and the Receiver entered into a "Surety and Advisor Access Agreement" (the "**Access Agreement**"). The purpose of the Access Agreement was to provide the sureties with access to and consultation with (as applicable) (i) Antamex's facilities, (ii) information technology personnel and staff responsible for technical drawings, (iii) vault servers, and (iv) Ryan Spurgeon. Such access was provided to the sureties and their representatives as, and when, requested. Since this time, the Receiver has decommissioned Antamex's servers. The sureties were aware that this step was being taken by the Receiver, having engaged in discussions with the Receiver's counsel in late June 2024 regarding this server. The Receiver informed the sureties of the cost of providing a copy of the server and received no response.

The sureties have, accordingly, been provided with ample prior opportunity to obtain the requested information.

(iii) Information Already Provided

In your response letter dated July 19, 2024, the sureties take the position that "it would be inequitable for the Receiver to seek recovery for disbursements made during the Adjournment Period without accounting for significant deposits that were made during that same period." As per the sureties' request, the Receiver has provided the information available to the Receiver regarding the deposits made during the Adjournment Period. It is the relevance of such deposits that is disputed by the Receiver, not their existence. In short, the sureties have been provided what they asked for to make their argument. It is therefore unclear why the additional information requested by the sureties is necessary for the sureties' to advance their position.

(iv) Cost of Production

The information requested by the sureties is not information readily available to the Receiver. While the information is, notionally, located in Antamex's books and records, the Receiver would be required to restart Antamex's server and expend time and professional resources locating, organizing and compiling the information to respond to the sureties' requests. This includes the information requested at items 6 and 7 which the Receiver now understands require Antamex's servers to be restarted to produce. The Receiver cannot incur these costs to the detriment of Antamex's estate.

If the sureties would like to access the requested information, the Receiver will require the sureties to enter into a funding arrangement to cover the professional costs of producing the requested information.

The Receiver notes that you have cited section 26(3) of the *Bankruptcy and Insolvency Act* as a basis for your request. Section 26(3) relates to books and records in relation to the administration of a bankrupt's estate. The records requested by the sureties do not relate to the administration of Antamex's estate and, by and large, relate to periods prior to the Receiver's appointment. Furthermore, the obligations set out thereunder are obligations of a trustee in bankruptcy. The Receiver is not a trustee in bankruptcy in relation to Antamex.

With respect to your comments on the proposed litigation timetable, the proposed timetable is, in the Receiver's view, fair and reasonable. The Receiver will not agree to provide the sureties' with its materials three weeks prior to the deadline for the sureties' delivering responding materials. The timelines suggested by the Receiver are far in excess of the requirements of the Rules of Civil Procedure. The sureties are well aware of the position the Receiver intends to put forth at the December 3 hearing, as such position was set out in detail in our letters dated April 25, 2024 and July 12, 2024. Accordingly, the sureties have the benefit of the same "lead time" to prepare materials as the Receiver.

Regards,
Caitlin

Caitlin McIntyre (she, her, hers)
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C. +1-905-746-6711

From: Borgo, Mark <MBorgo@blg.com>
Sent: Tuesday, October 1, 2024 5:07 PM
To: McIntyre, Caitlin <caitlin.mcintyre@blakes.com>; Rogers, Linc <linc.rogers@blakes.com>
Cc: Bambrough, Denise L. <DBambrough@blg.com>; Punzo, Andrew <APunzo@blg.com>
Subject: RE: Aviva/Nationwide/Euler - Antamex | Request for Information [BLG-DOCUMENTS.FID9281305]

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Caitlin,

We have now had an opportunity to consider your email below and make inquiries regarding the Receiver's position that certain information that we requested has already been made available to the Sureties.

With respect to the information requested in item numbers 1, 3 and 4 in our August 19, 2024 email to you, you have asserted that this information is "included in the server mirrored by the sureties at the outset of the receivership proceeding and is therefore in the sureties' possession". Unfortunately, that is not correct.

First, we have confirmed with Ryan Spurgeon and Perini that data was copied from the Antamex server onto external hard drives over the course of a number of days in late February, and that the copying process was completed by March 1, 2024. Accordingly, the hard drives contain no data with respect to any transactions that occurred after March 1, 2024 and they contain incomplete data with respect to transactions that occurred in the days leading up to March 1, 2024, as data was being copied folder by folder. In addition, significant portions of the data that was copied for the Sureties is corrupt or otherwise unreadable in its current form. As a result, the Sureties have very little information available to them regarding the transactions that took place during the Adjournment Period, which is why the information has been requested from the Receiver.

Turning now to the individual information requests, in item 1, we requested that you provide particulars of all payments received by the Receiver in connection with amounts owing to Antamex on its bonded and unbonded projects. As you

are aware, the Receiver was not appointed until after March 1, 2024. As a result, the hard drives onto which data was copied from the Antamex server do not contain any information regarding amounts collected by the Receiver.

A similar issue exists with respect to the information requested in items 3 and 4 because the hard drives provided to the Sureties contain incomplete or corrupted information with respect to the period before March 1, 2024 and no information from March 1st onward. We assume that the Receiver has itself conducted the exercise of tracking the sources of all deposits received and the invoices to which the deposits relate, so that it will know which invoices have been satisfied and which remain outstanding, as well as what amounts are otherwise due and owing in connection with all of Antamex's projects.

In item 2 of our information request, we asked that you provide us copies of all communications between the Receiver and EDC in connection with the Sureties' financing proposals. In response, you have asserted that, "in addition to considerations regarding privilege, such communications are not relevant to the issue at hand." We disagree with both assertions.

First, it is our view that because the Receiver is an officer of the Court and has a legal duty to act independently and impartially toward all stakeholders, no communications between the Receiver and just one of the stakeholders can be privileged. Specifically, the fact that EDC is the secured creditor that brought the application to appoint the Receiver does not mean that EDC and the Receiver may have privileged communications about matters that impact other creditors. Given the Receiver's role as an officer of the Court, there must be complete transparency in order to ensure fairness, impartiality and equal treatment of all stakeholders. We refer you in this regard to the decision of Newbould J. in *Canrock Ventures LLC v. Ambercore Software Inc. et al.*, 2011 ONSC 1138 (CanLII). We are not aware of any legal authority for the Receiver's assertion that its communications with EDC were privileged. Should you be aware of any such authority, please provide us with the same.

