

Court File No. CV-13-643-00

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

306440 ONTARIO LTD.

Applicant

- and -

782127 ONTARIO LTD. o/a ALRANGE CONTAINER SERVICES

Respondent

**FIRST REPORT TO COURT
OF PADDON + YORKE INC.
IN ITS CAPACITY AS RECEIVER OF THE RESPONDENT**

April 26, 2013

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APPENDICES

1. Appointment Order of The Honourable Justice Tzimas dated February 15, 2013.
2. Memo to File, prepared by Donald A. Bruce, Senior Manager with Paddon + Yorke Inc., February 15, 2013
3. Appraisal conducted by Infinity Asset Solutions, dated February 22, 2013
4. Notice of Receiver – Sub-sections 245(1) and 246(1) of the *Bankruptcy and Insolvency Act*
5. Copy of Analysis of Cash, Bank and Accounts Receivable Transactions for the period January 1 to February 15, 2013
6. Appraisal conducted by Infinity Asset Solutions, dated January 17, 2013
7. Receiver's First Interim Invoice up to April 15, 2013
8. Fees of Counsel up to April 15, 2013
9. Interim Statement of Receipts and Disbursements – Consolidated Receiver's Trust Account as at April 19, 2013

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B E T W E E N:**306440 ONTARIO LTD.****Applicant****- and -****782127 ONTARIO LTD. o/a ALRANGE CONTAINER SERVICES****Respondent**

**FIRST REPORT TO COURT OF PADDEN + YORKE INC. IN ITS CAPACITY AS
RECEIVER OF THE RESPONDENT**

April 26, 2013**INTRODUCTION AND PURPOSE OF THE FIRST REPORT**

1. On February 15, 2013, The Honourable Justice Tzimas issued an Order (the "Appointment Order") appointing Paddon + Yorke Inc. ("P+Y") as Receiver (the "Receiver") of all assets, undertakings and properties of 782127 Ontario Ltd. o/a Alrange Container Services ("Alrange" or the "Company"). A copy of the Appointment Order is attached as **Appendix 1**.
2. This first report (the "First Report") is filed by the Receiver in connection with a Motion being made to the Ontario Superior Court of Justice seeking an Order
 - (a) approving this First Report and the actions and activities of the Receiver set out in this First Report;
 - (b) approving an interim distribution to the Company's secured creditor, 306440 Ontario Ltd ("306440"), subject to an appropriate reserve for the fees and disbursements of the Receiver and its counsel;
 - (c) an order approving the fees of counsel for the Receiver; and,
 - (d) an order approving the first interim draw for fees of the Receiver.

3. In preparing this First Report, the Receiver has been provided with, and in making comments herein, has relied upon certain unaudited financial information, the Company's books and records and other information provided by the representatives of the Company and discussions with certain of the Company's employees. The Receiver has not audited, reviewed, or otherwise attempted to verify the accuracy and completeness of such information and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of such information contained in this First Report.

RECEIVER'S ACTIVITIES

4. The Receiver's actions since the Appointment Order related primarily to the following activities detailed below:

- (i) Alrange operated as a sales, storage and container refurbishment facility for shipping containers. It conducted its principal operations from leased premises at 44 Medulla Avenue in Etobicoke, Ontario. It also leased an outside storage facility at 51 Manstor Drive in Etobicoke at which it stored shipping containers for its various customers. Alrange had vacated the Manstor Drive location prior to the appointment of the Receiver. Late on the afternoon of February 15th, the Receiver attended at the Company's Medulla Avenue facility but elected not to take possession of the Company's facility consisting of approximately 45,000 square feet of combined shop and office space, and approximately six acres for outside storage of shipping containers. The operations of Alrange appeared to have been completely discontinued, although several former employees were on hand and were busily removing debris, piling up quantities of scrap metal, segregating books and records accumulated over the years, and generally emptying the building under the supervision of Chris Cornwall, President of Alrange.
- (ii) Although the Receiver elected not to go into possession of either of the premises, it did take an inventory of the chattels that were on hand at the time, and reviewed the list together with photographs. Attached as

Appendix 2 is a copy of an internal Memo to File, prepared by Donald A. Bruce, Senior Manager with Paddon + Yorke Inc., which summarizes the results of the initial attendance of the Receiver at Alrange to inspect the building and premises in connection with the taking of an inventory of the assets and to arrive at a decision whether to take possession.

