

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

BETWEEN:

**EXPORT DEVELOPMENT CANADA**

Applicant

- and -

**AXIOS MOBILE ASSETS CORP.; AXIOS MOBILE ASSETS INC.;  
AXIOS MOBILE ASSETS, INC.; AXIOS LOGISTICS SOLUTIONS INC.**

Respondents

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

**APPLICATION RECORD  
(APPOINTMENT OF RECEIVER)**

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Lawyers for Export Development Canada

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**Service List**

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**Counsel to Oleg Belittchenko**

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

BETWEEN:

**EXPORT DEVELOPMENT CANADA**

Applicant

- and -

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

**APPLICATION RECORD**

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O	Exhibit “O”: Axios Mobile Assets Inc. General Security Agreement in favour of Export Development Canada dated August 19, 2016
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U	Exhibit “U”: <i>Personal Property Security Act</i> searches for Axios Mobile Assets Inc., Axios Mobile Assets Corp., Axios Mobile Assets, Inc. and Assets Logistics Solutions Inc.
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**APPLICATION UNDER SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C.43, AS AMENDED,  
AND SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3 AS AMENDED**

EXPORT DEVELOPMENT CANADA  
Applicant

- and -

AXIOS MOBILE ASSETS CORP. et al.  
Respondents

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

Proceeding Commenced at Toronto

**APPLICATION RECORD  
(Appointment of Receiver)**

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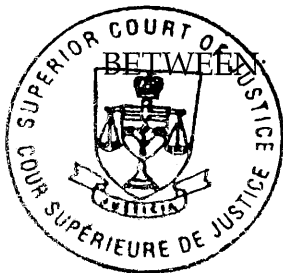
Lawyers for Exports Development Canada



# **TAB 1**

CV-17-11710-00CL  
Court File No.

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)



EXPORT DEVELOPMENT CANADA

Applicant

and

AXIOS MOBILE ASSETS CORP., AXIOS MOBILE ASSETS INC., AXIOS MOBILE  
ASSETS, INC. and AXIOS LOGISTICS SOLUTIONS INC.

Respondents

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

**NOTICE OF APPLICATION**

**TO THE RESPONDENTS:**

**A LEGAL PROCEEDING HAS BEEN COMMENCED** by the applicant. The claim made by the applicant appears on the following pages.

**THIS APPLICATION** will come on for a hearing before a judge of the Commercial List on a date to be fixed by a judge on the Commercial List at 330 University Avenue, Toronto, Ontario.

**IF YOU WISH TO OPPOSE THIS APPLICATION**, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

**IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION**, you or your lawyer must, in addition to serving your notice of

appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2 days before the hearing.

**IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

Date: February 23, 2017

Issued by

  
Local Registrar

*Address of the Court Office:*

Commercial List Office  
330 University Avenue, 7<sup>th</sup> Floor-4  
Toronto, Ontario  
MSG 1R7

<b>TO :</b>	<b>Axios Mobile Assets Corp.</b> c/o Greg Azeff Fogler Rubinoff LLP 77 King Street West Suite 3000, P.O. Box 95 TD Centre North Tower Toronto, ON M5K 1G8
<b>AND TO :</b>	<b>Axios Mobile Assets Inc.</b> c/o Greg Azeff Fogler Rubinoff LLP 77 King Street West Suite 3000, P.O. Box 95 TD Centre North Tower Toronto, ON M5K 1G8
<b>AND TO :</b>	<b>Axios Mobile Assets, Inc.</b> c/o Greg Azeff Fogler Rubinoff LLP 77 King Street West Suite 3000, P.O. Box 95 TD Centre North Tower Toronto, ON M5K 1G8

<b>AND TO :</b>	<b>Axios Logistics Solutions Inc.</b> c/o Greg Azeff Fogler Rubinoff LLP 77 King Street West Suite 3000, P.O. Box 95 TD Centre North Tower Toronto, ON M5K 1G8
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### Application

1. The Applicant, Export Development Canada (“**EDC**”), makes an application for an Order (the “**Appointment Order**”), *inter alia*:

- (a) abridging the time for service of the Notice of Application and the Application Record, and dispensing with further service thereof;
- (b) appointing A. Farber & Partners Inc. (“**Farber**”) as receiver and receiver and manager (in such capacity, the “**Receiver**”), without security, of (i) the assets, undertakings, and properties of Axios Mobile Assets Inc. (“**Axios Canada**”) pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”), and section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), and (ii) the assets, undertakings and properties of Axios Mobile Assets Corp. (“**Axios Corp**”), Axios Mobile Assets, Inc. (“**Axios USA**”), and Axios Logistics Solutions Inc. (“**Axios Logistics**”) pursuant to section 101 of the CJA;
- (c) granting a stay of proceedings in respect of any Respondent or the Property (as such term is defined in the proposed Appointment Order);
- (d) authorizing the Receiver to (i) retain Blake, Cassels & Graydon LLP (“**Blakes**”) as counsel to the Receiver, and (ii) consult with its independent counsel for matters upon which independent advice is required;

- (e) granting a charge over the Property in favour of the Receiver and counsel to the Receiver to secure their fees and disbursements in respect of these proceedings on the terms as set out in the proposed Appointment Order (the “**Receiver Charge**”);
- (f) granting a charge over the Property for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by the Appointment Order, including interim expenditures (the “**Receiver’s Borrowing Charge**”); and
- (g) such further and other relief as counsel may request and this Honourable Court may permit.

