

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

306440 ONTARIO LTD.

Applicant

- and -

782127 ONTARIO LTD. O/A ALRANGE CONTAINER SERVICES

Respondent

**SUPPLEMENTARY MOTION RECORD OF THE RECEIVER
(Returnable May 9, 2013)**

May 8, 2013

CASSELS BROCK & BLACKWELL LLP
2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

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jbirch@casselsbrock.com

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

TO: KEYSER, MASON, BALL, LLP
Barristers and Solicitors
Four Robert Speck Parkway
Suite 1600
Mississauga, ON
L5Z 1S1

Brian M. Jenkins LSUC #: 22769J
Tel: 905.276.9111
Fax: 905.276.2298

Lawyers for the applicant, 306440 Ontario Ltd.

AND TO: SERVICE LIST

SERVICE LIST

	Firm	Attention
TO:	KEYSER MASON BALL, LLP 4 Robert Speck Parkway, Suite 1600 Mississauga, ON L4Z 1S1 Lawyers for the Applicant, 306440 Ontario Ltd. and for Richard A. Cornwall	Brian M. Jenkins Tel: 905.276.9111 Fax: 905.276.2298 Jenkins@kmblaw.com
AND TO:	FERNANDES HEARN LLP 700-155 University Avenue Toronto, ON M5H 3B7 Lawyers for Textainer Equipment Management Limited	James G. Lea Tel: 416.203.9620 Fax: 416.203.9444 james@fernandeshern.com C. Afonso Tel: 416.203.9820 Fax: 416.203.9444 chris@fernandeshern.com
AND TO:	MAGRATH O'CONNOR 73 Richmond St. W., Suite 305 Toronto, ON M5H 4E8 Lawyers for Blue Sky Logistics and Omnibox Container	Gavin Magrath, Tel: 416.931.0463 Fax: 416.389.0743 gavin@magrathoconnor.com
AND TO:	CAI INTERNATIONAL, INC. Steuart Tower 1 Market Plaza, Suite 900 San Francisco, CA USA 94105	Steven J. Garcia Tel: 415.624.8132 Fax: 415.788.3430 sgarcia@capps.com
AND TO:	FASKEN MARTINEAU 66 Wellington Street West Suite 4200, Toronto Dominion Bank Tower Box 20, Toronto-Dominion Centre Toronto, Ontario M5K 1N6 Lawyers for CAI International, Inc.	Stuart Brotman Tel: 416 865 5419 Fax: 416 364 7813 sbrotman@fasken.com
AND TO:	STEWART, CORBETT 21 Court House Avenue P.O. Box 187 Brockville, ON K6V 5V2	John D. Simpson Tel: 613.342.4991 Fax: 613.342.8570 john@stewartcorbett.com

	Firm	Attention
	Lawyers for newterra ltd.	
AND TO:	Kubota Canada Inc. 5900 14 th Avenue Markahm, ON L3S 4K4	Tel: 905.294.6535 Fax: 905.294.6651
AND TO:	Bodkin Leasing Corporation 2150 Dunwin Drive, Unit 1 Mississauga, ON L5L 5M8	Tel: 905.820.4550 Fax: 905.228.1580
AND TO:	DeLage Landen Financial Services Canada Inc. 100-1235 North Service Road Oakville, ON L6M 2W2	Tel: 905.901.6300 Fax: 905.901.6460
AND TO:	Element Financial Corporation 41 Lesmill Road Toronto, ON M3B 2T3	Tel: 416.386.1067 Fax: 1-888.772.8129
AND TO:	Stonebridge Financial Corporation 20 Adelaide Street East Suite 1201 Toronto, ON M5C 2T6	Tel: 416.364.3001 Fax: 416.364.1557
AND TO:	GM Financial Canada Leasing Ltd. 2001 Sheppard Avenue Suite 600 Toronto, ON M2J 4Z8	Tel: 416.753.4000 Fax: 416.753.4100
AND TO:	Ford Credit Canada Limited 17187 – 114 Ave. Nw Edmonton, AB T5S 2N5	Tel: 1-877.636.7346 Fax: 780.443.5353
AND TO:	Steer Rite Inc. 27 Jutland Road Toronto, ON M8Z 2G6	Tel: 416.259.6662 Fax: 416.259.6663