- (iii) The Receiver was advised that a special arrangement had been entered into between Alrange and the Landlord to permit Alrange to continue to use the premises up to, and including, Friday, February 22nd and for which Alrange had tendered a special payment to the Landlord in the amount of \$6,540.50. This additional week's time would enable the Receiver to retrieve certain remaining assets still on site, including books and records, but without the attendant need for the Receiver to take possession. In view of the circumstances, the Receiver authorized the bank to honour the payment to the Landlord.
- (iv) The Receiver photographed the assets and took an inventory of the tangible personal property of Alrange, including goods that were believed to belong to third parties.
- (v) February 18, 2013 was a statutory holiday and no activities took place. However the Receiver attended frequently at 44 Medulla Avenue from February 19th through to February 22nd to oversee progress of the clean up of the office, production area and grounds. The Receiver monitored the movements of the remaining storage containers being removed from the site as well as the sale of the remaining stock of scrap metal.
- (vi) The Company was unable to contact three customers to ask them to move their containers off-site, but it was ultimately able to arrange temporary storage for those containers at a third party location.
- (vii) The Receiver observed that some Company assets appeared to be unaccounted for and engaged the services of Infinity Asset Solutions

("Infinity") to arrange to inspect and appraise the contents of non-customer containers at the third party location. A copy of the Infinity report is attached as Appendix 3. That inspection revealed that certain pieces of miscellaneous shop equipment with an appraised value of approximately \$7,750.00 had been placed into containers for what appeared to be future sales.

- (viii) The Receiver also arranged for Infinity to pick up the last piece of unsold equipment, a 2002 Vibromax 605 Roller, to be placed into a future auction.
- (ix) The Receiver met with the Landlord of 44 Medulla Avenue on February 19th to inform him of the Receivership and to discuss generally the nature and timing of the events that the Receiver expected to take place over the next four days. The Receiver obtained a copy of the lease agreement and continued to stay in contact with the Landlord from time to time during the period.
- (x) On February 15th, the Receiver contacted Toronto Dominion Bank and arranged for the Alrange bank accounts to be frozen to the extent that no further debit transactions should be honoured by the bank without prior approval of the Receiver. In this regard, the Receiver authorized the bank to honour one debit, namely the Ceridian charge to cover the final payroll to be processed on Thursday, February 21st. Additionally, because many of Alrange's customers pay their accounts receivable via electronic funds transfer, the Receiver elected to keep the operating bank accounts in place to ensure that such payments can continue to be collected. Additionally, the Receiver also opened a trust account for accounts receivable payments received by cheque or methods other than an electronic funds transfer.
- (xi) On February 22nd, the Landlord arrived to change the locks at 44 Medulla. The last of the clean up was completed, the waste companies

were directed to send their final bills to the Receiver, the employees who continued to work during that week were paid, and the premises were released to the Landlord in accordance with the arrangement described in paragraph 4(iii) above.

- (xii) The Receiver conducted a search of the Ontario Personal Property Security Registry to identify potential secured parties with claims against tangible personal property. Included therein were a number of registrations from various parties to secure several vehicles and three shipping container stackers all of which appear to have been leased by Alrange. With the exception of a used 2000 Hyster Model HR45EC container stacker, all leased property had been returned to the various lessors prior to the appointment of the Receiver. The stacker remaining, in respect of which Alrange signed a Voluntary Repossession Acknowledgement dated February 14, 2013 was also returned by the Receiver to the lessor after determining that there was no residual equity available for the Receiver.
- (xiii) The Receiver contacted Canada Post and requested that the mail of Alrange be redirected to the Receiver's address.
- (xiv) The Receiver contacted Toronto Hydro, Enbridge Gas, 407 ETR, and Bell Canada to ensure that the respective accounts had been cancelled.
- (xv) The Receiver contacted Home Depot and Staples to ensure that the credit card accounts were cancelled.
- (xvi) The Receiver contacted KRG Insurance Brokers and Intac Insurance to notify them of the Receivership, and to seek their confirmation of cancellation of insurance coverage.
- (xvii) The Receiver has had numerous telephone and email communications with creditors and lawyers representing creditors.