**THE GROUNDS FOR THE APPLICATION ARE:**

**The Respondents’ Business**

- (a) The Respondents are an integrated supply chain logistics company that offer technologically advanced shipping pallets primarily to the perishable food industry. The pallets are equipped with advanced radio frequency identification tags, barcodes and additional sensor capabilities, making them readily trackable at any point in time. The Respondents’ main source of revenue is generated from the rental of pallets and related transportation services to customers in the United States.
- (b) Axios Corp. is an Ontario corporation and the corporate parent of the other Respondents. Axios Canada is an Ontario corporation, Axios USA is a Michigan corporation and Axios Logistics is a Delaware corporation. Both Axios USA and

Axios Logistics have bank accounts at HSBC in Toronto, Ontario, and accordingly have assets in Ontario.

- (c) The primary management and business operations of the Respondents are conducted from the Head Office in Mississauga with most of the Respondents executive and senior management working at the Head Office. The Head Office acted as the “nerve centre” of the business in that all accounting functions, strategic decision-making, communication functions, marketing and pricing decisions, new business development initiatives, negotiations of material contracts and leases, acquisition of equipment, and other key functions were coordinated and/or managed from the Head Office in Mississauga.
- (d) The Respondents also have small satellite offices in Detroit, Michigan (operated through Axios USA) and Ithaca, New York (operated through Axios Logistics) primarily used to provide logistics services to its customers.
- (e) The Respondents have been experiencing significant financial difficulties for some time. Most recently, they have begun to shut down their operations due to a substantial exhaustion of their cash and credit resources, and all of their employees have been terminated, laid off or resigned other than the Chief Executive Officer of Axios Corp. As a result of the substantial cessation of its operations, there are approximately 80,000 Axios pallets that are currently disbursed across the United States, mainly at retail distribution centres, retail stores, egg farmers, and Axios leased facilities, which if not retrieved soon are at

significant risk of being sold, destroyed or otherwise disposed of by owners of the distribution centres where the pallets are located.

- (f) Due to the departure of substantially all of the Respondents' employees, the appointment of the Receiver is needed immediately to assist in the retrieval of the Axios pallets and to develop an appropriate going forward strategy for the business for the benefit of its creditors.

#### **Secured Financing and Indebtedness to EDC**

- (g) EDC is the senior secured lender to Axios Canada. EDC has extended credit facilities to Axios Canada pursuant to two loan agreements on November 25, 2015 and August 19, 2016 in the amounts of \$3,000,000 and \$2,000,000, respectively (together, the "**EDC Loan Agreements**"). The obligations of Axios Canada under each of the EDC Loan Agreements were guaranteed by Axios Corp., Axios USA, and Axios Logistics (such guarantors collectively being, the "**EDC Guarantors**").
- (h) EDC holds security over all of the property, assets and undertakings of Axios Canada (the "**EDC Security**"). It does not hold security as against the EDC Guarantors.
- (i) The Respondents are in default pursuant to both EDC Loan Agreements and the guarantees provided by the EDC Guarantors, and such defaults are continuing, with the current indebtedness totaling \$5,040,454.81 (the "**EDC Indebtedness**").



- (j) On February 10, 2017, EDC, by way of its counsel, delivered to Axios Canada demands and section 244 notices under the BIA in respect of the EDC Indebtedness. Similar demand letters were sent to the EDC Guarantors in respect of the EDC Indebtedness.
- (k) Axios Canada has consented to early enforcement of the EDC Security, including the appointment of the Receiver.
- (l) The EDC Guarantors do not oppose the appointment of the Receiver over their respective assets, undertakings and properties.

#### **Funding of Receivership**

- (m) It is proposed that EDC will fund the professional costs of the receivership through the granting of loans to the Receiver up to a maximum amount of \$300,000, secured by the Receiver's Borrowing Charge, for the purpose of funding the exercise of the powers and duties of the Receiver and granting a charge over the Property as security for the payment of monies borrowed on the terms as set out in the draft Appointment Order, filed;

#### **The Proposed Receiver**

- (n) Farber is a licensed trustee, as defined in the BIA, with experience in Canadian and cross-border insolvency engagements, including receiverships; and
- (o) The appointment of Farber as Receiver is just and convenient in the circumstances.