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Court File No. CV-13-643-00

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

306440 ONTARIO LTD.

Applicant

- and -

782127 ONTARIO LTD. o/a ALRANGE CONTAINER SERVICES

Respondent

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

May 7, 2013

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2. Assignment in Bankruptcy: Certificate of Appointment – Section 49 of the Act; Rule 85

Court File No. CV-13-643-00

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

306440 ONTARIO LTD.

Applicant

- and -

782127 ONTARIO LTD. o/a ALRANGE CONTAINER SERVICES

Respondent

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

May 7, 2013

INTRODUCTION AND PURPOSE OF THE SUPPLEMENTAL REPORT

1. Since the issuance of the First Report (the "**First Report**") dated April 26, 2013, there have been some additional events in respect of which the Receiver would like to update creditors and the Court.
2. This Supplement to the First Report of the Receiver (the "**Supplemental Report**") is filed by the Receiver in connection with a Motion being made to the Ontario Superior Court of Justice seeking an Order, *inter alia*, 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.
3. In preparing this Supplemental 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 Supplemental Report.

THE BANK ACCOUNTS ANALYSIS

3. The Receiver conducted a further analysis of the Company's operating accounts during the period from January 1, 2013 to February 15th, 2013. Based on the bank statement provided by the TD Bank, the Receiver noted that at the end of business on January 18, 2013 the Alrange operating loan was \$63,582.86 and hence, the bank account was in overdraft in like amount. Alrange therefore had no positive bank balance.

4. By the end of business January 21, 2013, the Alrange bank account had a credit balance in the sum of \$7,491.69. The Receiver has concluded that during the day of January 21, 2013, Alrange repaid the TD operating loan in full and started to accumulate cash in the bank account.

CREDITOR CLAIMS – OTHER

Claim of Textainer Equipment Management Limited (“Textainer”)

5. Subsequent to the First Report, and at the request of the Receiver, Textainer provided a list of shipping containers that it alleges had been entrusted to Alrange in accordance with the terms and conditions of a Depot Agreement dated September 1, 2000. Textainer further alleges that, in January 2013, a quantity of 127 containers were in Alrange's possession for storage, repair and/or resale purposes. Textainer informed the Receiver that it conducted an audit on October 3, 2012 and that all 127 containers were on hand at that time.

6. In paragraph 14 of the affidavit of Daniel Cohen sworn May 2, 2013, which is contained in the responding motion record of Textainer Equipment Management (US) Ltd., the allegation is as follows:

I have been advised by Arshad and verily believe that, he or another employee of Textainer performed a “stock check” of Textainers container inventory at Alrange on October 3, 2012. At that time, none of Textainers containers were unaccounted for.

7. The Receiver analysed the list of 127 containers by comparing the container ID numbers provided by Textainer against the container records of the Company. The results of the analysis were as follows:

- (i) Based on the Receiver's analysis of the listing provided by Textainer, there appears to be a quantity of approximately 100 containers that were sold or disposed of and the cash proceeds realized from these sales was received by Alrange on or before December 20, 2012. As noted in paragraphs 3 and 4 above, this could not possibly be the same cash that was on hand on February 15, 2013.
- (ii) Furthermore, out of the population of 100 containers noted above, there were approximately 68 containers, and possibly more, that had been sold or disposed of by Alrange before the inspection and hence, the Receiver's findings are at significant variance with the statement made by Arshad of Textainer (paragraph 6 above) wherein he stated that none of the containers were unaccounted for on the inspection date when, in fact, there appears to be at least 68 containers which were no longer on site.
- (iii) The Receiver believes it would be reasonable to conclude that the proceeds from the sale or disposal of those 68 containers made before October 3, 2012, including the collection of the accounts receivable created by those sales, have been fully absorbed in the ordinary course of Alrange's business. Accordingly, Textainer's claim regarding these containers would appear to be an ordinary unsecured claim in the bankruptcy proceeding (also see paragraph 13 below).
- (iv) In essence, it would appear that approximately 27 containers were sold or disposed of in the period since the inspection date, and the proceeds from the sale or disposal of those 27 containers would have been commingled with other monies and hence, may not be traceable, noting in particular that the bank account was in overdraft as at January 18, 2013 and did not start to accumulate cash until after January 21, 2013.
- (v) If it can be shown, or proven, by Textainer that proceeds from the sale of those 27 containers has a proprietary interest in, or charge on, the funds

held by the Receiver ahead of the secured creditor, the approximate market or selling value of those 27 containers is estimated to be \$60,000.

8. At the time that the Receiver was appointed on February 15, 2013, no remaining containers were at the premises of the Company.

ADDITIONAL ACCOUNTS RECEIVABLE COLLECTED

9. On May 2, 2013, the Receiver collected \$184,636.60 from one customer of the Company, newterra ltd. ("newterra"), representing partial settlement on the account. This reduced the original receivable from newterra from \$263,528.30 to \$78,891.70. Subsequently, newterra provided evidence that \$44,257.20 of the remaining account receivable could not be substantiated for various reasons.

10. After reviewing records and consulting with a former employee of the Company (who has been assisting the Receiver), the Receiver has concluded that it should accept a further payment of \$34,634.50 in full and final satisfaction of the remaining debt owing by newterra. The Receiver is hopeful that it will receive such amount in the near future.

MAJORITY SHAREHOLDER – AMOUNTS DUE TO ALRANGE

11. During a face to face meeting on the morning of May 3, 2013, the Receiver was informed by Mr. Chris Cornwall that no funds for his shareholder indebtedness would be forthcoming. The Receiver will make a second and final, formal demand on Mr. Cornwall, failing which the Receiver will consider whether it is advisable to commence legal collection proceedings, or to turn the matter over to the trustee for consideration by the estate inspectors.

ASSIGNMENT IN BANKRUPTCY

12. On the morning of May 6, 2013, the Company made an assignment in Bankruptcy. Chris Cornwall executed the assignment on behalf of the Company.

13. A copy of the Certificate of Appointment issued by the Office of the Superintendent of Bankruptcy certifying the assignment to have been filed and Paddon + Yorke Inc. to be the duly appointed trustee is included as **Appendix 1**.

14. The bankruptcy estate of the Company will require funds to allow the trustee (Paddon + Yorke Inc.) to perform its statutorily mandated functions such as convening a meeting of creditors. The Receiver seeks authorization to apply the sum of \$10,000 from the Receivership estate to fund the trustee's fees and disbursements in the bankruptcy.

15. The bankruptcy proceeding will provide an opportunity for all creditors to prove their claim against Alrange and for a scheme of distribution in the event there are funds available after the indebtedness to the secured creditor has been satisfied. It, too, will provide a mechanism for creditors to initiate further investigative measures into the affairs of the company.

16. As a consequence of the bankruptcy assignment, the claim of Canada Revenue Agency for GST/HST owing in the amount of \$98,000 (including penalty and interest) has been relegated to rank as an ordinary unsecured claim in the bankruptcy proceeding.

REVISED INTERIM RECEIPTS AND DISBURSEMENTS (February 18 to May 3, 2013)

17. A copy of the Receiver's Revised Interim Statement of Receipts and Disbursements for the estate for the period from February 15th to May 3rd is attached hereto as **Appendix 2**. The highlights are as follows:

- (i) Over the specified period, the Receiver has generated receipts of \$414,608.84;
- (ii) Disbursements during the period (excluding any professional fees and costs of the Receiver) totalled \$62,634.81 and,
- (iii) The total funds in the Receivership estate are currently \$811,857.18, which is composed of \$787,247.80 in the Receiver's trust account and \$24,609.38 in aggregate in the three Alrange bank accounts now under the Receiver's control.

PROPOSED REVISED INTERIM DISTRIBUTION

18. As noted in the First 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 appear to be properly recoverable by 306440 pursuant to the General Security Agreement granted to it.

19. 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.

20. The Receiver therefore recommends an interim distribution to 306440 of approximately \$375,000.00. In proposing this distribution, the Receiver has taken into account what it considers to be reasonable reserves for the claims of Textainer and three other parties supplying shipping containers that have asserted claims (collectively, the "Other Claimants") as well as future costs of the receivership.

21. Nothing in this report should be construed as expressing a view concerning the priority of the claims of the Other Claimants or suggesting that any specific pool of money should be actually set aside for such claims.

22. Accordingly, the proposed distribution of \$375,000 to 306440 is based on the following calculation:

Funds Available for Distribution	561,407.18
Interim distribution to 306440 Ontario Ltd	375,000.00
Interim Fees of Receiver, inclusive of HST	63,921.21
Fees and Costs for Bankruptcy Administration	<u>10,000.00</u>
Balance of Funds after Proposed Distrib. Excl Notional Amt	<u>\$ 112,485.97</u>

The notional amount for Other Creditors' claims is composed of the following

Textainer	\$ 100,000.00
CAI	67,200.00
Omnibox	46,750.00
Blue Sky	<u>36,500.00</u>
	<u>\$ 250,450.00</u>

CONCLUSION

23. To the extent that 306440 and the Other Creditors wish to assert claims to the funds in the Receivership Estate (subject, of course, to the Receiver's Charge established under paragraph 17 of the receivership order dated February 15, 2013), it will be incumbent on those creditors to schedule a further motion on notice to all secured creditors, so that priorities and entitlements to monies can be determined.

24. Subject to adjudication of these priority issues and further recoveries on the accounts receivable and the sale of the small quantity of remaining Company assets, the administration of this Receivership is otherwise largely complete.

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

- (i) approving the activities of the Receiver set out in the First Report;
- (ii) approving the activities of the Receiver set out in this Supplemental Report;
- (iii) approving an interim distribution to the Company's secured creditor, 306440 Ontario Ltd.;
- (iv) approving the interim fees and disbursements of the Receiver, inclusive of HST, as described in the First Report;

- 8 -

- (v) approving the appropriation of an amount of \$10,000.00 to be available for the taxed fees and costs to fund the administration of the Bankruptcy; and,
- (vi) approving the fees and disbursements, inclusive of HST, of Counsel.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 7th day of May , 2013

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

per: 

Lambert Huizingh, CRP

Appendix 1

APPENDIX 1

In the matter of the Receivership of
782127 Ontario Ltd o/a Alrange Container Services
of the City of Toronto
In the Province of Ontario

Interim Statement of Receipts and Disbursements
Consolidated Receiver's Trust Account
As at May 3 2013

Receipts		
Cash on Hand	\$ 1,760.35	
Cash in Bank Accounts	\$458,122.80	
Accounts Receivable	\$412,742.79	
Miscellaneous Refunds	1,866.05	
Other	<u>-</u>	
Total Receipts -- Consolidated Receiver's Account		\$ 874,491.99
Disbursements		
Appraisal Fees	\$ 2,926.70	
Bank Charges and interest	779.69	
Contract Labour	17,680.00	
Final Payroll & related Expenses	24,057.13	
Legal Fees (see note below)	11,148.13	
Other minor expenses	482.01	
Waste Removal and Facility cleaning	<u>5,561.15</u>	
Total Disbursements -- Consolidated Receiver's Account		<u>62,634.81</u>
Excess of Receipts over Disbursements		811,857.18
Payment to Secured Creditor		
306440 Ontario Limited		<u>-</u>
Excess of Receipts over Disbursements		<u>\$ 811,857.18</u>
Proof:		
in Trust Account		\$ 787,247.80
In Co Bank Accounts		<u>24,609.38</u>
		<u>\$ 811,857.18</u>

Note: Subject to Court Approval

Appendix 2



Industry Canada

Office of the Superintendent
of Bankruptcy Canada

Industrie Canada

Bureau du surintendant
des faillites Canada

District of: Ontario
 Division No.: 09 - Toronto
 Court No.: 31-1744257
 Estate No.: 31-1744257

In the Matter of the Bankruptcy of:

782127 Ontario Ltd.

Debtor

PADDON + YORKE INC.

Trustee

Ordinary Administration

Date and time of bankruptcy:	May 06, 2013, 09:56	Security:	\$0.00
Date of trustee appointment:	May 06, 2013		
Meeting of creditors:	May 23, 2013, 11:00 Novotel Toronto Mississauga Centre 3670 Hurontario Street Mississauga, Ontario Canada,		
Chair:	Trustee		

CERTIFICATE OF APPOINTMENT - Section 49 of the Act: Rule 85

I, the undersigned, official receiver in and for this bankruptcy district, do hereby certify that:

- the aforementioned debtor filed an assignment under section 49 of the *Bankruptcy and Insolvency Act*;
- the aforementioned trustee was duly appointed trustee of the estate of the debtor.

The said trustee is required:

- to provide to me, without delay, security in the aforementioned amount;
- to send to all creditors, within five days after the date of the trustee's appointment, a notice of the bankruptcy; and
- when applicable, to call in the prescribed manner a first meeting of creditors, to be held at the aforementioned time and place or at any other time and place that may be later requested by the official receiver.

Date: May 06, 2013, 10:00

E-File/Dépôt Electronique

Official Receiver

25 St. Clair Avenue East, 6th floor, Toronto, Ontario, Canada, M4T1M2, (877)376-9902

Tab B

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) THURSDAY, THE 9TH
JUSTICE) DAY OF MAY, 2013

B E T W E E N:

(Court Seal)

306440 ONTARIO LTD.

Applicant

- and -

782127 ONTARIO LTD. O/A ALRANGE CONTAINER SERVICES

Respondent

**ORDER
(PROCEEDS DISTRIBUTION AND APPROVAL OF RECEIVER CONDUCT)**

THIS MOTION, made by Paddon + Yorke Inc., in its capacity as court-appointed receiver (the "Receiver") of 782127 Ontario Ltd. o/a Alrange Container Services ("Alrange"), for a motion approving the conduct of the Receiver as disclosed in the First Report, dated April 26, 2013 (the "First Report"), and for other relief, was heard this day at the court house, 7755 Hurontario Street, Brampton, Ontario, L6W 4T6.

ON READING the First Report, the Supplement to the First Report dated May 7, 2013 (the "Supplement"), the Fees Affidavit of Cassels Brock & Blackwell LLP sworn April 25, 2013, and the Affidavit of Daniel Cohen, sworn May 2, 2013, and upon hearing the submissions of counsel for each of the Receiver, 306440 Ontario Ltd., and Textainer

Equipment Management (US) Ltd., no one else on the service list appearing although properly served,

1. THIS COURT ORDERS that the actions and activities of the Receiver as set out in the First Report and the Supplement be and are hereby approved.
2. THIS COURT ORDERS that the fees of Cassels Brock & Blackwell LLP up to April 15, 2013, as described in the Affidavit of Eleanore Morris, sworn April 25, 2013 be and are hereby approved.
3. THIS COURT ORDERS that the fees of the Receiver as described in Appendix 7 to the First Report be and are hereby approved.
4. THIS COURT ORDERS that the Receiver is authorized and directed to make an interim distribution to 306440 Ontario Ltd.(the "**Secured Creditor**") in the amount of \$375,000.
5. THIS COURT ORDERS that the Receiver may use \$10,000 of funds on hand in the receivership estate to fund the expenses of the bankruptcy of the Respondent (Estate No. 31-1744257), subject to the later approval of actual trustee fees and disbursements in accordance with the *Bankruptcy and Insolvency Act*.
6. THIS COURT ORDERS that the Secured Creditor and all other secured creditors and trust claimants of the Respondent who wish to establish the validity and priority of their claims shall bring a motion before this court on July ____, 2013 on notice to the Receiver and all parties on the Service List, which motion shall be served not less than 21 days prior to the hearing date.

(Signature of Judge)

306440 ONTARIO LTD.

Applicant

and 782127 ONTARIO LTD. O/A ALRANGE CONTAINER
SERVICES
Respondent

Court File No. CV-13-643-00

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
BRAMPTON

ORDER
(Partial Proceeds Distribution and Approval of Receiver
Conduct)

Cassels Brock & Blackwell LLP
2100 Scotia Plaza
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Lawyers for Paddon + Yorke Inc. in its capacity as court
appointed receiver of 782127 Ontario Ltd. o/a Alrange
Container Services

306440 ONTARIO LTD.

Applicant

and 782127 ONTARIO LTD. O/A ALRANGE CONTAINER
SERVICES
Respondent

Court File No. CV-13-643-00

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
BRAMPTON

SUPPLEMENTARY MOTION RECORD
OF THE RECEIVER
(RETURNABLE MAY 9, 2013)

Cassels Brock & Blackwell LLP
2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

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Container Services