

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

BETWEEN:

**STAR AMERICA DPGI ACQUISITION COMPANY, INC.**

Applicant

and

**DEMAND POWER GROUP INC.**

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

**FACTUM OF THE RECEIVER  
Returnable July 28, 2025**

July 23, 2025

**Goodmans LLP**

Barristers & Solicitors  
Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto ON M5H 2S7

**Joseph Pasquariello** LSO#: 38390C  
jpasquariello@goodmans.ca

**Andrew Harmes** LSO#: 73221A  
aharmes@goodmans.ca

**Josh Sloan** LSO#: 90581H  
jsloan@goodmans.ca

Tel: 416.979.2211

Fax: 416.979.1234

Lawyers for the Receiver

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## PART I – INTRODUCTION<sup>1</sup>

1. On November 22, 2023 (the “**Appointment Date**”), the Ontario Superior Court of Justice (the “**Court**”) issued an order (as amended on December 17, 2024, the “**Receivership Order**”) appointing Deloitte Restructuring Inc. (“**Deloitte**”) as receiver and manager (in such capacity, the “**Receiver**”) pursuant to section 101 of the *Courts of Justice Act* R.S.O. 1990, c. C.43, as amended (the “**CJA**”), of all of the assets, undertakings and properties (collectively, the “**Property**”) of Demand Power Group Inc. (the “**Company**” or “**Demand Power**”).<sup>2</sup>

2. Since the Appointment Date, the Receiver has, among other things, developed a sale process to sell certain assets of the Company, taken substantially all steps toward closing a transaction in relation to the same and advanced various litigation matters involving the Company.

3. As discussed further below, the Receiver is seeking an order (the “**Order**”) that, among other things:

- (a) amends the Receivership Order to: (i) increase the Receiver’s borrowing power under the Receivership Order; and (ii) correspondingly increase the Receiver’s Borrowing Charge (as defined in the Receivership Order);
  - (b) approves the Second Report and the activities of the Receiver described therein;
- and

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<sup>1</sup> All capitalized terms used herein and not otherwise defined have the meaning ascribed to them in the Second Report of the Receiver dated July 21, 2025 (the “**Second Report**”) or the Receivership Order, as applicable.

<sup>2</sup> *Star America DPGI Acquisition Company, Inc. v Demand Power Group Inc.* (22 November 2023) Ont Sup Ct J [Commercial List] CV-23-00709164-00CL ([Order \(appointing Receiver\)](#)) [*Receivership Order*]; *Star America DPGI Acquisition Company, Inc. v Demand Power Group Inc.* (17 December 2024) Ont Sup Ct J [Commercial List] CV-23-00709164-00CL ([Order](#)) [*Amendment to Receivership Order*].

- (c) approves the fees and disbursements of the Receiver and those of its counsel, as described in the Second Report and the related fee affidavits of representatives of the Receiver and its counsel.

4. For the reasons specified herein and in the Second Report, the Receiver respectfully requests that this Court grant the proposed Order.

## **PART II – FACTS**

### **(A) Background**

5. Demand Power, is a corporation incorporated pursuant to the laws of Ontario and carried on business as a developer and operator of power supply systems.<sup>3</sup>

6. On November 22, 2023, pursuant to section 101 of the CJA, Star America brought an application seeking the appointment of Deloitte as Receiver of the Property of Demand Power. In connection with Star America’s application, Star America, as lender, provided the Receiver with a revolving facility up to \$1,000,000 to fund the receivership proceedings. This initial financing was secured by the Receiver’s Borrowing Charge (as defined in the Receivership Order) over the Property.<sup>4</sup>

7. On December 17, 2024, the Court granted an Order, which, among other things, amended the Receivership Order to authorize the Receiver to borrow an additional \$500,000 from Star America, as lender, and granted a corresponding increase in the Receiver’s Borrowing Charge.<sup>5</sup>

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<sup>3</sup> Second Report at para 3 [[E1094:E13](#)].

<sup>4</sup> [First Report of the Receiver](#) dated December 10, 2024 at paras 1, 5; [Receivership Order](#) at para 22.

<sup>5</sup> [Amendment to Receivership Order](#) at para 3.

**(B) The Receiver's Borrowings**

8. The Receiver requires additional funding to, among other things, support various on-going litigation involving the Company with revised timelines associated therewith. Under the Receivership Order, the Receiver is permitted to borrow up to \$1,500,000, in aggregate, without further Court approval. As of July 21, 2025, the Receiver's borrowings have totaled \$1,450,000 to fund the receivership proceedings.<sup>6</sup>

9. Star America has provided the \$1,450,000 to fund the receivership to date and provided an additional \$1,000,000 to further fund the receivership, subject to this Court's approval.<sup>7</sup> Accordingly, the Receiver recommends that the Receiver's borrowing powers under the Receivership Order and the related Receiver's Borrowing Charge be increased from \$1,500,000 to \$2,500,000.

**(C) The Second Report and the Receiver's Activities**

10. The Receiver is seeking approval of the Second Report and its activities described therein. Since the First Report of the Receiver dated December 10, 2024, the Receiver has undertaken the following activities:

- (a) the Receiver and Narrows Green LP have agreed in form and substance to an amendment, which is in the process of being executed, confirming the treatment of taxes payable in connection with the Narrows Green Transaction (as defined in the First Report);

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<sup>6</sup> Second Report at para 27-28 [\[E1100;E19\]](#).

<sup>7</sup> Second Report at paras 29 [\[E1100;E19\]](#).

- (b) taken substantially all steps toward closing the Narrows Green Transaction, with closing anticipated imminently;
- (c) filed monthly HST returns for the post-receivership period;
- (d) continued to advance various litigation matters involving the Company with the assistance of its counsel;
- (e) provided regular updates to Star America on the progress of the receivership; and
- (f) addressed additional matters as they arose from time to time.<sup>8</sup>

11. The foregoing activities have been necessary, are consistent with the Receiver's duties and powers granted pursuant to the Receivership Order, have been undertaken with efficiency and reasonableness, and are in the interest of the Demand Power's stakeholders.

**(D) Fees and Disbursements of the Receiver and its Counsel**

12. The proposed Order, among other things, provides for the approval of the fees and disbursements incurred by the Receiver and its counsel ("**Goodmans**") from November 1, 2024 to June 30, 2025 and July 8, 2024 to July 15, 2025, respectively.

13. The Receiver and its counsel have sought to ensure that the work required to be performed in the receivership proceedings has been undertaken in the most efficient manner possible, including by utilizing consistent core personnel throughout the mandate.<sup>9</sup>

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<sup>8</sup> Second Report at para 11 [E1096:E15].

<sup>9</sup> Affidavit of Andrew Harnes sworn July 22, 2025 at para 7 and Exhibit "C" [E1175:E94, E1217:E136] [*Goodmans Fee Affidavit*]; Affidavit of Warren Leung sworn July 21, 2025 at para 5 and Exhibit "B" [E1139:E58, E1143:E62] [*Deloitte Fee Affidavit*].

14. The Receiver's fees and disbursements, as well as those of its counsel, have been presented to Star America, who has advanced funding to the Receiver for the purpose of funding the Receiver's mandate, and Star America has no objections or concerns with the fees presented.<sup>10</sup>

15. The total number of hours worked by the Receiver's professionals from November 1, 2024 to June 30, 2025 was 184.4, giving rise to fees totaling \$119,997.50, together with disbursements and HST in the amount of \$33,439.04, totaling \$153,436.54.<sup>11</sup>

16. The total number of hours worked by Goodmans' professionals from July 8, 2024 to July 15, 2025 was 774.7, giving rise to fees totaling \$680,778, together with disbursements and HST in the amount of \$100,746.12 totaling \$781,524.12.<sup>12</sup>

17. The fees and disbursements charged by the Receiver and its counsel are consistent with market professional rates for significant commercial restructuring and receivership matters.<sup>13</sup>

### **PART III – ISSUES AND LAW**

18. The issue to be decided on the motion is whether the Court should grant the Order, which, among other things:

- (a) increases the principal amount of the Receiver's borrowing power and corresponding Receiver's Borrowings Charge from \$1,500,000 to \$2,500,000 million;

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<sup>10</sup> Second Report at para 25 [\[E1099:E18\]](#).

<sup>11</sup> Deloitte Fee Affidavit at para 3 and Exhibit "A" [\[E1138:E57, E1141:E60\]](#).

<sup>12</sup> Goodmans Fee Affidavit at para 5 and Exhibit "B" [\[E1175:E94, E1215:E134\]](#).

<sup>13</sup> Deloitte Fee Affidavit at para 5 [\[E1139:E58\]](#); Goodmans Fee Affidavit at para 7 [\[E1175:E94\]](#);

- (b) approves the Second Report and the activities of the Receiver described therein;  
and
- (c) approves the fees and disbursements of the Receiver and its counsel, as described  
in the Second Report and the related fee affidavits of representatives of the Receiver  
and its counsel.

**(A) The Receiver’s Borrowing Power and related Borrowing Charge should be Increased**

19. Section 101 of the CJA affords the Court broad discretion over the powers it may grant a Receiver so long as the terms are “just or convenient”.<sup>14</sup>

20. This Court will often extend a receiver’s borrowing limit in response to evolving circumstances in a receivership, including where the remaining availability under a credit facility is insufficient to cover unanticipated or contingent costs, or to complete urgent activities while also maintaining a buffer for any unforeseen costs.<sup>15</sup>

21. To enable the Receiver to be able to complete its mandate, which, primarily, is to advance ongoing litigation involving Demand Power, the Receiver requires that its borrowing powers be increased in aggregate by \$1,000,000.<sup>16</sup> The additional borrowings will be on terms similar to the powers granted pursuant to the Receivership Order, including empowering the Receiver to borrow a specified amount and securing the funds borrowed by a Borrowing Charge.

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<sup>14</sup> CJA, [s. 101\(2\)](#).

<sup>15</sup> See e.g., *Macquarie Equipment Finance Limited v Validus Power Corp et al* (1 November 2023), Ont Sup Ct J [Commercial List] CV-23-00703754-00CL ([Order \(Increase of Receiver’s Borrowing Limit\)](#)) at para 2; *Kingsett Mortgage Corporation et al v Vandyk et al* (21 December 2023), Ont Sup Ct J [Commercial List] CV-23-00709180-00CL ([Order \(Approving Increased Borrowing Power by Receiver\)](#)) at para 2.

<sup>16</sup> Second Report at para 28 [[E1100](#);[E19](#)].



22. Star America has provided \$1,450,000 of funding to date, and has provided an additional \$1,000,000 to the Receiver to further fund the receivership, subject to this Court's approval.<sup>17</sup>

23. In light of the forgoing, the Receiver submits that increasing the Receiver's borrowing limit, and the corresponding Borrowing Charge, is necessary, just and convenient in the circumstances.

**(B) The Second Report and the Receiver's Activities Described therein Should be Approved**

24. This Court has the inherent jurisdiction to approve the activities of a court-appointed receiver if the receiver demonstrates that it has acted reasonably, prudently and not arbitrarily.<sup>18</sup>

25. There are also good policy and practical reasons for approving the activities of a Court-appointed officer, including that Court approval:

- (a) allows the court-officer to move forward with next steps in the proceeding;
- (b) brings the court-officer's activities before the court;
- (c) allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified;
- (d) enables the Court to satisfy itself that the court-officer's activities have been conducted in prudent and diligent manners;

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<sup>17</sup> Second Report at para 29 [\[E1100:E19\]](#).

<sup>18</sup> *Bank of America Canada v Willann Investments Ltd*, [1993] [OJ No 1647, 20 CBR \(3d\) 223](#) (Gen Div) at paras 3-5, aff'd [\[1996\] OJ No. 2806, 65 ACWS \(3d\) 44 \(CA\)](#).