**Additional Grounds**

- (p) The grounds as more particularly set out in the Affidavit of Geoff Bleich sworn February 23, 2017 (the “**Bleich Affidavit**”);
- (q) Section 243 of the BIA;
- (r) Section 101 of the CJA;
- (s) Rules 1.04, 2.03, 3.02, 16 and 38 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (t) Such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- (a) the Bleich Affidavit, and the exhibits thereto; and,
- (b) such further and other materials as counsel may advise and this Honourable Court may permit.

February 23, 2017

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Lawyers for Export Development Canada

## **TAB 2**

Court File No.

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

BETWEEN:

**EXPORT DEVELOPMENT CANADA**

Applicant

and

**AXIOS MOBILE ASSETS CORP., AXIOS MOBILE ASSETS INC., AXIOS MOBILE  
ASSETS, INC., and AXIOS LOGISTICS SOLUTIONS INC.**

Respondents

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

**AFFIDAVIT OF GEOFF BLEICH**  
(Sworn February 23, 2017)

I, Mr. Geoff Bleich of the City of Ottawa, Province of Ontario **MAKE OATH AND SAY AS  
FOLLOWS:**

1. I am a Special Risks Manager at Export Development Canada (“**EDC**”), senior secured lender to Axios Mobile Assets Inc. (“**Axios Canada**”), and as such I have knowledge of the matters deposed to in this affidavit. Where this affidavit is not based on my direct personal knowledge, it is based on information and belief and I verily believe such information to be true. In particular, in swearing this affidavit, I have reviewed and relied upon written and oral information provided (either directly or indirectly) by, among other sources, (i) A. Farber &

Partners Inc. (“**Farber**”), the proposed receiver in this proceeding, (ii) Richard MacDonald, Chief Executive Officer of Axios Mobile Assets Corp (“**Axios Corp**”), and (iii) publicly available information from Axios Corp.’s securities filings.

2. This affidavit is sworn in support of an application for an order (the “**Appointment Order**”) appointing Farber as receiver and receiver and manager (in such capacity, the “**Receiver**”), without security, of the assets, undertakings, and properties of the Respondents, Axios Corp. and its subsidiaries, Axios Canada, Axios Mobile Assets, Inc. (“**Axios USA**”), and Axios Logistics Solutions Inc. (“**Axios Logistics**”) (collectively, the “**Companies**”).

## OVERVIEW

3. Axios Corp. together with its five wholly-owned subsidiaries, Axios Canada, Axios USA, Axios Logistics<sup>1</sup>, Axsense Inc, and Axios Mobile Assets USA Inc. (“**Axios Nevada**”) (collectively, the “**Axios Group**” or “**Axios**”), are a supply chain logistics company that offers technologically advanced shipping pallets primarily to the perishable food industry. Its “next generation” pallets when paired with Axios’ proprietary tracking and information system help to improve the value chain in the logistics market.

4. Axios has been experiencing significant financial difficulties for some time. Most recently, Axios has begun to shut down its operation due to a substantial exhaustion of its cash and credit resources and has terminated all of its employees other than the Chief Executive Officer of Axios. Corp., Mr. Richard MacDonald. As a result of the substantial cessation of its operations, there are approximately 80,000 pallets that are currently stranded across the United States, mainly at retail distribution centres, retail stores, egg farmers, wash hub facilities, and repair warehouses, which if not retrieved soon are at significant risk of being sold, destroyed or otherwise disposed of by owners of the distribution centres where the pallets are located.

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<sup>1</sup>Axios Logistics wholly-owns Mobius Logistics, Inc. which is not subject to these proposed receivership proceedings.

5. Given these circumstances, EDC has delivered written demands to all Respondents, and notice under section 244 of the *Bankruptcy and Insolvency Act* (Canada) (“**BIA**”) has been delivered to Axios Canada. To date, the amounts owing to EDC have not been repaid. EDC seeks the appointment of Farber as Receiver of the Respondents on an *ex parte* basis in order to preserve and maintain the remaining value of Axios’ assets that is at imminent risk of dissipating. Once initial protective steps are taken and additional information is obtained, the Receiver intends to return to court to seek further direction with respect to the appropriate going forward strategy. I understand this application is proceeding with the consent of Axios Canada and is not opposed by Axios Corp., Axios Logistics, and Axios USA. Accordingly, the appointment of Farber as receiver and manager is just and convenient in the circumstances.

#### **A. THE AXIOS GROUP**

6. The Axios Group is headed by Axios Corp., which, until recently, was publicly traded on the TSX Venture Exchange under the trading symbol “AXA”, and as a result of falling below the TSX Venture Exchange’s listing standards, has now been moved to the NEX board, a separate board of the TSX Venture Exchange for companies that have a low level of activity or have ceased to carry on active business. A copy of a corporate organizational chart of the Axios Group is attached hereto as **Exhibit “A”**.