As to the Receiver's position regarding relevance, as you are aware, it is the Sureties' position that no amounts are payable under the Adjournment and Ancillary Relief Order, in part, because the Order contemplated that no amounts would be payable if the Sureties committed, by March 12, 2024, to providing EDC with "necessary and sufficient financial support". As you know, EDC ultimately took the position that no financing proposal would be "sufficient" unless the proposal included payment in full of all amounts owing under the EDC loan; however, EDC's position in this regard was not disclosed to the Court prior to the Sureties requesting the further adjournment that resulted in the Adjournment and Ancillary Relief Order being made. To the extent that the Receiver had communications with EDC regarding what constituted "necessary and sufficient financial support" from its perspective, such communications would not only be relevant to the interpretation of the Order, but they would be of critical importance to the Court's determination of whether the Order applies in the circumstances.

For the reasons set out above, as well as the Receiver's obligation to permit any creditor to have access to Antamex's books, records and documents pursuant to section 26(3) of the *Bankruptcy and Insolvency Act*, RSC, 1985, c B-3, we request that the Receiver give further consideration to our requests for the information as set out at items 1, 2, 3, and 4 of our email dated August 19, 2024. Please provide us with the Receiver's final position as soon as possible, so that we may consider whether to schedule a further attendance to address these issues well in advance of the return date of the motion for directions.

With respect to item 5 in our email dated August 19th, we requested information regarding how the amounts paid in respect of payroll during the Adjournment Period were allocated to each project. While you have advised that "payroll was not, historically, allocated by Antamex on a per job basis", we would think that there must be some records indicating which employees were paid and which project(s) they were working on. Otherwise, it wouldn't be possible for Antamex to allocate job costs to any particular project and account for such costs accordingly in determining profit. We therefore request that the Receiver reconsider this request, as we expect that this information is available within Antamex's records, at least to some extent.

With respect to items 6 and 7 in our email, we look forward to receiving the information that the Receiver has agreed to provide at the Receiver's earliest possible opportunity. It would be helpful if you could advise when you anticipate that this information will be received.

Finally, we also require definitive information regarding the nature of and reason for the \$500,000 payment that Suffolk made following negotiations with the Receiver. It is not sufficient to simply advise that the payment represented settled AR without identifying the invoices or claims to which the payment related. Please also provide whatever supporting documentation is available with respect to the original amount claimed to be owing and the basis for the Receiver accepting a settlement of \$500,000.

You have asked us to comment on the timetable that you have proposed for the delivery of material in respect of the motion for directions. However, we require the Receiver's final position regarding whether and when it will provide us with the information that we require to respond to the motion before we are able to commit to a date for delivering our clients' responding materials. In any event, please be advised that we require the Receiver's materials at least three weeks before the deadline for delivering the Sureties' responding materials in order to fairly allocate the remaining time until the hearing date, particularly given the lead time that the Receiver has had since making its demand for payment in April.

Best regards,



Mark A. Borgo

Senior Associate

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Canada M5H 4E3

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From: McIntyre, Caitlin <caitlin.mcintyre@blakes.com>

Sent: Friday, September 6, 2024 11:27 AM

To: Borgo, Mark <MBorgo@blg.com>; Rogers, Linc <linc.rogers@blakes.com>

Cc: Bambrough, Denise L. <DBambrough@blg.com>; Punzo, Andrew <APunzo@blg.com>

Subject: RE: Aviva/Nationwide/Euler - Antamex | Request for Information [BLG-DOCUMENTS.FID9281305]

Mark,

With respect to the documents requested by you at items 1, 3 and 4, this information is included in the server mirrored by the sureties at the outset of the receivership proceeding and is therefore in the sureties' possession. With respect to the communications requested at item 2, in addition to considerations regarding privilege, such communications are not relevant to the issue at hand. The information requested at item 5 is not available to the Receiver; payroll was not, historically, allocated by Antamex on a per job basis.

The Receiver is working to gather the information requested at items 6 and 7.

Additionally, we would like to propose the following litigation timetable in respect of this motion. Please let us know your thoughts on the dates and steps set out below.

Deadline for Delivery of Receiver's Motion Record	November 5, 2024
Deadline for Delivery of Sureties' Reply Record	November 12, 2024
Deadline for Delivery of Receiver's Factum	November 19, 2024

Deadline for Delivery of Sureties' Reply Factum	November 26, 2024
Deadline for Delivery of Receiver's Reply Factum (if any)	November 29, 2024

Regards,
Caitlin

Caitlin McIntyre (she, her, hers)
Associate
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From: Borgo, Mark <MBorgo@blg.com>
Sent: Monday, August 19, 2024 9:22 AM
To: Rogers, Linc <linc.rogers@blakes.com>; McIntyre, Caitlin <caitlin.mcintyre@blakes.com>
Cc: Bambrough, Denise L. <DBambrough@blg.com>; Punzo, Andrew <APunzo@blg.com>
Subject: Aviva/Nationwide/Euler - Antamex | Request for Information [BLG-DOCUMENTS.FID9281305]

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Hi Linc and Caitlin,

Further to our previous exchange of correspondence regarding the application of the Adjournment and Ancillary Relief Order, we will require the following information in order to prepare our clients' materials for the motion for directions:

1. Full particulars of all payments received by the Receiver in connection with amounts owing to Antamex on its bonded and unbonded projects, together with supporting documents;
2. All communications between the Receiver and EDC in connection with the Sureties' financing proposals;
3. For all deposits reflected in the attached account statement excerpts, please provide the corresponding pay application or other similar documentation that identifies the source of the deposit and the job or jobs it is associated with;
4. For all vendor payments reflected in the attached account statement excerpts, please provide copies of the invoices that support each payment and identification of the job it is associated with, if applicable;
5. For all payroll payments reflected in the attached account statement excerpts, please provide payroll detail that shows how payroll is allocated to each job;
6. Please provide the cash disbursements journal for the period 2/27/24 – 3/13/24; and

7. Please provide the general ledger detail for the period 2/27/24 – 3/13/24.

Best regards,



Mark A. Borgo

Senior Associate

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APPENDIX “F”

McIntyre, Caitlin

From: McIntyre, Caitlin
Sent: Monday, July 1, 2024 10:43 PM
To: Borgo, Mark; Bambrough, Denise L.; Rogers, Linc
Subject: RE: Antamex/Klimer/EllisDon - The Well Project (Follow up re Project Records) [BLG-DOCUMENTS.FID9281305]

Denise, Mark,

Please see below the Receiver's responses to your questions regarding Antamex's records.