- (xviii) All relevant documentation relating to the proceedings has been posted on the Receiver's website at <http://www.paddonyorke.com/current-insolvency-assignments/>
- (xix) The Receiver prepared the final stub-period returns for HST and EHT and has made arrangements with the Canada Revenue Agency to conduct a trust audit as soon as possible.
- (xx) The Receiver reviewed the sales invoices pertaining to the asset liquidation which occurred between January 1, 2013 and February 15, 2013 and compared the actual sales values to the values supplied by Infinity.

NOTICE OF RECEIVER

5. On February 25th, the Receiver did give notice by ordinary mail to every known creditor of the Notice of Receiver pursuant to sections 245 (1) and 246 (1) of the *Bankruptcy and Insolvency Act*, a copy of which is attached as **Appendix 4**.

THE BANK ACCOUNTS ANALYSIS

6. The Receiver discovered that the Company had three bank accounts: two in Canadian funds and one in U.S. funds. As of February 15th, the two Canadian dollar accounts totaled \$457,944.64 and the U.S. dollar account was \$178.16. Further to the action taken in paragraph 4(x), the Receiver took the following additional steps:

- (i) The Receiver reviewed the Company bank account transactions for the period January 1, 2013 through to February 15, 2013 in order to determine the composition of the Company cash position. A copy of the analysis is included as **Appendix 5**.
- (ii) The Receiver reviewed the bank deposits, wire transfers and cheques as well as matched the deposits to the associated invoices.

- (iii) The Receiver determined that of the total funds in the Canadian dollar accounts, a sum of \$430,912.86 related to the liquidation transactions (see below) which had occurred in January and February. The remaining net balance of \$27,209.94 was attributable to regular operations.

THE SALE AND LIQUIDATION OF ASSETS

7. The Receiver was informed by the President, Chris Cornwall, that effective January 1, 2013, Alrange ceased operations and embarked on a program to liquidate its assets. The Company engaged the services of Infinity Assets Solutions ("Infinity") to provide an itemized appraisal of all the Company's assets. A copy of this report is included as Appendix 6.

8. The Receiver reviewed each invoice from asset sales during the period from January 1, 2013 to February 15, 2013 and compared the sale value to the appraised values provided by Infinity. The sale amounts obtained by the Company were consistent with the appraised values. In aggregate, realizations totaled approximately 91% of the overall appraised amounts.

THE SECURED CREDITOR CLAIM

9. The Receiver was appointed as a result of the application of 306440, a secured creditor of the Company. The total amount claimed by 306440 is \$747,102.17 as at February 15, 2013

10. In order to determine whether the Company was, in fact, indebted to 306440, and to what extent, the Receiver undertook a number of investigatory steps, including the following:

- (i) The Receiver reviewed the unaudited Notice to Reader financial statements of Alrange for the fiscal year ended February 29, 2012 prepared by the firm Prapavessis-Jacek, Chartered Accountants. The Receiver noted that the loans from 306440 to Alrange appearing on the financial statements continued to be properly recorded in the Alrange books of record subsequent to that date.
- (ii) The Receiver reviewed the unaudited financial statements of 306440 for the fiscal year ended April 30, 2012 which were also prepared by the

firm of Prapavessis-Jacek, Chartered Accountants and noted a corresponding receivable from Alrange in the same amount.

- (iii) The Receiver noted from the foregoing review that as at February 29, 2012, a sum of \$398,918.13 was owed by Alrange to 306440.
- (iv) The Receiver also reviewed the working paper continuity analysis prepared by Prapavessis-Jacek of the advances made by 306440 and the repayments made by Alrange for the period from April 6, 2010 through to February 28, 2012. The analysis showed that 306440 had made two cash injections during that time -- one for \$248,918.13 on April 6, 2010 and one for \$340,000 on September 26, 2011 -- and that Alrange had continued to make regular and consistent repayments on these loans.
- (v) According to the Alrange accounting records, additional loans in the aggregate amount of \$570,000 were advanced from 306440 to Alrange during the months of September and October 2012. The Receiver reviewed the bank deposits and bank statements to determine that the funds were advanced and properly recorded in the books, and the Receiver ascertained that there were, in fact, three loans totaling \$570,000 made during that period: one in September 2012 in the amount of \$100,000 and two in October in the amounts of \$120,000 and \$350,000.
- (vi) According to the accounting records of Alrange, a total of \$221,815.96 in principal was repaid during the period of March 1st 2012 through to February 1st, 2013. The Receiver reviewed the Alrange bank statements and cancelled cheques in order to satisfy itself that the payments appear to have been made and recorded properly.

RETENTION OF LEGAL COUNSEL/VETTING OF SECURITY

11. The Receiver engaged the services of Cassels Brock & Blackwell LLP as legal counsel (“Counsel”) to the Receiver. Counsel reviewed and confirmed the security held by the Secured Creditor on the property and assets of Alrange to be valid and enforceable, subject to the usual assumptions and qualifications.

CREDITOR CLAIMS – OTHER

12. Two suppliers of shipping containers have claimed a proprietary interest in certain containers which had been supplied to Alrange and/or the proceeds from the sale of those containers pursuant to, or in conjunction with, a form of agreement known in the industry as a “Depot Agreement”.

Claim of Textainer Equipment Management Limited (“Textainer”)

- (i) The Receiver has been advised by legal counsel for Textainer that a number of shipping containers have been entrusted to Alrange in accordance with the terms and conditions of a Depot Agreement dated September 1, 2000. Those containers allegedly were in Alrange’s possession for storage, repair and/or resale purposes. The subject containers were not on hand or remaining at the Alrange premises as at the date of Receivership and accordingly, Textainer advises that it apprehends that the containers “have been improperly disposed of, if not converted to a use inconsistent with Textainer’s ownership of the same.” Textainer contends it has a claim against Alrange in the net amount of USD\$169,438.69.
- (ii) Textainer has further advised the Receiver that it may wish to seek an order to lift the stay provided for in the Appointment Order to enable Textainer to advance a claim against Alrange and hence, Textainer has served a Notice of Appearance with respect to this Receivership proceeding.

Claim of Container Applications Limited ("CAI")

- (iii) CAI of San Francisco, California, supplied shipping containers to Alrange pursuant to a Depot Agreement (also referred to as the "Container Yard Agreement") dated October 11, 2001. CAI contends that certain containers which had been shipped to Alrange were subsequently sold by Alrange to newterra ltd (lower case) with an aggregate invoiced value of USD\$67,200.00. CAI asserts that the containers at issue are owned outright and that Alrange does not, nor ever had, any ownership interest in them. On the basis of that assertion, CAI had demanded payment directly from Alrange's customer, newterra ltd.
- (iv) Based on searches performed by Counsel, CAI did not perfect by registration any security interest in the containers.
- (v) newterra ltd is indebted to Alrange in the amount of \$263,528.30 which sum includes the USD\$67,200.00 for shipping containers newterra ltd believes it has purchased from Alrange. To date, no monies have been received by the Receiver from newterra ltd.
- (vi) At the direction of the Receiver, counsel has made payment demand upon newterra for the full amount of the \$263,528.30 owing. To date, no amount has been received.

**PAYROLL AND WAGE EARNER PROTECTION PROGRAM ACT ("WEPPA")
MATTERS**

13. The Receiver learned that all employees had been terminated effective February 15, 2013 and that the outstanding amounts owing to the employees consisted of the remaining wages and vacation pay for those employees who had worked the previous two weeks. The Receiver understood that the final pay cheques and the remaining Records of Employment would be processed by Ceridian Payroll Services the following week. Accordingly, the Receiver took the following steps:

- (i) The Receiver authorized the bank to honour the payment to Ceridian to cover the remaining wages and vacation pay.
- (ii) The Receiver verified the records to ensure that the 2012 T-4's had previously been processed by Ceridian and it reviewed the Company records to ensure there was no outstanding liability for unpaid wages and unpaid vacation pay. The Receiver then prepared the calculations as required pursuant to WEPPA.
- (iii) On February 26th, by ordinary mail, the Receiver contacted the employees who had been terminated between January 1st and February 15th 2013 to advise them of their claim under the WEPPA. Each employee was invited to review the Proof of Claim prepared on their behalf by the Receiver, and, if in agreement, to sign and return it to the Receiver.
- (iv) To date, the Receiver has received 30 of the 34 eligible employees' Proofs of Claim, and registered the Receivership of each of those Proofs of Claim with Service Canada. The employees who filed Proofs of Claim were then sent a letter setting out the process by which they could apply for WEPPA benefits directly with Service Canada.
- (v) The Receiver contacted Canada Revenue Agency and requested a trust audit of the Company's payroll be scheduled.

ACCOUNTS RECEIVABLE

14. The accounts receivables which were listed on the books and records of the Company as at the date of Receivership were in the amounts of CAD\$626,205.29 and USD\$22,474.70.

15. The Receiver engaged the services of the former Alrange Director of Finance to assist with the collection of the accounts receivable and in connection with various other tasks in the administration of this Receivership.

16. The Receiver retrieved from the Company's accounting system the customer statements and invoices and contacted each customer by ordinary mail, advised of the Receivership and their obligation to settle the account forthwith.

17. The Receiver has made extensive efforts to collect the accounts receivable including numerous phone calls, emails and faxes. To date, these collection efforts have realized a sum of approximately \$233,312.67 from forty-one customers.

18. There is one large account in the amount of \$263,528.30 which is owed by a single customer, newterra ltd. As noted above, efforts to collect this amount continue.

19. At present, a sum of approximately \$92,000.00 remains outstanding from approximately twenty-one customers, not including newterra ltd.

20. Based on the collection efforts to date, the Receiver anticipates that approximately \$55,000.00 of the original listed accounts receivable may prove to be uncollectible.

MAJORITY SHAREHOLDER – AMOUNTS DUE TO ALRANGE

21. Based on a review of the Company's books and records, it would appear that Chris Cornwall, the president, director and majority shareholder of record is indebted to Alrange as follows:

- (i) For an amount of approximately \$10,000.00 in cash sales of scrap metal made in the period immediately prior to the Receivership; and,
- (ii) For a net amount of \$13,006.44 comprising sundry transactions since February 28, 2012.

22. In April, via registered mail, the Receiver sent a second request for payment to Mr. Chris Cornwall. The Receiver has an acknowledgement of receipt from Canada Post and is awaiting a reply from Mr. Cornwall.

SALE OF REMAINING ASSETS

23. As noted in paragraphs 4 (vii) and 4 (viii) above, the following assets remain to be sold:

- (i) A 2002 Vibromax 605 Roller with an appraised value of \$15,000.00; and,
- (ii) A quantity of shop equipment and tools appraised at \$7,750.00.

The Receiver anticipates that these assets will be dealt with before the end of May 2013.

FIRST INTERIM DRAW - PROFESSIONAL FEES AND COSTS OF THE RECEIVER

24. A significant portion of the administration of this Receivership is now complete.

- (i) The time charges for the professional services of the Receiver for the period up to April 15, 2013 are as follows:

<u>Professional Staff</u>	<u>Rate</u>	<u>Hours</u>	<u>Fees</u>
John F. Delo, President	400.00	4.4	\$ 1,760.00
Lambert Huizingh, Senior Vice President	390.00	107.0	41,730.00
Sonya Strand, Senior Manager	250.00	6.5	1,625.00
Donald A. Bruce, Senior Manager	225.00	29.9	6,727.50
David Wallace, Technician	125.00	33.0	4,125.00
Briana Bolden, Technician	100.00	6.0	<u>600.00</u>
			\$ 56,567.50
		HST	<u>7,353.71</u>
		Interim total	\$ <u>63,921.21</u>

- (ii) Included therein are professional services in the approximate amount of \$10,515.00 (before HST) incurred in connection with pre-receivership and other preparatory activities, including the preparation of the application materials in support of the Appointment Order and other matters incidental to the appointment of the Receiver.
- (iii) Pursuant to paragraph 19 of the Appointment Order, it is the Receiver's intention to apply funds from the interim receipts of the Receivership as interim advances on the fees and disbursements of the Receiver and its counsel. The Receiver will seek approval of the payment of its fees and disbursements, including the legal fees and disbursements of its counsel, from the Court once the administration of the Receivership is completed and it seeks discharge.

25. A copy of the Receiver's invoice covering the period up to and include April 15, 2013 is attached as **Appendix 7** to this Report.

FEES OF COUNSEL

26. The fees of Counsel for the period up to and including April 15, 2013 are in the total amount of \$11,148.13, including HST. A copy of the invoice rendered by counsel is attached as **Appendix 8**.

INTERIM RECEIPTS AND DISBURSEMENTS (February 18 to April 19, 2013)

27. A copy of the Receiver's Interim Statement of Receipts and Disbursements for the estate for the period from February 15th to April 19th is attached hereto as **Appendix 9**. The highlights are as follows:

- (i) The Receiver realized \$459,883.15 in respect of the cash on hand and in the bank accounts;
- (ii) Additional receipts realized in the period were a sum of \$235,178.72;
- (iii) Disbursements during the period (excluding any professional fees and costs of the Receiver) were a sum of \$55,084.19; and,
- (iv) The balance in the Receiver's trust account is a sum of \$615,287.31 and is in addition to the three Alrange bank accounts which total \$24,690.37.

PROPOSED INTERIM DISTRIBUTION

28. As noted elsewhere in this report, 306440 is owed a sum of \$747,102.17 not including certain legal costs incurred by 306440 to realize on its Security and which are properly recoverable by 306440 pursuant to the General Security Agreement granted to it.

29. The Receiver is not aware of any creditor having a claim which ranks in priority to the security of 306440 Ontario Ltd., including any deemed trust claims.

30. The Receiver therefore recommends an interim distribution to 306440 Ontario Ltd. of approximately \$500,000.00. With the collection of the accounts receivables remaining, the Receiver also recommends that any additional recoveries realized by the Receiver and funds on hand, net of an appropriate reserve for the fees and disbursements of the Receiver and its counsel, may be distributed to 306440 Ontario Ltd. as further distributions without further Order of this Court.

31. Accordingly, the Receiver seeks approval from this Honourable Court for the following interim distribution of funds currently on hand:

Funds on hand as at April 19, 2013	\$639,977.68
Less:	
Interim distribution to 306440 Ontario Ltd	500,000.00
Interim Fees of Receiver, inclusive of HST	63,921.21
Provision for Receiver's legal fees and cost	11,148.13
 Balance of funds on hand after proposed distribution	 <u>\$64,908.34</u>

32. The Receiver believes there is a reasonable expectation that 306440 will be paid in full, including the legal costs associated with its recovery, upon the further collection of the amounts owing by newterra ltd, (paragraph 12 (vi)), the collection of the other outstanding accounts receivable (paragraph 19) and the amounts owing by the majority shareholder (paragraph 21).

CONCLUSION

33. Subject to further recoveries on the accounts receivable and the sale of the remaining Corporate Assets, the administration of this Receivership is otherwise largely complete.

34. The Receiver respectfully requests an Order of this Honourable Court:

- (i) approving the activities of the Receiver set out in this First Report;
- (ii) approving both an interim distribution to the Company's Secured Creditor, 306440 Ontario Ltd. and on-going future distributions and subject to an appropriate reserve for the fees and disbursements of the Receiver and its counsel;
- (iii) approving the first interim draw of the Receiver for its fees, inclusive of HST, subject to final taxation by the Court; and,
- (iv) approving the fees and disbursements, inclusive of HST, of the Receiver's Counsel incurred to date.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26th day of April, 2013

**Paddon + Yorke Inc. in its capacity as
court-appointed receiver of 782127
Ontario Ltd. o/a Alrange Container
Services**

Per: _____


Lambert Huizingh, CIRP