7. Axios Corp. is duly incorporated under the laws of Ontario. Its registered office is the office of its legal counsel Fogler, Rubinoff, LLP, in Toronto, Ontario, and its principal place of business is a leased office located at 30 Topflight Drive, Unit 7, Mississauga, Ontario (the “**Mississauga Head Office**”). A copy of the corporate profile of Axios Corp. is attached hereto as **Exhibit “B”**.

8. Axios Corp. wholly-owns the following five subsidiaries:

- (a) **Axios Canada:** Axios Canada is duly incorporated under the laws of Ontario. Its registered office is the Mississauga Head Office. A copy of the corporate profile report of Axios Canada is attached hereto as **Exhibit “C”**.

- (b) **Axsense:** Axsense is duly incorporated under the laws of Ontario. Its registered office is also the Mississauga Head Office. A copy of the corporate profile report Axsense is attached hereto as **Exhibit “D”**.
  - (c) **Axios USA:** Axios USA is duly incorporated under the laws of the State of Michigan in the United States. Its registered office is in Detroit, Michigan. A copy of the corporate profile report Axios USA is attached hereto as **Exhibit “E”**.
  - (d) **Axios Logistics:** Axios Logistics is duly incorporated under the laws of the State of Delaware in the United States. Its registered office is in Wilmington, Delaware. A copy of the corporate profile report Axios Logistics is attached hereto as **Exhibit “F”**.
  - (e) **Axios Nevada:** Axios Nevada is duly incorporated under the laws of the State of Nevada in the United States. Its registered office is in Reno, Nevada. A copy of the corporation profile report for Axios Nevada is attached hereto as **Exhibit “G”**.
9. Mobius Logistics, Inc. (“**Mobius**”) is duly incorporated under the laws of the State of Delaware in the United States, and is a wholly-owned subsidiary of Axios Logistics. Its registered office is located in Ithaca, New York. I understand that Mobius’ provided freight services to Axios customers using leased trucks and trailers. A copy of the corporate profile report Mobius is attached hereto as **Exhibit “H”**.
10. EDC does not have any direct business dealings with Mobius and therefore at this time it is not seeking to have Farber appointed as Receiver over this entity. Similarly, I am advised by Mr. MacDonald that Axsense and Axios Nevada are dormant companies and do not have any assets, liabilities or operations. Accordingly, EDC is also not seeking Farber be appointed as Receiver over Axsense or Axios Nevada.
11. The commercial operations of each of the Companies subject to the proposed Receivership are discussed in greater detail below.



## **B. BUSINESS OPERATIONS**

12. The Axios Group produces and supplies to producers in the perishable food industry an “environmentally friendly” structural and trackable technology enabled mobile asset platform (or pallet) made from composite material as an alternative to traditional shipping options, such as wooden pallets. The Axios pallets are equipped with advanced radio frequency identification tags, barcodes and additional sensor capabilities, making them readily trackable at any point in time. I understand that the Axios pallets are manufactured using a proprietary compound through a proprietary manufacturing process, and that all intellectual property is owned by Axios Corp.

13. The primary management and business operations of the Axios Group are conducted from the Head Office in Mississauga with most of the Axios Group executive and senior management working at the Head Office. The Head Office acted as the “nerve centre” of the business in that all accounting functions, strategic decision-making, communication functions, marketing and pricing decisions, new business development initiatives, negotiations of material contracts and leases, acquisition of equipment, and other key functions were coordinated and/or managed from the Head Office in Mississauga. Prior to recent lay-offs and resignations, seventeen employees (including management) worked at the Head Office.

14. As of the date hereof, I understand that all employees have been terminated, laid off, or have resigned and the business is functioning on a skeleton staff at its Head Office consisting of only Richard MacDonald. I have been advised by Mr. MacDonald that before such terminations, lay-offs, and resignations approximately \$314,650 in gross wages remained unpaid, in addition to amounts owing in respect of accrued vacation pay.

15. Prior to recent events, the Axios Group utilized a relatively simple distribution system. First, the Axios pallets components were manufactured at a factory owned by a third party in Buffalo, New York and then assembled at a factory owned by a third party in Guelph, Ontario. My understanding is that Axios Canada owns the moulds and assembly equipment used to manufacture the pallets. After manufacture, the pallets were shipped to sanitization facilities

(or “wash hubs”) in Ohio and Pennsylvania where the pallets were sanitized.<sup>2</sup> My understanding is that Axios Logistics owns the wash hub equipment and leases the wash hub facility in Pennsylvania; however, the wash hub equipment and facility in Ohio is owned and operated by a third party. Following sanitization, the pallets were then shipped on trucks and trailers to customers (predominantly egg producers and suppliers), who then used the pallets to transport their product to regional retail distribution centres. Once a customer’s product was delivered to the applicable distribution centre, the pallets were then retrieved from the distribution centre and returned to a sanitization facility for washing before their next deployment. Pallets that were not in use were warehoused in leased premises in Elmira, New York.