1. **Could you please provide an estimate of how many boxes of paper records there are for the Aviva / Nationwide bonded projects so that we can plan accordingly.**

44 banker boxes

2. **Please also let us know if there are any timing issues that we should be aware of in terms of collecting the paper records from the Concord facility.**

The boxes are currently being stored at Iron Mountain. There will be a cost associated with removing them from storage.

3. **Lastly, does the Receiver intend to create a forensic copy of the main server at the Concord facility? If so, would it be possible for a second copy to be made? As mentioned below, we would be happy to consider an undertaking regarding any personal or confidential information that is saved to the server and is unrelated to the bonded projects.**

The Receiver made a copy of the server in April 2024. No additional business records have been created since the image was created. It would cost roughly \$5,500 for a copy to be made.

Caitlin McIntyre (she, her, hers)

Associate

caitlin.mcintyre@blakes.com

T. +1-416-863-4174

C. +1-905-746-6711

From: Borgo, Mark <MBorgo@blg.com>

Sent: Thursday, June 27, 2024 2:13 PM

To: Bambrough, Denise L. <DBambrough@blg.com>; McIntyre, Caitlin <caitlin.mcintyre@blakes.com>; Rogers, Linc <linc.rogers@blakes.com>

Subject: RE: Antamex/Klimer/EllisDon - The Well Project (Follow up re Project Records) [BLG-DOCUMENTS.FID9281305]

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Hi Caitlin,

Are you available to jump on a quick call to discuss our email below?

Thanks,

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From: Borgo, Mark

Sent: Wednesday, June 26, 2024 10:12 AM

To: Bambrough, Denise L. <DBambrough@blg.com>; McIntyre, Caitlin <caitlin.mcintyre@blakes.com>; Rogers, Linc <linc.rogers@blakes.com>

Subject: RE: Antamex/Klimer/EllisDon - The Well Project (Follow up re Project Records) [BLG-DOCUMENTS.FID9281305]

Hi Caitlin,

Further to the below:

1. Could you please provide an estimate of how many boxes of paper records there are for the Aviva / Nationwide bonded projects so that we can plan accordingly.
2. Please also let us know if there are any timing issues that we should be aware of in terms of collecting the paper records from the Concord facility.
3. Lastly, does the Receiver intend to create a forensic copy of the main server at the Concord facility? If so, would it be possible for a second copy to be made? As mentioned below, we would be happy to consider an undertaking regarding any personal or confidential information that is saved to the server and is unrelated to the bonded projects.

Thank you,

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From: Bambrough, Denise L. <DBambrough@blg.com>

Sent: Monday, June 24, 2024 11:13 PM

To: McIntyre, Caitlin <caitlin.mcintyre@blakes.com>; Rogers, Linc <linc.rogers@blakes.com>

Cc: Borgo, Mark <MBorgo@blg.com>

Subject: RE: Antamex/Klimer/EllisDon - The Well Project (Follow up re Project Records) [BLG-DOCUMENTS.FID9281305]

Hi Caitlin,

Following up on our last call, once the Receiver is finished with the paper records relating to the projects bonded by Aviva and Nationwide, we would like to make arrangements for our clients to obtain those records. Would you please request from the Receiver an estimate of how many boxes of paper records there are for each of the projects bonded by Aviva and Nationwide? If the number is manageable, we will likely propose arrangements for all of the project records to be picked up, at our clients' expense, at a mutually convenient time. However, if the records are voluminous, our clients may want to be more selective. In any event, the idea would be that our clients will retain such records as may be required to deal with ongoing claims and litigation and destroy any documents that are not required, if and when that is the case.

It is my understanding that Nationwide has already obtained what it requires from the vault server, but we would like to ensure that any data relating to the bonded projects that may be on the main server is preserved. Does the Receiver intend to create a forensic copy of the main server? If so, would you please let us know if it would be possible for a second forensic copy to be made and, if so, what the associated cost would be? We appreciate that the Receiver may require the sureties to provide an undertaking not to use or share any personal information or any confidential information that is unrelated to the projects, and we would be happy to consider a draft undertaking in this regard.

We look forward to hearing from you.

Regards,
Denise



Denise L. Bambrough

Partner

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From: McIntyre, Caitlin <caitlin.mcintyre@blakes.com>

Sent: Wednesday, June 12, 2024 3:50 PM

To: Bambrough, Denise L. <DBambrough@blg.com>; Rogers, Linc <linc.rogers@blakes.com>

Cc: Borgo, Mark <MBorgo@blg.com>

Subject: RE: Antamex/Klimer/EllisDon - The Well Project [BLG-DOCUMENTS.FID9281305]

Hi Denise,

Apologies for the delay getting back to you. We are available tomorrow from 9:30-10:30, 11-1:30, and 2:30-4. Please let us know if something in those windows would work for you.

Thanks,
Caitlin

Caitlin McIntyre (she, her, hers)
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C. +1-905-746-6711

From: Bambrough, Denise L. <DBambrough@blg.com>
Sent: Monday, June 10, 2024 2:16 PM
To: McIntyre, Caitlin <caitlin.mcintyre@blakes.com>; Rogers, Linc <linc.rogers@blakes.com>
Cc: Borgo, Mark <MBorgo@blg.com>
Subject: RE: Antamex/Klimer/EllisDon - The Well Project [BLG-DOCUMENTS.FID9281305]

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Caitlin,

Thank you for your email below. Would you please let me know when you are available for a call to discuss possible arrangements for the surety to assume carriage of the Antamex claim on The Well Project and obtain continuing access to various electronic and paper records.

Regards,
Denise



Denise L. Bambrough

Partner

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From: McIntyre, Caitlin <caitlin.mcintyre@blakes.com>
Sent: Friday, June 7, 2024 8:27 PM
To: Bambrough, Denise L. <DBambrough@blg.com>; Rogers, Linc <linc.rogers@blakes.com>
Cc: Borgo, Mark <MBorgo@blg.com>
Subject: RE: Antamex/Klimer/EllisDon - The Well Project [BLG-DOCUMENTS.FID9281305]

Denise,

The Receiver has determined that it does not intend to pursue Antamex's affirmative claim. If the sureties wish to pursue this claim, the Receiver is open to discussing a path forward.

With respect to your question regarding destruction of documents, the Receiver intends to maintain the paper records for so long as they are needed to facilitate the collection of accounts receivable. Thereafter, the paper records will be destroyed. The vault server will likely be imaged and then decommissioned. If the sureties require continued access to any documents, the Receiver is open to discussing arrangements.

With respect to your inquiry regarding the payment by Suffolk during the adjournment period, the Receiver did not identify any payment from Suffolk in the amount of \$500,000 during this period. A payment was received after the Receiver's appointment from Suffolk in roughly this amount which represented the amount Suffolk and the Receiver mutually agreed was owing in respect of certain materials that Suffolk required the release of.

Regards,
Caitlin

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From: Bambrough, Denise L. <DBambrough@blg.com>
Sent: Friday, May 31, 2024 1:36 PM
To: Rogers, Linc <linc.rogers@blakes.com>; McIntyre, Caitlin <caitlin.mcintyre@blakes.com>
Cc: Borgo, Mark <MBorgo@blg.com>
Subject: Antamex/Klimer/EllisDon - The Well Project [BLG-DOCUMENTS.FID9281305]

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Linc and Caitlin,

Further to our call earlier this week, please find attached a copy of Associate Justice Robinson's endorsement dated May 9, 2024, which was provided to us by Greg Hersen's office.

Would you please let us know if you have had an opportunity to obtain instructions from the Receiver regarding Antamex's affirmative claim on this project. Counsel for Klimer would like to write to Associate Justice Robinson as soon as possible to confirm that the next case conference will take place in mid-June and, in our view, the issues surrounding Antamex's claims needs to be determined first. In any event, however, it is clear that the other parties wish to move their lien actions forward as expeditiously as possible.

As the attached endorsement reflects, affidavits of documents will be required in short order in all of the actions (including the Klimer action). We would therefore also appreciate hearing from you as soon as possible regarding Antamex's electronic and paper records relating to the bonded projects.

We would be happy to arrange a further call with you for next Monday or Tuesday, if that would work on your end. Please let us know.

Have a nice weekend.

Regards,
Denise



Denise L. Bambrough

Partner

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APPENDIX “G”

McIntyre, Caitlin

From: Bambrough, Denise L. <DBambrough@blg.com>
Sent: Monday, October 21, 2024 3:25 PM
To: McIntyre, Caitlin
Cc: Rogers, Linc; Borgo, Mark; 'ghersen@torkinmanes.com'
Subject: RE: Antamex - Affirmative Claim and Defence of Klimer Actions on The Well project [BLG-DOCUMENTS.FID9275893]
Attachments: 2024 10 21 - Assignment Agreement (Draft)(148224261.4).docx
Importance: High

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Caitlin,

Further to our email exchange below, please find attached a draft Assignment Agreement, for your review. As you suggested, the language in the agreement tracks the language in the intervention Order that was obtained in the Klimer lien actions.

Would you please confirm that the attached Assignment Agreement is acceptable to the Receiver, or provide any comments that the Receiver may have, at your earliest opportunity. We would like to have the agreement finalized before the next Trial Management Conference, which is scheduled for October 24, 2024.

Also, we have confirmed with Aviva that it is prepared to pay the \$5,500 amount that you previously advised would be the cost associated with creating a further copy of the imaged server.

We look forward to hearing from you.

Regards,
Denise



Denise L. Bambrough

Partner

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From: McIntyre, Caitlin <caitlin.mcintyre@blakes.com>
Sent: Wednesday, October 9, 2024 2:09 PM
To: Bambrough, Denise L. <DBambrough@blg.com>
Cc: Rogers, Linc <linc.rogers@blakes.com>; Borgo, Mark <MBorgo@blg.com>; 'ghersen@torkinmanes.com'

<ghersen@torkinmanes.com>

Subject: RE: Antamex - Affirmative Claim and Defence of Klimer Actions on The Well project [BLG-DOCUMENTS.FID9275893]

Denise,

While I note that Antamex's affirmative claim was assigned to Aviva under an indemnity agreement, if Aviva wishes to proceed with Antamex's affirmative claim, the Receiver will require a formal agreement addressing the liabilities of the Receiver and Antamex's estate, which are not addressed by the assignment of the claim. I expect that the terms would look similar to what is laid out in the Order granted by the Court in respect of the Klimer lien actions. Please circulate a draft agreement, and the Receiver will review.

Thank you,
Caitlin

Caitlin McIntyre (she, her, hers)

Associate

caitlin.mcintyre@blakes.com

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C. +1-905-746-6711

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From: Bambrough, Denise L. <DBambrough@blg.com>

Sent: Tuesday, October 8, 2024 7:07 PM

To: McIntyre, Caitlin <caitlin.mcintyre@blakes.com>

Cc: Rogers, Linc <linc.rogers@blakes.com>; Borgo, Mark <MBorgo@blg.com>; 'ghersen@torkinmanes.com' <ghersen@torkinmanes.com>

Subject: Antamex - Affirmative Claim and Defence of Klimer Actions on The Well project [BLG-DOCUMENTS.FID9275893]

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Caitlin,

Further to our previous correspondence and discussions, Aviva has decided to proceed with retaining Greg Hersen of Torkin Manes to defend the two lien actions commenced by Klimer (in which Aviva obtained leave to intervene as an added party) and advance Antamex's related affirmative claim against EllisDon. As you will recall, Torkin Manes requires that its significant outstanding accounts receivable be satisfied as a condition of representing Aviva. As Antamex's affirmative claim was formally assigned to Aviva under the indemnity agreement that Antamex executed in favour of Aviva, I don't think that it is necessary for Aviva and the Receiver to incur the expense of drafting a formal agreement confirming the Receiver's agreement that Aviva may pursue its assigned rights and retain any recovery that may be available, but would you please confirm this by reply email. We confirm on behalf of Aviva that Aviva will be responsible for satisfying Torkin Manes' outstanding accounts receivable, and that Aviva will also be responsible for all further costs that may be incurred in advancing the claim.

We would appreciate hearing from you regarding the foregoing at your earliest opportunity as there is a Trial Management Conference scheduled for October 24th and we anticipate that Associate Justice Robinson will order an aggressive timetable for next steps at the hearing. Once we hear from you, we will take the steps necessary to obtain an Order to Continue.

Regards,
Denise



Denise L. Bambrough

Partner

T 416.367.6008

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APPENDIX “H”

McIntyre, Caitlin

From: Borgo, Mark <MBorgo@blg.com>
Sent: Wednesday, November 20, 2024 9:43 AM
To: McIntyre, Caitlin
Cc: Rogers, Linc; Bambrough, Denise L.; Punzo, Andrew; MacFarlane, Alex; MacLellan, James
Subject: RE: Available Dates - CV-24-00715153-00CL [BLG-DOCUMENTS.FID9281305]

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We are advised that the hard drive was delivered to reception.

Thank you,



Mark A. Borgo

Senior Associate

T [416.367.7887](tel:416.367.7887) | MBorgo@blg.com

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From: Borgo, Mark
Sent: Wednesday, November 20, 2024 9:09 AM
To: McIntyre, Caitlin <caitlin.mcintyre@blakes.com>
Cc: Rogers, Linc <linc.rogers@blakes.com>; Bambrough, Denise L. <DBambrough@blg.com>; Punzo, Andrew <APunzo@blg.com>; MacFarlane, Alex <AMacfarlane@blg.com>; MacLellan, James <JMACLELLAN@blg.com>
Subject: RE: Available Dates - CV-24-00715153-00CL [BLG-DOCUMENTS.FID9281305]

Morning Caitlin – the original copy will be returned to Deloitte today. The hard drive will be delivered to mailroom/reception.

Thanks,



Mark A. Borgo

Senior Associate

T [416.367.7887](tel:416.367.7887) | MBorgo@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W., Toronto, ON,
Canada M5H 4E3

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Borden Ladner Gervais LLP

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From: McIntyre, Caitlin <caitlin.mcintyre@blakes.com>
Sent: Tuesday, November 19, 2024 10:40 PM
To: Borgo, Mark <MBorgo@blg.com>
Cc: Rogers, Linc <linc.rogers@blakes.com>; Bambrough, Denise L. <DBambrough@blg.com>; Punzo, Andrew <APunzo@blg.com>; MacFarlane, Alex <AMacfarlane@blg.com>; MacLellan, James <JMACLELLAN@blg.com>
Subject: Re: Available Dates - CV-24-00715153-00CL [BLG-DOCUMENTS.FID9281305]

Hi Mark,

Deloitte will prepare another copy. Could you please have the original copy returned to Deloitte to the attention of Brian Casey so that they can take a look and see if it can be fixed (which would be faster)?

Thanks,
Caitlin

Caitlin McIntyre
Associate
Email: caitlin.mcintyre@blakes.com
Dir: 416-863-4174

On Nov 19, 2024, at 9:21 PM, Borgo, Mark <MBorgo@blg.com> wrote:

• External Email | Courrier électronique externe •

Hi Caitlin,

One of the hard drives delivered this afternoon labelled “VM Files” is not powering on and cannot be connected to our computers. We’ve confirmed that this is an issue with the hard drive itself and not the power adapter. Could you please arrange for Deloitte to prepare and send us a new “VM Files” hard drive?

Thank you,

<image001.jpg>

Mark A. Borgo

Senior Associate

T 416.367.7887 | MBorgo@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W. Toronto, ON,
Canada M5H 4E3

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From: Borgo, Mark

Sent: Tuesday, November 19, 2024 2:51 PM

To: McIntyre, Caitlin <caitlin.mcintyre@blakes.com>
Cc: Rogers, Linc <linc.rogers@blakes.com>; Bambrough, Denise L. <DBambrough@blg.com>; Punzo, Andrew <APunzo@blg.com>; MacFarlane, Alex <AMacfarlane@blg.com>; MacLellan, James <JMACLELLAN@blg.com>
Subject: RE: Available Dates - CV-24-00715153-00CL [BLG-DOCUMENTS.FID9281305]

Thanks, Caitlin. Confirming receipt.

<image001.jpg>

Mark A. Borgo

Senior Associate

T 416.367.7887 | MBorgo@blg.com

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Canada M5H 4E3

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From: McIntyre, Caitlin <caitlin.mcintyre@blakes.com>

Sent: Tuesday, November 19, 2024 2:40 PM

To: Borgo, Mark <MBorgo@blg.com>

Cc: Rogers, Linc <linc.rogers@blakes.com>; Bambrough, Denise L. <DBambrough@blg.com>; Punzo, Andrew <APunzo@blg.com>; MacFarlane, Alex <AMacfarlane@blg.com>; MacLellan, James <JMACLELLAN@blg.com>

Subject: RE: Available Dates - CV-24-00715153-00CL [BLG-DOCUMENTS.FID9281305]

Mark,

I'm advised that the hard drive has arrived at the BLG mailroom.

Regards,
Caitlin

Caitlin McIntyre (she, her, hers)

Associate

caitlin.mcintyre@blakes.com

T. +1-416-863-4174

C. +1-905-746-6711

Blake, Cassels & Graydon LLP

199 Bay Street, Suite 4000, Toronto ON M5L 1A9 ([Map](#))

blakes.com | [LinkedIn](#)

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From: McIntyre, Caitlin
Sent: Monday, November 18, 2024 5:56 PM
To: Borgo, Mark <MBorgo@blg.com>
Cc: Rogers, Linc <LINC.ROGERS@blakes.com>; Bambrough, Denise L. <DBambrough@blg.com>; Punzo, Andrew <APunzo@blg.com>; MacFarlane, Alex <AMacfarlane@blg.com>; MacLellan, James <JMACLELLAN@blg.com>
Subject: RE: Available Dates - CV-24-00715153-00CL [BLG-DOCUMENTS.FID9281305]

Hi Mark,

I think the court office would be better positioned to give you an accurate answer. In the Receiver's view, however, as the Sureties requested this Case Conference, the Sureties should deliver their Aide Memoire at least 24 hours before the deadline, to allow the Receiver one day to deliver a responding Aide Memoire. This approach will reduce overlap and streamline the Aide Memoires for the Court.

By way of update with respect to the copy of the remaining portions of the server, I understand that it will be complete late this evening and will be delivered tomorrow morning.

Lastly, in Denise's email dated November 16, 2024, she indicated that she did not intend to return Linc's call until she received the Receiver's response to the questions raised in her email. We have now provided such response and continue to think it would be helpful to have a call to narrow the issues for the Court and discuss the issues the Sureties intend to raise at the case conference. Please let us know if you are willing to participate in such a call and, if so, what your availability is.

Thanks,
Caitlin

Caitlin McIntyre (she, her, hers)
Associate
caitlin.mcintyre@blakes.com
T. +1-416-863-4174
C. +1-905-746-6711

From: Borgo, Mark <MBorgo@blg.com>
Sent: Monday, November 18, 2024 2:15 PM
To: McIntyre, Caitlin <caitlin.mcintyre@blakes.com>
Cc: Rogers, Linc <linc.rogers@blakes.com>; Bambrough, Denise L. <DBambrough@blg.com>; Punzo, Andrew <APunzo@blg.com>; MacFarlane, Alex <AMacfarlane@blg.com>; MacLellan, James <JMACLELLAN@blg.com>
Subject: FW: Available Dates - CV-24-00715153-00CL [BLG-DOCUMENTS.FID9281305]

• External Email | Courrier électronique externe •

Hi Caitlin,

The email below from the Court indicates that the parties need to upload their materials to CaseLines five days before the hearing. Our understanding is that the materials need to be filed two days before the hearing. Can you please confirm when the parties' Aide Memoires are due?

Thank you,

<image001.jpg>

Mark A. Borgo
Senior Associate
T 416.367.7887 | MBorgo@blg.com
Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON,

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From: JUS-G-MAG-CSD-Toronto-SCJ Commercial List <MAG.CSD.To.SCJCom@ontario.ca>

Sent: Thursday, November 7, 2024 10:19 AM

To: Borgo, Mark <MBorgo@blg.com>; Bambrough, Denise L. <DBambrough@blg.com>

Cc: Punzo, Andrew <APunzo@blg.com>; MacLellan, James <JMACLELLAN@blg.com>; MacFarlane, Alex <AMacfarlane@blg.com>; linc.rogers@blakes.com; Caitlin McIntyre (caitlin.mcintyre@blakes.com) <caitlin.mcintyre@blakes.com>

Subject: RE: Available Dates - CV-24-00715153-00CL [BLG-DOCUMENTS.FID9281305]

[External / Externe]

Hello!

This matter approved for hearing via videoconference on November 25 , at 9:30am , 30 min , before Justice Black .

Toronto Commercial List – Hearings on May 9 and beyond will use Ministry Zoom coordinates created and uploaded by court staff into CaseLines. Parties will no longer need to provide Zoom coordinates for hearings

Please note that is moving counsel office responsibility to invite all required counsel to CaseLines on particular file for upcoming hearing.

Self Represented Litigants will now have the ability to Invite other people to their case.

Lawyers will now have the permission to remove themselves from the case

For more information on Caselines in the Superior Court of Justice, please see the [Supplementary Notice to the Profession and Litigants in Civil and Family Matters Regarding the Caselines Pilot, E-Filing, and Fee Payment | Superior Court of Justice \(ontariocourts.ca\)](#)

Please note that the Caselines are created 5 days before the hearing date and counsel required to upload the material also 5 days before the hearing date (unless the hearing scheduled on urgent basis).

For the hearings that scheduled under request forms please upload that request form into Caselines along with required material for the hearing .

Please follow the filing direction posted on court website below:

[Commercial List and Estates List Filing Direction | Superior Court of Justice \(ontariocourts.ca\)](#).

Please note for filing questions Re JSO portal please address to :

Toronto.Commercial.Filings@ontario.ca for commercial list matters

Toronto.estates@ontario.ca for estates list matters

Please note that for scheduling appearance please follow per below:

Those matters are allotted a **max of 15 minutes in length**. The moving party will be required to upload their request form, a 2 page Aide Memoire and a participant sheet (in word format) to Caselines.

Thank you

Alsou Anissimova

Superior Court of Justice
Commercial & Estates Trial coordinator
330 University Ave 7th floor
Civil Trial office
Toronto, Ontario
M5G 1R7
Tel: (416) 327-5047
Fax: (416) 327-5697
Email: toronto.commercialist@jus.gov.on.ca

From: Borgo, Mark <MBorgo@blg.com>
Sent: Wednesday, November 6, 2024 8:10 PM
To: JUS-G-MAG-CSD-Toronto-SCJ Commercial List <MAG.CSD.To.SCJCom@ontario.ca>; Bambrough, Denise L. <DBambrough@blg.com>
Cc: Punzo, Andrew <APunzo@blg.com>; MacLellan, James <JMACLELLAN@blg.com>; MacFarlane, Alex <AMacfarlane@blg.com>; linc.rogers@blakes.com; Caitlin McIntyre (caitlin.mcintyre@blakes.com)

<caitlin.mcintyre@blakes.com>

Subject: RE: Available Dates - CV-24-00715153-00CL [BLG-DOCUMENTS.FID9281305]

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Hi Alsou,

We will take the November 25th date before Justice Black. Please find attached the Hearing Request Form.

If you require anything further, please let us know.

Thank you,

<image001.jpg>

Mark A. Borgo

Senior Associate

T [416.367.7887](tel:416.367.7887) | MBorgo@blg.com

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Canada M5H 4E3

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From: JUS-G-MAG-CSD-Toronto-SCJ Commercial List <MAG.CSD.To.SCJCom@ontario.ca>

Sent: Wednesday, November 6, 2024 1:31 PM

To: Bambrough, Denise L. <DBambrough@blg.com>; Borgo, Mark <MBorgo@blg.com>

Cc: Punzo, Andrew <APunzo@blg.com>; MacLellan, James <JMACLELLAN@blg.com>; MacFarlane, Alex <AMacfarlane@blg.com>; linc.rogers@blakes.com; Caitlin McIntyre (caitlin.mcintyre@blakes.com) <caitlin.mcintyre@blakes.com>

Subject: RE: Available Dates - CV-24-00715153-00CL [BLG-DOCUMENTS.FID9275893]

[External / Externe]

I have provided first available date before Justice Black -November 25

From: Bambrough, Denise L. <DBambrough@blg.com>

Sent: Wednesday, November 6, 2024 1:02 PM

To: JUS-G-MAG-CSD-Toronto-SCJ Commercial List <MAG.CSD.To.SCJCom@ontario.ca>; Borgo, Mark <MBorgo@blg.com>

Cc: Punzo, Andrew <APunzo@blg.com>; MacLellan, James <JMACLELLAN@blg.com>; MacFarlane, Alex <AMacfarlane@blg.com>; linc.rogers@blakes.com; Caitlin McIntyre (caitlin.mcintyre@blakes.com) <caitlin.mcintyre@blakes.com>

Subject: RE: Available Dates - CV-24-00715153-00CL [BLG-DOCUMENTS.FID9275893]

CAUTION -- EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the sender.

Good afternoon,

As the purpose of the requested Case Conference is to obtain Justice Black's guidance regarding certain information that the Sureties require in order to respond to the Receiver's motion for directions returnable before His Honour on December 3rd, it is our view that the Case Conference should also proceed before Justice Black.

Regards,
Denise

<image001.jpg>

Denise L. Bambrough

Partner

T 416.367.6008

Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON, Canada M5H 4E3

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From: JUS-G-MAG-CSD-Toronto-SCJ Commercial List <MAG.CSD.To.SCJCom@ontario.ca>

Sent: Wednesday, November 6, 2024 12:21 PM

To: Borgo, Mark <MBorgo@blg.com>

Cc: Bambrough, Denise L. <DBambrough@blg.com>; Punzo, Andrew <APunzo@blg.com>; MacLellan, James <JMACLELLAN@blg.com>; MacFarlane, Alex <AMacfarlane@blg.com>; linc.rogers@blakes.com; Caitlin McIntyre (caitlin.mcintyre@blakes.com) <caitlin.mcintyre@blakes.com>

Subject: RE: Available Dates - CV-24-00715153-00CL [BLG-DOCUMENTS.FID9281305]

[External / Externe]

Hello!

Can you proceed before any available judge ?

Thank you

Alsou Anissimova

Superior Court of Justice

Commercial list Trial coordinator

330 University Ave 7th floor

Civil Trial office

Toronto, Ontario

M5G 1R7

Tel: (416) 327-5047

Email: MAG.CSD.To.SCJCOM@ONTARIO.CA

Toronto Commercial List – Commencing May 9, 2022 , Ministry Zoom coordinates will be used, created and uploaded by court staff into CaseLines. Zoom coordinates for hearings will no longer need to be provided by the parties.

Please note that counsel for the moving party is responsible for inviting all required counsel/parties on a file to CaseLines for upcoming hearings.

Please note when providing the request form for scheduling via e-mail , please copy (cc) request form to all required counsel.

From: Borgo, Mark <MBorgo@blg.com>

Sent: Tuesday, November 5, 2024 5:58 PM

To: JUS-G-MAG-CSD-Toronto-SCJ Commercial List <MAG.CSD.To.SCJCom@ontario.ca>

Cc: Bambrough, Denise L. <DBambrough@blg.com>; Punzo, Andrew <APunzo@blg.com>; MacLellan, James <JMACLELLAN@blg.com>; MacFarlane, Alex <AMacfarlane@blg.com>; linc.rogers@blakes.com; Caitlin McIntyre (caitlin.mcintyre@blakes.com) <caitlin.mcintyre@blakes.com>

Subject: RE: Available Dates - CV-24-00715153-00CL [BLG-DOCUMENTS.FID9281305]

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Thank you for getting back to us so quickly. As the Case Conference is being requested on an urgent basis to address outstanding requests for information that our clients require in order to prepare their responding materials for a December 3rd motion, would it be possible to obtain any earlier dates?

<image001.jpg>

Mark A. Borgo

Senior Associate

T 416.367.7887 | MBorgo@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON,
Canada M5H 4E3

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From: JUS-G-MAG-CSD-Toronto-SCJ Commercial List <MAG.CSD.To.SCJCom@ontario.ca>

Sent: Tuesday, November 5, 2024 5:52 PM

To: Borgo, Mark <MBorgo@blg.com>

Cc: Bambrough, Denise L. <DBambrough@blg.com>; Punzo, Andrew <APunzo@blg.com>; MacLellan, James <JMACLELLAN@blg.com>; MacFarlane, Alex <AMacfarlane@blg.com>; linc.rogers@blakes.com; Caitlin McIntyre (caitlin.mcintyre@blakes.com) <caitlin.mcintyre@blakes.com>
Subject: RE: Available Dates - CV-24-00715153-00CL [BLG-DOCUMENTS.FID9281305]

[External / Externe]

Hello!

We have November 25 available at 9:30am , before Justice Black

Thank you

Alsou Anissimova

Superior Court of Justice
Commercial list Trial coordinator
330 University Ave 7th floor
Civil Trial office
Toronto, Ontario
M5G 1R7
Tel: (416) 327-5047
Email: MAG.CSD.To.SCJCOM@ONTARIO.CA

Toronto Commercial List – Commencing May 9, 2022 , Ministry Zoom coordinates will be used, created and uploaded by court staff into CaseLines. Zoom coordinates for hearings will no longer need to be provided by the parties.

Please note that counsel for the moving party is responsible for inviting all required counsel/parties on a file to CaseLines for upcoming hearings.

Please note when providing the request form for scheduling via e-mail , please copy (cc) request form to all required counsel.

From: Borgo, Mark <MBorgo@blg.com>
Sent: Tuesday, November 5, 2024 5:40 PM
To: JUS-G-MAG-CSD-Toronto-SCJ Commercial List <MAG.CSD.To.SCJCom@ontario.ca>
Cc: Bambrough, Denise L. <DBambrough@blg.com>; Punzo, Andrew <APunzo@blg.com>; MacLellan, James <JMACLELLAN@blg.com>; MacFarlane, Alex <AMacfarlane@blg.com>; linc.rogers@blakes.com; Caitlin McIntyre (caitlin.mcintyre@blakes.com) <caitlin.mcintyre@blakes.com>
Subject: Available Dates - CV-24-00715153-00CL [BLG-DOCUMENTS.FID9281305]

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Dear Alsou,

We are counsel for Aviva Insurance Company of Canada, Nationwide Mutual Insurance Company, and Euler Hermes North America Insurance Company.

We are writing to request an urgent case conference in relation to the motion for directions returnable December 3, 2024.

Court File Number: CV-24-00715153-00CL

Date of Hearing Sought: Next available date

Short Title of Proceedings: Export Development Canada v Antamex Industries ULC

Purpose of Hearing: Urgent Case Conference to address the Sureties' outstanding requests for information required to respond to the Receiver's motion for directions returnable on December 3, 2024

Time Required: 30 minutes

Material Required: The parties will each file an Aide Memoire.

Justice (Seized of matter/ most familiar with matter): Justice Black

We look forward to hearing from you.

Thank you,

<image001.jpg>

Mark A. Borgo

Senior Associate

T 416.367.7887 | MBorgo@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON,

Canada M5H 4E3

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APPENDIX “I”

McIntyre, Caitlin

From: Bambrough, Denise L. <DBambrough@blg.com>
Sent: Wednesday, November 20, 2024 9:46 PM
To: McIntyre, Caitlin; Rogers, Linc; Borgo, Mark
Cc: Punzo, Andrew; MacLellan, James; MacFarlane, Alex
Subject: RE: Available Dates - CV-24-00715153-00CL [BLG-DOCUMENTS.FID9275893]

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Linc and Caitlin,

In connection with our outstanding request for supporting documents that evidence the disbursements relied upon by the Receiver, and the summary of disbursements provided by the Receiver, we have the following additional questions:

- a. MDD has not been able to reconcile the \$1.9 million in disbursements categorized by the Receiver as “employee costs” against the bank statements provided, nor does this amount accord with the information provided to MDD by Ryan Spurgeon. Specifically, MDD understands that the total weekly payroll amount during the Adjournment Period was approximately \$400,000. It’s therefore not clear what the \$1.9 million amount is comprised of. As you know, we have requested supporting documents for the alleged disbursements in this category. We also request the following information:
 - i. Is it the Receiver’s position that the entire \$1.9 million amount was disbursed from Antamex accounts during the Adjournment Period?
 - ii. If not, what portion of this amount was disbursed on or after March 13, 2014?
 - iii. Does any portion of the \$1.9 million amount relate to any of the following obligations incurred (i.e. rather than disbursed) by Antamex:
 1. Benefits;
 2. RRSP deductions; and
 3. Vacation Pay,and, if so, to what extent were such obligations incurred/accrued *prior to* the Adjournment Period; and
 - iv. We understand that the actual payroll amount stated above includes amounts paid to field labour on Antamex’s projects as opposed to amounts office staff. Is the Receiver able to provide a breakdown of the actual payroll amount as between Antamex’s various projects and/or as between field staff and office staff?
- b. For what property were insurance costs paid during the Adjournment Period and does the amount stated in the Receiver’s summary include premiums for any period of time after the Receivership Order was made?
- c. Please provide a breakdown of the Inter-company Disbursements as it appears that the Receiver may have failed to account for inter-company transfers in the amount of \$675,000.
- d. Does the amount said to have been disbursed for “Premises” include:
 - i. Amounts paid for any of the facilities before, during and/or after the Adjournment Period and, if so, please provide a breakdown; and
 - ii. Amounts paid by way of intercompany transfer for the 256 Victoria St. premises and, if so, what amounts.

- e. MDD is unable to recognize the amount alleged to have been disbursed for Supplier Payments and Ryan Spurgeon advises that the amount disbursed was much less. Please identify the disbursements allocated to this category. Also, please advise as to what extent were Supplier Payments made to beneficiaries of the trust obligations to which Antamex was subject in respect of its various Canadian and U.S. construction projects.

We look forward to receiving the Receiver's responses to the above questions as soon as possible.

Thank you,
Denise



Denise L. Bambrough

Partner

T 416.367.6008

Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON, Canada M5H 4E3

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Calgary | Montréal | Ottawa | Toronto | Vancouver

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From: McIntyre, Caitlin <caitlin.mcintyre@blakes.com>

Sent: Saturday, November 16, 2024 7:46 PM

To: Bambrough, Denise L. <DBambrough@blg.com>; Rogers, Linc <linc.rogers@blakes.com>; Borgo, Mark <MBorgo@blg.com>

Cc: Punzo, Andrew <APunzo@blg.com>; MacLellan, James <JMACLELLAN@blg.com>; MacFarlane, Alex <AMacfarlane@blg.com>

Subject: RE: Available Dates - CV-24-00715153-00CL [BLG-DOCUMENTS.FID9275893]

Denise,

When it was copied in March, the imaged server was split into four parts. Inadvertently, only one part was included in the copy of the imaged server made for the sureties. I understand that a hard drive containing the extra data will be ready on Monday for shipment. Could you please confirm what address the hard drive should be sent to? Once you are in receipt of that hard drive, please let us know if there is additional data you think should be there that is missing and we will look into it.

The server was imaged on March 14, 2024 and only contains data on the server prior to this date. I understand that, as a result, it does not contain the "Deloitte Receivership" folder that you refer to. This folder is on the decommissioned server.

Finally, with respect to your request for supporting information and documents on which the Receiver relied to produce the chart copied in your email, I am reattaching the supporting documentation that was circulated to you in April. As you will see, many of the disbursements contain a description or payee that helped the Receiver to identify the applicable category. Where the Receiver was uncertain of the appropriate characterization, the Receiver consulted former employees of Antamex to identify the correct categorization. I confirm that there is no other documentation or information that the Receiver relied on to make determinations.

Regards,
Caitlin

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

SECOND SUPPLEMENT TO THE THIRD
REPORT OF THE RECEIVER
Dated December 3, 2024

BLAKE, CASSELS & GRAYDON LLP

Barristers and Solicitors

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Lawyers for the Receiver