- (e) provides protection for the court-officer; and
- (f) protects the creditors from the delay in distribution that would be caused by: (i) re-litigation of steps taken to date, and (ii) potential indemnity claims by the court-officer.<sup>19</sup>

26. This Court has held that the foregoing observations apply to the activities of a Court-appointed receiver because the activities of any court officer “can and should be considered by the Court as against the mandate, powers and authority of that officer.”<sup>20</sup>

27. In these receivership proceedings, all of the Receiver’s activities were reasonable and carried out in accordance with the powers and duties under the Receivership Order. As it relates to the activities described in the Second Report, the Receiver’s primary activities consist of advancing the Company’s litigation matters with the assistance of its counsel, taking substantially all steps toward closing the Narrows Green Transaction and filing monthly HST returns for the post-receivership period.<sup>21</sup>

28. The above-mentioned activities have been necessary, are consistent with the duties and powers granted to the Receiver pursuant to the Receivership Order, have been undertaken with efficiency and reasonableness, and are in the interest of Demand Power’s stakeholders. Accordingly, the Second Report and the activities described therein ought to be approved.

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<sup>19</sup> *Target Canada Co, Re*, [2015 ONSC 7574](#) at para [12](#); *Laurentian University of Sudbury*, [2022 ONSC 2927](#) at paras [13-14](#) [*Laurentian University*].

<sup>20</sup> *Triple-I Capital Partners Limited v 12411300 Canada Inc*, [2023 ONSC 3400](#) at para [66](#) [*Triple-I*].

<sup>21</sup> Second Report at para 11 [[E1096;E15](#)].

**(C) The Fees of the Receiver and Goodmans Should be Approved**

29. The jurisdiction of this Court to pass the accounts of the Receiver and its counsel is confirmed in the Receivership Order, which directs that: “the Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.”<sup>22</sup>

30. The overarching test on a motion to pass accounts is to consider the “overriding principle of reasonableness”, with the predominant consideration in such assessment being the overall value contributed by the Receiver and its counsel.<sup>23</sup> As stated by this Court, “[t]he Court does not engage in a docket-by-docket or line-by-line assessment of the accounts as minute details of each element of a professional services may not be instructive when looked at in isolation.”<sup>24</sup> Likewise, the Ontario Court of Appeal has stated “[t]he focus of the fair and reasonable assessment should be on what was accomplished, and not how much time it took.”<sup>25</sup>

31. The following factors assist courts in evaluating the quantum of a court-appointed officer’s and its counsel’s fees. These factors are not intended to be an exhaustive list and other factors may be material in any particular case:

- (a) the nature, extent and value of the assets being handled;
- (b) the complications and difficulties encountered;

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<sup>22</sup> [Receivership Order](#) at para 20.

<sup>23</sup> *Laurentian University* at para [9](#); *Re Nortel Networks Corporation et al*, [2017 ONSC 673](#) at paras [13–15](#).

<sup>24</sup> *Laurentian University* at para [9](#).

<sup>25</sup> *Bank of Nova Scotia v Diemer*, [2014 ONCA 851](#) at para [45](#) [*Diemer*].

- (c) the degree of assistance provided by the company, its officers or its employees;
- (d) the time spent;
- (e) the Receiver's knowledge, experience and skill;
- (f) the diligence and thoroughness displayed;
- (g) the responsibilities assumed;
- (h) the results achieved; and
- (i) the cost of comparable services when performed in a prudent and economical manner.<sup>26</sup>

32. Applying these factors to the present case, it is respectfully submitted that the accounts of the Receiver and its counsel, as described in the Second Report and the related fee affidavits of representatives of the Receiver and its counsel, are fair reasonable and should be approved:

- (a) the Receiver's fees and disbursements, as well as those of its legal counsel, have been presented to Star America, and Star America has no objections or concerns with the fees presented;<sup>27</sup>
- (b) while the Receiver anticipates the ongoing administration of the Company for a further period of time, the Receiver has worked to diligently "close out" matters where possible, including advancing various ongoing litigation involving the

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<sup>26</sup> *Laurentian University* at para [10](#); *Triple -I* at para [23](#).

<sup>27</sup> Second Report at para 25 [[E1099](#); [E18](#)].

Company and taking substantially all steps toward closing the Narrows Green Transaction.<sup>28</sup> The breadth of matters detailed in the Second Report further demonstrate the diligence and thoroughness displayed by the Receiver and its counsel;

- (c) the Receiver and its counsel are experienced restructuring professionals who have been integral in these receivership proceedings and have at all times demonstrated diligence and thoroughness throughout;
- (d) both the Receiver and its counsel, to the best of their knowledge, charge rates that are comparable to the rates charged by similar accounting and law firms in the Toronto market for the provision of similar services;<sup>29</sup> and
- (e) the Receiver and its counsel have sought to ensure that the work required to be performed in the case has been undertaken in the most efficient manner possible. In respect to fees of the Receiver's counsel, the fees incurred reflect services performed in accordance with the instructions of the Receiver.<sup>30</sup>

33. Accordingly, for the reasons set out above, a consideration of the applicable factors supports the approval of the accounts of the Receiver and its counsel as being fair and reasonable.

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<sup>28</sup> Second Report at para 11 [[E1096:E15](#)].

<sup>29</sup> Goodmans Fee Affidavit at para 7 [[E1175:E94](#)]; Deloitte Fee Affidavit at para 5 [[E1139:E58](#)].

<sup>30</sup> Goodmans Fee Affidavit at para 7 and Exhibit "C" [[E1175:E94](#), [E1217:E136](#)]; Deloitte Fee Affidavit at para 5 and Exhibit "B" [[E1139:E58](#), [E1143:E62](#)].

**PART IV – RELIEF REQUESTED**

34. For the reasons set out herein, the Receiver respectfully requests that the Court grant the Order.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 23<sup>rd</sup> day of July, 2025.

*Goodmans LLP*

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**Goodmans LLP**

**Joseph Pasquariello** LSO#: 38390C  
jpasquariello@goodmans.ca

**Andrew Harmes** LSO#: 73221A  
aharmes@goodmans.ca

**Josh Sloan** LSO#: 90581H  
jsloan@goodmans.ca

Lawyers for the Receiver

## SCHEDULE A - LIST OF AUTHORITIES

1. *Macquarie Equipment Finance Limited v Validus Power Corp et al* (1 November 2023), Ont Sup Ct J [Commercial List] CV-23-00703754-00CL ([Order \(Increase of Receiver's Borrowing Limit\)](#))
2. *Kingsett Mortgage Corporation et al v Vandyk et al* (21 December 2023), Ont Sup Ct J [Commercial List] CV-23-00709180-00CL ([Order \(Approving Increased Borrowing Power by Receiver\)](#))
3. *Bank of America Canada v Willann Investments Ltd*, [1993] [OJ No 1647, 20 CBR \(3d\) 223](#) (Gen Div), aff'd [\[1996\] OJ No. 2806, 65 ACWS \(3d\) 44 \(CA\)](#)
4. *Target Canada Co, Re*, [2015 ONSC 7574](#)
5. *Laurentian University of Sudbury*, [2022 ONSC 2927](#)
6. *Triple-I Capital Partners Limited v 12411300 Canada Inc.*, [2023 ONSC 3400](#)
7. *Re Nortel Networks Corporation et al*, [2017 ONSC 673](#)
8. *Bank of Nova Scotia v Diemer*, [2014 ONCA 851](#)

I certify that I am satisfied as to the authenticity of every authority cited in this Factum.

Date: July 23, 2025

  
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Signature

## **SCHEDULE B - STATUTORY REFERENCES**

### ***COURTS OF JUSTICE ACT*** **R.S.O. 1990, c. C.43**

#### **Injunctions and receivers**

**101 (1)** In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

#### **Terms**

**101 (2)** An order under subsection (1) may include such terms as are considered just.



**APPLICATION PURSUANT TO 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c.  
C.43, AS AMENDED**

Court File No.: CV-23-00709164-00CL

**STAR AMERICA DPGI**  
**ACQUISITION COMPANY, INC**  
Applicant

- and -

**DEMAND POWER GROUP INC.**  
Respondent

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
Proceeding commenced at Toronto

**FACTUM OF THE RECEIVER**  
**(Returnable July 28, 2025)**

**GOODMANS LLP**  
Barristers & Solicitors  
333 Bay Street, Suite 3400  
Toronto, Canada M5H 2S7

**Joseph Pasquariello LSO#: 38390C**  
jpasquariello@goodmans.ca

**Andrew Harmes LSO#: 73221A**  
aharmes@goodmans.ca

**Josh Sloan LSO#: 90581H**  
jsloan@goodmans.ca

Tel: (416) 979-2211  
Fax: (416) 979-1234

Lawyers for the Receiver