16. To coordinate the Axios Group pallet pooling operations in the United States, Axios USA leased premises in Detroit, Michigan, which was primarily used as a small satellite office and employed three employees. In addition, Axios Logistics leased premises in Ithaca, New York, which were used primarily as the main operating office for the companies’ pallet pool rental and trucking activities and was managed by seven employees. As previously noted, all employees of Axios USA and Axios Logistics have now been terminated, laid off or resigned.

17. As a result of the above described distribution system, at any point in time, the Axios pallets are located at its customers, its wash hubs or retail distribution centres across the United States. Presently, there are approximately 80,000 pallets in circulation with the vast majority located at 30 retail distribution centres located in central and eastern United States. I understand such retail distribution centres are owned by Wal-Mart Stores, Inc.

18. The Axios Group main source of revenue is generated from the rental of its pallets and related transportation services it provides its customers. I have been advised by Mr. MacDonald that to facilitate the rental of the Axios pallets to US customers, Axios Canada sold its pallets to Axios Logistics, who then would rent the pallets to US customers. The Axios

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<sup>2</sup>Additional sanitization equipment is located at a leased “wash hub” facility in Atlanta, Georgia; however, I understand that facility is not yet operational.

Group has supplied pallets and logistics to four of the five largest egg producers and ten of the top forty egg suppliers in the United States.

19. I am advised by Richard MacDonald that the Companies maintain the following bank accounts:

- (a) Axios Corp:
  - (i) a Canadian savings account with HSBC in Toronto used for payments in respect of Canadian-dollar denominated corporate expenses, as well as intercompany payments to Canadian subsidiaries; and
  - (ii) a U.S. dollar chequing account with HSBC in Toronto used for payments in respect of U.S.-dollar denominated corporate expenses, as well as intercompany payments to U.S. subsidiaries,
- (b) Axios Canada:
  - (i) a Canadian chequing account with HSBC in Toronto used for payments in respect of Canadian-dollar denominated operating expenses; and
  - (ii) a U.S. dollar chequing account with HSBC in Toronto used for payments in respect of U.S.-dollar denominated operating expenses,
- (c) Axios USA:
  - (i) a U.S. dollar chequing account with Chase Bank used for payments in respect of the companies' logistics and sales efforts,
- (d) Axios Logistics:
  - (i) a U.S. dollar chequing account with Chase Bank used for payments in respect of the companies' pallet pooling and logistics operations, and

20. Axios is currently in the process of migrating the Chase and Tompkins Trust accounts used by Axios USA and Axios Logistics to HSBC, in order to consolidate and streamline its banking activities. Each of these entities has recently established a chequing account with HSBC in Toronto, currently holding a nominal positive balance.

**ASSETS**

21. Attached hereto as **Exhibit “I”** is Axios Corp.’s interim unaudited condensed consolidated financial statements for the three and nine months ended September 30, 2016 (the “**September 2016 Financial Statements**”), which are the most recent financial statements available to EDC.

22. According to the September 2016 Financial Statements, the total book value of the Axios Group’s current assets as at September 30, 2016 was approximately \$5,579,000, comprised of the following:

- (a) cash (including restricted cash) in the amount of approximately \$2,422,000;
- (b) accounts receivable and prepaid amounts of approximately \$2,098,000; and
- (c) government receivables in the amount of approximately \$1,059,000.

23. According to the September 2016 Financial Statements, the total book value of the Axios Corp. Group’s non-current assets as at September 30, 2016 was approximately \$17,285,000, comprised of the following:

- (a) property and equipment valued at approximately \$11,632,000, primarily comprised of machinery and pallet inventory;
- (b) intangible assets valued at approximately \$5,274,000; and
- (c) goodwill valued at approximately \$379,000.

24. I understand from Mr. MacDonald that the total book value of the Axios Group’s current assets have been significantly reduced as a result of ordinary course Q4 2016 operations. The Axios Group now has negligible remaining cash resources.

## LIABILITIES

25. According to the September 2016 Financial Statement, as at September 30, 2016, the Axios Group's collective liabilities totalled approximately \$14,613,000, including total current liabilities of approximately \$7,446,000.

26. According to the September 2016 Financial Statement, the Axios Group's liabilities as at September 30, 2016 were comprised of the following:

- (a) accounts payable and other accrued liabilities in the amount of approximately \$3,523,000;
- (b) convertible debentures in the aggregate amount of approximately \$3,072,000;
- (c) derivative liability in the amount of approximately \$18,000;
- (d) current liabilities portion of loans payable in the aggregate amount of approximately \$833,000; and
- (e) non-current liabilities portion of loans payable in the aggregate amount of approximately \$7,167,000.

27. I have been advised by Mr. MacDonald that that substantially all of the Axios Group's accounts payable are now past due. Moreover, as a result of recent events, a large portion of the non-current liabilities have become due and owing due to events of default by the Axios Canada, in particular the loans provided by EDC as described in more detail below.

### A. SECURED CREDIT FACILITIES WITH EDC

28. EDC is the Government of Canada's export credit agency. Its mandate is to assist Canada's export trade by helping Canadian companies to respond to international business opportunities. EDC is a self-funding Crown corporation operating at an arm's length from the Government of Canada.

29. EDC is Axios Canada's senior secured lender. EDC has extended credit facilities to Axios Canada pursuant to two loan agreements (together, the "**EDC Loan Agreements**")

between EDC, as lender, Axios Canada, as borrower, and Axios Corp., Axios USA, and Axios Logistics, as guarantors (collectively, the “**EDC Guarantors**”).

30. The first loan by EDC to Axios Canada was made pursuant to the loan agreement dated November 25, 2015 (the “**2015 EDC Loan Agreement**”, attached hereto as **Exhibit “J”**). The second loan by EDC to Axios Canada was made pursuant to a loan agreement dated August 19, 2016 (the “**2016 EDC Loan Agreement**”, attached hereto as **Exhibit “K”**).

#### 2015 EDC Loan

31. Pursuant to the 2015 EDC Loan Agreement, EDC provided to Axios Canada a non-revolving credit facility in the maximum principal amount of \$3,000,000, the full amount of which has been advanced to Axios Canada (the “**2015 Loan**”).

32. The 2015 Loan was guaranteed by each EDC Guarantor by way of separate guarantees dated November 25, 2015 (collectively, the “**2015 Guarantees**”, attached hereto as **Exhibit “L”**.)

33. As security for the 2015 Loan, Axios Canada executed and delivered a general security agreement dated November 25, 2015 in favour of EDC (the “**2015 GSA**”, attached hereto as **Exhibit “M”**). Pursuant to the 2015 GSA, Axios Canada granted to and in favour of EDC a continuing security interest in all of Axios Canada’s present and after-acquired real and personal property.

34. Pursuant to the 2015 EDC Loan Agreement, Axios Canada was to make monthly interest payments following the initial advance, and to repay the principal of the 2015 Loan in 18 consecutive, equal monthly instalments beginning in May 2017. Interest on the outstanding principal accrues at a rate of interest equal to Prime Rate plus 8.00% per annum (the “**Interest Rate**”). Where amounts are due and payable but unpaid, default interest on such amounts will be payable on demand at the Interest Rate increased by 2% per annum. Upon any Event of Default (as defined in the 2015 Loan Agreement), EDC may declare all or part of the indebtedness of Axios Canada pursuant to the 2015 Loan Agreement immediately due and

payable without any further demand or notice of any kind. As noted above, EDC made such a demand on February 10, 2017, in accordance with the terms of the 2015 EDC Loan Agreement.

35. As at February 9<sup>th</sup>, 2017 the current indebtedness with respect to the 2015 Loan is \$3,026,383.57, on which interest and fees continue to accrue.

#### 2016 EDC Loan

36. Pursuant to the 2016 EDC Loan Agreement, EDC extended an additional non-revolving credit facility in the maximum principal amount of \$2,000,000 (the “**2016 Loan**”).

37. The 2016 Loan was also guaranteed by the EDC Guarantors by way of separate guarantees dated August 19, 2016 (collectively, the “**2016 Guarantees**”, attached hereto as **Exhibit “N”**.)

38. As security for the 2016 Loan, Axios Canada executed and delivered a general security agreement dated August 19, 2016 in favour of EDC (the “**2016 GSA**”, attached hereto as **Exhibit “O”**). Pursuant to the 2016 GSA, Axios Canada granted to and in favour of EDC a continuing security interest in all of Axios Canada’s present and after-acquired real and personal property.

39. Pursuant to the 2016 EDC Loan Agreement, Axios Canada was to make monthly interest payments following the initial advance, and to repay the principal of the 2016 Loan in 18 consecutive, equal monthly instalments beginning in February 2018. Interest accrues at the same Interest Rate as in the 2015 Loan Agreement. Where amounts are due and payable but unpaid, default interest on such amounts will be payable on demand at the Interest Rate increased by 2% per annum. Upon any Event of Default (as defined in the 2016 Loan Agreement), EDC may declare all or part of the indebtedness of Axios Canada pursuant to the 2016 Loan Agreement immediately due and payable without any further demand or notice of any kind. As noted above, EDC made such a demand on February 10, 2017, in accordance with the 2016 EDC Loan Agreement.

40. As at February 9<sup>th</sup>, 2017, the current indebtedness with respect to the 2016 Loan is \$2,014,071.24, on which interest and fees continue to accrue.

41. Accordingly, as a result of the two loans, the aggregate indebtedness owing to EDC pursuant to the EDC Loan Agreements is approximately \$5,040,454.81, on which interest and fees continue to accrue (the “**EDC Indebtedness**”).

## **B. SUBORDINATED SECURED DEBENTURE**

42. Pursuant to a Subscription Agreement (the “**Subordinated Debenture Subscription Agreement**”) and a Secured Debenture (the “**Subordinated Debenture**”), each dated July 22, 2016, Oleg Belittchenko (the “**Subordinated Debenture Holder**”) made a loan (the “**Subordinated Debenture Loan**”) to Axios Corp. in the amount of \$3,000,000. Copies of the Subordinated Debenture Subscription Agreement and Subordinated Debenture are attached hereto as **Exhibits “P”** and “**Q**”, respectively.

43. The terms of the Subordinated Debenture provide that only interest is payable quarterly, commencing the quarter ending September 30, 2016, through January 22, 2018. Thereafter blended payments of principal and interest will be made quarterly, commencing the quarter ending March 31, 2018. The amount owing pursuant to the Subordinated Secured Debenture being the “**Subordinated Debenture Indebtedness**”. I am advised that as at December 31, 2016, the Subordinated Debenture Indebtedness was \$3,071,835.63.

44. Axios Corp. entered into and delivered a general security agreement dated July 22, 2016 (the “**Subordinated Debenture GSA**”) in favour of the Subordinated Debenture Holder, a copy of which is attached hereto as **Exhibit “R”**.

45. Pursuant to an inter-creditor agreement dated July 22, 2016 (the “**Inter-Creditor Agreement**”), attached hereto as **Exhibit “S”**), the Subordinated Debenture Holder agreed to



postpone and subordinate the indebtedness under the Subordinated Debenture in favour of the indebtedness of Axios Corp. to EDC.<sup>3</sup>

46. As a condition to EDC making its second loan to Axios Canada, the Subordinated Debenture Holder, Axios Canada, Axios Corp., and EDC entered into a postponement and subordination agreement dated August 19, 2016 (the “**Subordination Agreement**”, attached hereto as **Exhibit “T”**). Pursuant to the Subordination Agreement, the Subordinated Debenture Holder agreed to postpone and subordinate the Subordinated Debenture Indebtedness to any and all indebtedness of Axios Canada and Axios Corp to EDC.

#### **HSBC BANK CANADA CREDIT CARD**

47. I am advised by Mr. MacDonald that until recently, Axios Corp. had a credit card facility with HSBC Bank Canada (“**HSBC**”), secured by a deposit in the amount of \$50,000. However, during the week of December 30, 2016 Axios Corp. paid the outstanding balance and cancelled the credit cards, and has received substantially all of the deposit.

#### **C. OTHER PPSA/UCC CREDITORS**

48. I am advised by my counsel, Blake, Cassels & Graydon LLP (“**Blakes**”), that a review of the *Personal Property Security Act* (Ontario) (“**PPSA**”) search results as against the Companies, attached as **Exhibit “U”** hereto, indicate that other than the security in favour of EDC and HSBC, there are no other security interests registered against Axios Canada. With respect to Axios Corp., other than the registration in favour of the Subordinated Debenture Holder, the only other security interest registered against Axios Corp. is in respect of Gould Leasing Ltd. which registration is limited to equipment and that I understand relates to the rental of photocopiers and printers. There are no financing statements registered against Axios USA or Axios Logistics under the PPSA.

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<sup>3</sup>The Inter-Creditor Agreement made an inadvertent reference to Axios Corp. as the borrower under the 2015 EDC Loan Agreement, however in the subsequent Subordination Agreement (defined below), the borrower was correctly identified as Axios Canada.

49. I am further advised by my counsel that a review of the Uniform Commercial Code search results, attached as **Exhibit “V”** hereto, made against the Companies in Ohio, New York, District of Columbia, Michigan, and Delaware shows:

- (a) EDC is the only secured party registered against Axios Canada in Ohio, New York and DC in respect of all present and after-acquired personal property and proceeds thereof;
- (b) EDC is the only secured party registered against Axios USA in New York and DC in respect of all present and after-acquired personal property and proceeds thereof<sup>4</sup>; and
- (c) C T Corporation, as representative, is registered against Axios Logistics, among others, in New York and Delaware.<sup>5</sup>

50. There are no UCC registrations made against Axios Corp. in the above-noted jurisdictions.

## **E. UNSECURED CONVERTIBLE DEBENTURES**

51. As set out in the September 2016 Financial Statements, in December 2014 and April 2015, Axios Corp. completed offerings of unsecured convertible debenture units (collectively, the “**Convertible Debentures**”) and raised gross proceeds of \$1,925,000 and \$1,375,000 respectively. Each Convertible Debenture unit consists of one debenture with a principal amount of \$1.00, along with 500 warrants. The Convertible Debentures provide for 12 percent

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<sup>4</sup> I understand this registration was made advertently due to the similarities in the corporate legal name of Axios USA and Axios Canada.

<sup>5</sup> The collateral description references the collateral as “Receivables – All assets now owned or hereafter acquired and wherever located, including but not limited to, the following subcategories of assets: (a) Accounts, including but not limited to, credit card receivables; (b) Chattel Paper; (c) Inventory; (d) Equipment; (e) Instruments, including but not limited to, Promissory Notes; (f) Investment Property; (g) Documents; (h) Deposit Accounts; (i) Letter of Credit Rights; (j) General Intangibles; (k) Supporting Obligations; and (i) Proceeds and Products of the foregoing.

annual interest, paid quarterly in arrears. Interest related to certain of the Convertible Debenture issuances is payable in the form of common shares of Axios Corp.

52. The Convertible Debentures mature on the third anniversary of their respective issue dates. The holders of the Convertible Debentures have the option to convert the Convertible Debentures to common shares of Axios Corp. at \$1.00 per share at any time on or before the maturity date. Each warrant enables the Convertible Debenture holder to purchase a common share of Axios Corp. at an exercise price of \$2.00 for a period of three years from the date of issuance of the debentures.

53. As at September 30, 2016, Axios Corp. had liability of approximately \$3,072,000 in respect of the Convertible Debentures.

#### **EVENTS LEADING TO DECLINE**

54. Despite growth in sales and revenue, the Axios business is currently not profitable, and its net losses have continued to increase. According to the September 2016 Financial Statements, Axios had a net loss of approximately \$10,835,000 in the nine-month period ended September 30, 2016. In previous fiscal years, Axios had net losses (before taxes) of approximately \$3,100,000 and \$9,108,000 in the 2014 and 2015, respectively. A copy of the 2015 Annual Financial Statement is attached hereto as **Exhibit “W”**.

55. As a company in its early development stage, Axios’ revenue is derived from and dependent on a limited number of customers. I understand that gaining new customers is expensive, as Axios’ sales model requires renting its pallets and pooling services across the entire supply chain from retailer approval to vendor adoption of its products. Moreover, as it is introducing a new product into an existing marketplace, Axios is competing with established competitors. The rate of adoption among potential customers has not been high enough to cover Axios’ increasing operating costs as it has attempted to expand into the United States.

56. I am advised by Mr. MacDonald that recent attempts to raise capital have been largely unsuccessful, and as a result there is very little cash available to service its debt, pay its employees, and manage its day-to-day operations.

57. Turnover in personnel has been significant. In addition to the loss of all of its employees (other than Mr. MacDonald as outlined above), other key management and directors have also left the Axios Group recently. For example, on January 10, 2017, Axios Corp. announced that John Albright had resigned as a director of the company. On January 30, 2017, Axios Corp. announced that Michael Cooke had resigned as Chief Financial Officer. Press releases announcing such changes are attached hereto as **Exhibit “X”**.

58. Most recently, on February 10, 2017, as set out in Exhibit “Y”, Axios Canada announced that as a result of its inability to raise additional financing that it was ceasing its logistics operations effective immediately.

#### **A. Axios Defaults and EDC Demands**

59. As a result of the foregoing, Axios Canada is in default under both the EDC 2015 Loan and the EDC 2016 Loan, respectively.

60. On February 10, 2017, EDC, by way of its counsel, delivered to Axios Canada demands and section 244 notices under the BIA in respect of the EDC Indebtedness (the “**EDC Demands**”, attached hereto as **Exhibit “Z”**). Similar demand letters were sent to all EDC Guarantors (the “**EDC Guarantor Demand Letters**”). Copies of the EDC Guarantor Demand Letters are attached hereto as **Exhibit “AA”**.

61. On February 13, 2017, Axios Canada consented to the early enforcement by EDC of its security, including the appointment of a receiver. Such consents are attached hereto as **Exhibit “BB”**. In addition, I understand that Axios Corp., Axios USA, and Axios Logistics do not oppose the appointment of a Receiver over all of their respective assets, undertakings and properties.

62. Pursuant to the 2015 GSA and 2016 GSA, EDC may take steps to appoint a receiver over the collateral. In the Subordination Agreement, the Subordinated Debenture Holder consents to EDC taking enforcement steps, including the appointment of a receiver.

#### **URGENT NEED FOR RECEIVER**

63. