

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

**B E T W E E N:**

**COMERICA BANK**

Applicant

- and -

**ARXX BUILDING PRODUCTS INC., ARXX CORPORATION, ARXX BUILDING  
PRODUCTS U.S.A. INC., ECB HOLDINGS, LLC, APS HOLDINGS, LLC, UNISAS  
HOLDINGS, LLC, AND ECO-BLOCK INTERNATIONAL, LLC**

Respondents

APPLICATION UNDER SECTION 243 OF THE *BANKRUPTCY AND  
INSOLVENCY ACT*, R.S.C. 1985, c.B-3, AS AMENDED, AND SECTION 101  
OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.C.43, AS AMENDED

**FACTUM OF THE RECEIVER  
(MOTION RETURNABLE JANUARY 29, 2014)**

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the receiver for ARXX Building  
Products Inc., ARXX Corporation,  
ARXX Building Products U.S.A. Inc.,  
ECB Holdings, LLC, APS Holdings,  
LLC, UNISAS Holdings, LLC and  
Eco-Block International, LLC

## PART I - OVERVIEW

1. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on December 9, 2013 (the “**Appointment Order**”), Duff & Phelps Canada Restructuring Inc. (“**D&P**”) was appointed receiver (in such capacity, the “**Receiver**”) of the assets, property and undertaking of each of ARXX Building Products Inc. (“**ARXX Canada**”), ARXX Building Products U.S.A. Inc. (“**ARXX USA**” and, together with ARXX Canada, “**ARXX**”), ARXX Corporation, ECB Holdings, LLC, APS Holdings, LLC, UNISAS Holdings, LLC and Eco-Block International, LLC (collectively, the “**ARXX Group**”).

2. On December 27, 2013, this Honourable Court granted an order (the “**Sale Process Order**”) approving a Stalking Horse Agreement (the “**Stalking Horse Agreement**”) dated December 19, 2013, between the Receiver and Airlite Plastics Co. (“**Airlite**”) and related bidding procedures (the “**Bidding Procedures**”) and sales process (the “**Sale Process**”) for the Purchased Assets.

3. The Receiver seeks two orders (the “**Orders**”) of this Honourable Court, including:

(i) an order substantially in the form of the draft order included at Tab 3 of the Receiver’s Motion Record and more particularly, an order:

- (a) if necessary, abridging the time for service of the Motion Record so that the motion is properly returnable on Wednesday, January 29, 2014, dispensing with further service thereof, and validating in all respects service thereof;
- (b) approving the sale transaction (the “**Transaction**”) contemplated by an asset purchase agreement (the “**APA**”) between the Receiver and Airlite (the “**Purchaser**”) dated December 19, 2013;
- (c) approving the Receiver’s execution of the APA and authorizing and directing the Receiver to execute all other ancillary documents and agreements required to complete the transaction set out in the APA and to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the ARXX Group’s

right, title and interest in and to the assets described in the APA (the “**Purchased Assets**”) to the Purchaser; and

- (d) vesting in the Purchaser all of the ARXX Group’s right, title and interest in and to the Purchased Assets free and clear of all encumbrances (other than permitted encumbrances, if any) provided that such vesting shall be effective only upon delivery by the Receiver to the Purchaser of a certificate substantially in the form attached to the draft order confirming, *inter alia*, that all terms and conditions under the APA have been satisfied or waived;
- (ii) an order substantially in the form of the draft order included at Tab 4 of the Receiver’s Motion Record and more particularly, an order:
- (a) authorizing a distribution by the Receiver to Comerica Bank, on closing of the transaction contemplated in the APA, of US\$1.5 million from the sale proceeds, and authorizing the Receiver to make further distributions to Comerica Bank at any time, and from time to time, following such closing (collectively, the “**Distributions**”), in an aggregate amount not to exceed the secured obligations of the ARXX Group to Comerica Bank;
  - (b) approving the First Report of the Receiver dated December 19, 2013 (the “**First Report**”) and the activities outlined therein;
  - (c) approving the Second Report of the Receiver dated January 22, 2014 (the “**Second Report**”) and the activities outlined therein;
  - (d) sealing the liquidation analysis appended as Confidential Appendix 1 to the Second Report (the “**Confidential Appendix**”); and
  - (e) providing such further and other relief as this Honourable Court deems just.

4. The Receiver recommends issuance of the Orders for the factual and legal bases set forth herein and in its Motion Record.

## PART II - THE FACTS

### (i) General Background

5. A detailed description of the facts relating to the ARXX Group's corporate and capital (including debt) structure, is set forth in the First Report of the Receiver, dated December 19, 2013 (the "**First Report**") and the Second Report.

6. The Receiver has filed its Second Report to provide this Honourable Court with the background, basis for, and its recommendation in respect of the relief requested herein, and the Second Report is located at Tab 2 of the Receiver's Motion Record.

7. The ARXX Group is in the business of designing and marketing building products known as insulating concrete forms ("**ICF**"), which are a green, energy-efficient technology used in residential and commercial construction. The business is operated through ARXX Canada, an Ontario Corporation, and ARXX USA, a Delaware company that is a wholly-owned subsidiary of ARXX Canada. ARXX USA is entirely dependent on ARXX Canada and cannot operate on a standalone basis.

Second Report, Receiver's Motion Record, Tab 2, 2.0, paras. 1, 4.

8. As described in detail in the Second Report, the ARXX Group's principal line of business is selling ICF. The ARXX Group purchases ICF on a "just-in-time" basis from various suppliers, and immediately sells the product to customers. The ARXX Group's business is seasonal; sales are slower in the winter when residential and commercial business slows, and increased funding is required during this time.

First Report, Receiver's Motion Record, Tab 2-C, 2.0, paras. 2, 3.

### (ii) The ARXX Group's Principal Indebtedness to Comerica Bank (the "**Bank**")

9. The application to appoint the Receiver was brought by the Bank, the ARXX Group's principal secured creditor. The ARXX Group was indebted to the Bank in the amount of approximately US\$3.6 million, as at December 9, 2013 (excluding fees, costs and expenses), pursuant to a loan agreement dated September 24, 2010, as amended (the "**Loan Agreement**").

First Report, 3.0, para. 1.

10. The Bank has committed to fund the Company's operations until the closing of this transaction. To the extent required, the Receivership Order authorizes the Receiver to borrow up to \$500,000 pursuant to Receiver's Certificates. Any such advances are secured by a charge on the assets of the ARXX Group subject only to the Receiver's Charge. As at the date of the Second Report, the Receiver has not required any such borrowings.

First Report, 3.1, para. 3.

11. According to the ARXX Group's accounts payable listings, unsecured obligations totaled approximately \$2 million as at December 9, 2013. Trade creditors are principally comprised of inventory suppliers and freight companies.

First Report, 3.2, para. 1.

12. As evidence of the ARXX Group's indebtedness owing to the Bank, the Receiver and its counsel have been provided with copies of the following documents:

- (a) a loan agreement dated September 24, 2010, among ARXX Building Products Inc., as borrower, the Bank, as lender, and ARXX Corporation, ARXX Building Products U.S.A. Inc., 924843 Ontario Inc., Hilltribe Homes Inc., ECB Holdings, LLC, APS Holdings, LLC, UNISAS Holdings, LLC, and Eco-Block International, LLC, as guarantor, as amended by the First Amendment to Loan Agreement dated September 15, 2011, the Second Amendment to Loan Agreement dated November 3, 2011, the Third Amendment to Loan Agreement dated February 9, 2012, the Fourth Amendment to Loan Agreement dated May 30, 2012, the Fifth Amendment to Loan Agreement dated October 17, 2012, the Sixth Amendment to Loan Agreement dated April 29, 2013, and the Seventh Amendment to Loan Agreement dated October 28, 2013;
- (b) a pledge and security agreement dated October 2012, between ARXX Inc. and the Bank, in relation to the Loan Agreement;
- (c) a general security agreement dated September 24, 2010, granted by ARXX Inc. to and in favour of the Bank;
- (d) a security agreement and interest pledge agreement dated September 24, 2010, among ARXX Corporation, ARXX Building Products U.S.A. Inc., ECB Holdings, LLC, APS Holdings, LLC, UNISAS Holdings, LLC, and Eco-Block International, LLC, as grantors, and the Bank;

- (e) a general security agreement dated September 24, 2010, granted by ECB Holdings, LLC, to and in favour of the Bank; and
- (f) the intellectual property security agreements each dated September 24, 2010, granted by each of ARXX Corporation, ARXX Building Products U.S.A. Inc., ECB Holdings, LLC, APS Holdings, LLC, UNISAS Holdings, LLC, and Eco-Block International, LLC, to and in favour of the Bank.

Second Report, Appendix G (Security Opinion).

**(iii) The ARXX Group's Sale and Marketing Process**

13. The Management of ARXX began a process of identifying and soliciting potential investors in and/or purchasers of the business in September of 2013. Certain strategic parties were approached in this process, including Airlite.

First Report, 4.0, para. 1.

Second Report, 3.1, para. 1.

14. Airlite was identified in September of 2013, at which point the ARXX Group's management began to discuss the terms of a potential sale. On September 19, 2013, Airlite executed a confidentiality agreement and commenced its diligence efforts. On November 12, 2013, Airlite delivered a letter of intent, setting out the proposed terms of a purchase of the business.

First Report, 4.0, para. 2.

15. Negotiations with Airlite were ongoing at the time of the commencement of the receivership proceedings and were significantly advanced. These negotiations were continued by the Receiver immediately following the Receiver's appointment. The Receiver's objective from the outset was to negotiate an Asset Purchase Agreement with Airlite that could be used as a "stalking horse" in the Sale Process.

First Report, 4.0, paras. 3, 5.

16. At the time of its appointment, the Receiver believed there were a number of reasons to pursue completion of negotiations with Airlite and to proceed by way of a stalking horse sale process, including:

- i) negotiations with Airlite were significantly advanced;
- ii) significant value of the ARXX Group consists of its customer relationships; announcing a sale agreement at the outset of the receivership proceedings best preserves the value of the ARXX Group in the circumstances;
- iii) a stalking horse process preserves the opportunity to seek a superior bid to the Stalking Horse APA while simultaneously avoiding the risk of expending time and resources to conduct a sale process that might prove unsuccessful; and
- iv) the Bank was supportive of proceeding in this manner.

First Report, 4.0, para. 4.

17. On December 19, 2013, the Receiver entered into the APA, which was to serve as a stalking horse agreement within the Sale Process. Details of the APA can be found in the Second Report at Section 3.3. The APA, the Sale Process and the Bidding Procedures were approved by this Honourable Court on December 27, 2013.

Second Report, 3.1, paras. 2, 3.

**(iv) The ARXX Group's Sale Process and Selection of the Purchaser**

18. Immediately after the approval of the Sale Process Order, the Receiver commenced the Sale Process by taking several steps, including:

- distributing an interest solicitation letter detailing the acquisition opportunity to approximately 100 parties, including parties that were previously identified and approached by the ARXX Group's Management;

- preparing a data room containing historical financial and other information, including employee data, supplier and customer information, product specifications and certain contracts and agreement, as well as a copy of the APA;
- requiring a form of confidentiality agreement to be executed by interested parties in order to obtain additional information, including a confidential information memorandum prepared by the Receiver and access to an online data room established by the Receiver;
- advertising the acquisition opportunity in *The Globe and Mail* (National Edition); and
- facilitating due diligence requests from interested parties.

Second Report, 3.1, para. 4.

19. Nine parties executed the confidentiality agreement and were provided access to the data room, which parties included several strategic parties operating in the ICF industry. In accordance with the Sale Process, no qualified bids were received by the bid deadline. As such, in accordance with the Bidding Procedures, no auction was held and the Purchaser was selected pursuant to the Stalking Horse Agreement.

Second Report, 3.2, para. 1.

20. On January 22, 2014, the Receiver sent a letter to Airlite confirming that it was the “successful bidder” and that, in accordance with the APA and the Sale Process Order, the Receiver would promptly file motion materials to apply for the Orders.

Second Report, 3.2, para. 2.

**(v) Need for Sealing Order**

21. The Receiver has prepared a liquidation analysis that is subject to the sealing request. This Confidential Appendix contains highly-sensitive commercial information of the ARXX Group and their related businesses and operations. There is no reasonable alternative to a sealing order that would prevent this sensitive information from becoming publicly available, which is necessary to preserve the integrity of the Sale Process and to avoid any prejudice that might be caused by publicly disclosing the confidential and commercially-sensitive information contained



in the liquidation analysis, including to the Receiver's liquidation of the "Excluded Assets" under the APA following completion of the transaction contemplated by the APA.

Second Report, 3.4, paras. 1-3.

**(vi) Prospective Distribution to the Bank**

22. The Receiver is requesting authorization to make a distribution to the Bank, on closing of the transactions contemplated in the APA, of US\$1.5 million from the sale proceeds, and authorizing the Receiver to make further distributions to the Bank at any time, and from time to time, following such closing (collectively, the "Distributions"), in an aggregate amount not to exceed the secured obligations of the ARXX Group to the Bank. The initial proposed distribution would leave sufficient funds in the Receiver's accounts to fund the outstanding matters in the receivership. All parties on the Service List were duly served with notice of the request for authorization to make such Distributions.

**PART III - ISSUES**

23. The Receiver's request for approval of the Orders raises the following issues for this Honourable Court:

- i) What is the legal test for approval of the APA and has it been met in the present circumstances?
- ii) Is a sealing of the Confidential Appendix warranted?
- iii) Is the Distribution appropriate at this time?

**PART IV - LAW AND ARGUMENT**

- i) **What is the legal test for approval of the APA?**

24. Receivers have the powers set out in the order appointing them. Receivers are consistently granted the power to sell property of a debtor, which is, indeed, the case under the Appointment Order.

25. Under Section 100 of the *Courts of Justice Act* (Ontario), this Honourable Court has the power to vest in any person an interest in real or personal property that the Court has authority to order be conveyed.

*Courts of Justice Act*, R.S.O. 1990, c. C-43, s. 100.

26. It is settled law that where a Court is asked to approve a sales process and transaction in a receivership context, the Court is to consider the following principles (collectively, the “*Soundair Principles*”):

- (a) whether the party made a sufficient effort to obtain the best price and to not act improvidently;
- (b) the interests of all parties;
- (c) the efficacy and integrity of the process by which the party obtained offers; and
- (d) whether the working out of the process was unfair.

*Royal Bank of Canada v. Soundair Corp.* (1991), 4 O.R. (3d) 1 (C.A.), para. 16, Commercial List Authorities Book.

*Skyepharm PLC v. Hyal Pharmaceutical Corp.* (1999), 12 C.B.R. (4<sup>th</sup>) 87 (Ont. S.C.J., appeal quashed, (2000), 47 O.R. (3d) 234 (C.A.)), para. 3, Receiver’s Brief of Authorities, Tab 1.

27. Absent clear evidence that a proposed sale is improvident or that there was an abuse of process, a Court is to grant deference to the recommendation of a receiver to sell a debtor’s assets. Only in such exceptional circumstances will a Court intervene and proceed contrary to the recommendation of its officer, the Receiver.

*Soundair*, para. 21.

*Skyepharma PLC*, para 3.

*Integrated Building Corp. v. Bank of Nova Scotia (1989)*, 75 C.B.R. (N.S.) 158 (Alta. C.A.), paras. 1-3, Receiver's Brief of Authorities, Tab 2.

*Battery Plus Inc. (Re.)*, [2002] O.J. No. 731, paras. 2-3 and 22-23, Receiver's Brief of Authorities, Tab 3.

28. Moreover, if a sale process leading up to a proposed asset sale is determined to be fair and reasonable, "a court will not lightly interfere with the exercise of...commercial and business judgment in the context of an asset sale."

*Re AbitibiBowater Inc.*, 2010 QCCS 1742, Receiver's Brief of Authorities, Tab 4, para. 71.

29. In the case of *Re Grant Forest Products Inc.*, Justice Campbell held that, "once a process has been put in place by Court Order for the sale of assets of a failing business, that process should be honoured, excepting extraordinary circumstances."

*Re Grant Forest Products Inc.*, 2010 ONSC 1846 [Comm. List], Receiver's Brief of Authorities, Tab 5, paras. 10-11.

30. In the case of *Re. PCAS Patient Care Automated Services Inc.*, Justice Brown considered a request for sale approval, vesting and distribution orders in the context of a stalking horse bid when a sale and investor solicitation plan ("SISP") had already been approved by the Court. In holding that the process leading to the proposed sale was reasonable, Justice Brown noted several times the importance of the fact that the SISP had already been approved by the Court. He held that, "I am satisfied that the SISP run by the Applicants, with the extensive involvement of the Monitor, complied with the terms of the SISP approved in my May 14 Order," and that, "The court-approved SISP would be stood on its head were [the acceptance of a late bid] allowed." Finally, Justice Brown held that, "In sum, the compliance of the Applicants with the court-approved SISP...led me to conclude that the process leading to the proposed sale was reasonable."

*Re. PCAS Patient Care Automated Services Inc.*, 2012 ONSC 3367 (Ont. S.C.J. [Comm. List]), Receiver's Brief of Authorities, Tab 6, paras. 42, 44, 47.

31. In the present case, the Sale Process was designed with significant input from the Receiver in order to maximize the purchase price that could be obtained for the Purchased Assets of the ARXX Group for the benefit of all stakeholders, and was approved along with the Bidding Procedures by this Honourable Court on December 27, 2013.

Second Report, 3.1, para. 3.

32. No party has objected to the Sale Process, and the Receiver is satisfied that the Sale Process was fair, transparent and reasonable. There was also appropriate consultation of the Bank, the principal secured creditor of the ARXX Group, prior to and throughout the Sale Process.

Second Report, 3.5, para. 1.

33. In the present case, evidence has been presented in the Second Report to demonstrate that each of the *Soundair* Principles has been satisfied, and that the economic realities of the business vulnerability and financial position of the ARXX Group militate in favour of approval of the issuance of the Orders.

**(a) *Efforts to Obtain the Best Price***

34. As detailed above, the ARXX Group engaged in a marketing process that culminated in the Stalking Horse Agreement, and the subsequent Sale Process and resulting APA. The goal of the Sale Process was to obtain the best price possible, which was helped by the Stalking Horse Agreement. The Receiver is of the view that the market for the Purchased Assets was sufficiently canvassed through these sales and marketing processes, and that parties who may have an interest were given a reasonable opportunity to review the opportunity, conduct due diligence, and make an offer. The Receiver believes that the purchase price under the APA is fair and reasonable under the current circumstances, and that further marketing efforts are unlikely to result in a superior transaction.

Second Report, 3.5, para. 1.

**(b) *The Interests of All Parties***

35. The Sale Transaction provides for the best possible outcome for all parties with an economic interest in these proceedings. The Bank is the principal secured creditor of the ARXX Group. No other creditor could reasonably expect a more favourable outcome from another process or manner of proceeding. Absent the completion of the Sale Transaction, there would not be funding available to continue the ARXX Group's operations. The Sale Transaction is also in the best interests of the ARXX Group's existing customers and suppliers, and eliminates the uncertainty for stakeholders regarding the status of the business, operations and viability of the ARXX Group. The Sale Transaction also contemplates the continuation of the ARXX Group's operations and is expected to preserve employment for certain of the ARXX Group's key sales executives.

Second Report, 3.5, para. 1; 4.0, para. 1.

**(c) *The Efficacy and Integrity of the Process***

36. The Purchased Assets were extensively marketed. All interested parties were given the opportunity to participate in the Sale Process and were provided with access to data rooms upon executing the appropriate confidentiality arrangements. The Stalking Horse Agreement was negotiated in good faith and is the best and highest price under the circumstances. The appropriateness of this is evidenced by the Second Report. No one objected to the Sale Process or the Bidding Procedures at the time they were previously approved by this Honourable Court, and the Receiver has implemented and adhered to the Sale Process and the Bidding Procedures.

Second Report, 3.1, paras. 3, 4; 3.5, para. 1.

**(d) *Whether the Process was Unfair***

37. The Sale Process and Bidding Procedures were approved pursuant to an Order of this Honourable Court dated December 27, 2013. The Receiver had direct involvement in negotiating the terms and conditions of the APA, and believes they are fair and reasonable under the current circumstances. The purchase price obtained for the Purchased Assets under the APA is the highest price that could be obtained pursuant to the Sale Process, as no other offers were

submitted under the Sale Process and the value of the Sale Transaction significantly exceeds the liquidation value of the ARXX Group's assets.

Second Report, 3.1, para. 3; 3.5, para. 1.

38. Based on the foregoing, it is clear that the proposed Sale Transaction contemplated under the APA satisfies the *Soundair* Principles.

**ii) Is a sealing of the Confidential Appendix warranted?**

39. The Receiver requests that the Confidential Appendix be sealed until further order of this Honourable Court.

40. The Supreme Court of Canada in *Sierra Club of Canada v. Canada (Minister of Finance)*, held that a sealing order should only be granted when:

- (a) an order is needed to prevent serious risk to an important interest because reasonable alternative measures will not prevent the risk; and
- (b) the salutary effects of the order outweigh its deleterious effects, including the effects on the right to free expression, which includes public interest in open and accessible court proceedings.

*Sierra Club of Canada v. Canada (Minister of Finance)*, [2002] 2 S.C.R. 522, para. 53, Commercial List Authorities Book.

See also *Re Nortel Networks Corp.* (2009), 56 C.B.R. (5th) 224, 2009 CarswellOnt 4838 (Ont.Sup. Ct. J.) [Commercial List], paras. 38 - 39, Receiver's Brief of Authorities, Tab 7.

41. The Confidential Appendix subject to the sealing request is a liquidation analysis that contains highly sensitive commercial information of the ARXX Group and their related businesses and operations. Importantly, it contains the estimated liquidation value of certain assets that are excluded from the APA and that will be subsequently liquidated by the Receiver. There is no other reasonable alternative to preventing this information from becoming publicly available. The sealing request has been tailored to this transaction and all of the terms of the

APA have been disclosed herein. The salutary effects of maintaining the confidential nature of the Confidential Appendix greatly outweighs the deleterious effects.

Second Report, 3.4, paras. 1-3.

*Re SkyPower Corp.*, 2009 CarswellOnt 9415 (Ont. Sup. Ct. J.)  
[Commercial List], para. 14, Receiver's Brief of Authorities, Tab 8.

**iii) Are the Distributions appropriate at this time?**

42. The Receiver submits that the Distributions are appropriate because there would be sufficient funds remaining to provide for the ongoing administration of the receivership and completion thereof, as set out in the Second Report.

Second Report, 4.3, paras. 1-3.

43. Specifically, the aggregate funds expected to be held by the Receiver following closing of the Sale Transaction is estimated by the Receiver to be approximately US\$3.2 million. If the Distribution in the amount of US\$1.5 million is paid to the Bank, the balance of the funds held by the Receiver would be US\$1.7 million.

Second Report, 4.3, para. 3.

44. The Orders sought also authorize the Receiver to make additional distributions to the Bank without further Court Order. This request is to eliminate the costs that would otherwise be incurred to return to Court for the sole purpose of authorizing the Receiver to make further distributions to the Bank. The Receiver will continue to be mindful of the costs to completion of these proceedings prior to making any such distributions to the Bank.

Second Report, 4.3, paras.1-4.

45. The Receiver is not aware of any claim that may rank in priority to the Bank for which there would not be sufficient funds remaining in the Receiver's accounts after funding the proposed US\$1.5 million distribution. In addition:

- The Appointment Order provides for a charge on the property in favour of the Receiver and its counsel for their fees and disbursements. The Receiver is

satisfied that the remaining funds and the realizable value of the excluded assets from the Sale Transaction are sufficient to cover the Receiver's Charge;

- The Appointment Order Authorizes the Receiver to borrow up to \$500,000 and provides for a corresponding charge on the property in favour of the Receiver. No amounts have been borrowed by the Receiver during these proceedings and the Receiver does not anticipate borrowing any funds during these proceedings;
- The other secured creditors identified in the Security Opinion appended to the Second Report have either been fully repaid, or will have their leased equipment returned to them; and
- Based on the ARXX Group's books and records, the Receiver understands that there are no potential deemed trust amounts for employee claims, source deductions or harmonized sales tax owing to Canada Revenue Agency relating to the pre-filing and/or post-filing periods.

Second Report, 4.3, para. 3.


46. Based on the foregoing, the Receiver submits that the Distributions are appropriate.

#### **PART V - ORDER REQUESTED**

47. For the reasons set forth herein and in the Second Report, the Receiver respectfully requests the granting of the Orders in the form contained in the Receiver's motion record.



ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22 day of January, 2014.

per: 

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Inc., in its capacity as the Court-appointed  
receiver for ARXX Building Products Inc.,  
ARXX Corporation, ARXX Building Products  
U.S.A. Inc., ECB Holdings, LLC, APS Holdings,  
LLC, UNISAS Holdings, LLC, and Eco-Block  
International, LLC

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**TAB A**

**SCHEDULE "A"**  
**LIST OF AUTHORITIES**

1. *AbitibiBowater Inc., Re*, 2010 QCCS 1742.
2. *Battery Plus Inc. (Re.)*, [2002] O.J. No. 731 (S.C.J.).
3. *Integrated Building Corp. v. Bank of Nova Scotia* (1989), 75 C.B.R.(N.S.)158 (Alta. CA).
4. *Nortel Networks Corp., Re*, (2009), 56 C.B.R. (5th) 224, 2009 CarswellOnt 4338 (Ont.Sup. Ct. J.) [Commercial List].
5. *Re Grant Forest Products Inc.*, 2010 ONSC 1846 [Commercial List].
6. *PCAS Patient Care Automated Services Inc., Re.*, 2012 ONSC 3367 (Ont. S.C.J. [Comm. List]).
7. *Royal Bank of Canada v. Soundair Corp.* (1991), 4 O.R. (3d) 1 (C.A.).
8. *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002] 2 S.C.R. 522.
9. *Skyepharma PLC v. Hyal Pharmaceutical Corp.* (1999), 12 C.B.R. (4<sup>th</sup>) 87 (Ont. S.C.J., appeal quashed, (2000), 47 O.R. (3d) 234 (C.A.)).
10. *SkyPower Corp., Re*, 2009 CarswellOnt 9415 (Ont. Sup. Ct. J.) [Commercial List].

**TAB B**

**SCHEDULE “B”  
RELEVANT STATUTES**

1. *Bankruptcy and Insolvency Act* (R.S.C., 1985, c. B-3), s. 243

**Court may appoint receiver**

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

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person’s or bankrupt’s business; or
- (c) take any other action that the court considers advisable.

**Restriction on appointment of receiver**

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

- (a) the insolvent person consents to an earlier enforcement under subsection 244(2); or
- (b) the court considers it appropriate to appoint a receiver before then.

**Definition of “receiver”**

(2) Subject to subsections (3) and (4), in this Part, “receiver” means a person who

- (a) is appointed under subsection (1); or
- (b) is appointed to take or takes possession or control — of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt — under
  - (i) an agreement under which property becomes subject to a security (in this Part referred to as a “security agreement”), or
  - (ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

**Definition of “receiver” — subsection 248(2)**

(3) For the purposes of subsection 248(2), the definition “receiver” in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

**Trustee to be appointed**

(4) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

**Place of filing**

(5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

**Orders respecting fees and disbursements**

(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver’s claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

**Meaning of “disbursements”**

(7) In subsection (6), “disbursements” does not include payments made in the operation of a business of the insolvent person or bankrupt.

2. *Courts of Justice Act*, R.S.O. 1990, c. C-43, s. 100, 101.

**Vesting orders**

100. A court may by order vest in any person an interest in real or personal property that the court has authority to order be disposed of, encumbered or conveyed.

**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.

COMERICA BANK

and

ARXX BUILDING PRODUCTS INC., ARXX CORPORATION,  
ARXX BUILDING PRODUCTS U.S.A. INC., ECB HOLDINGS,  
LLC, APS HOLDINGS, LLC, UNISAS HOLDINGS, LLC, and ECO-  
BLOCK INTERNATIONAL, LLC  
RESPONDENTS

Court File No. CV-13-10353-00CL

APPLICANT

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

Proceedings commenced in Toronto

**FACTUM  
(SALE APPROVAL)**

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ARXX Corporation, ARXX Building Products  
U.S.A. Inc., ECB Holdings, LLC,  
APS Holdings, LLC, UNISAS Holdings, LLC,  
and Eco-Block International, LLC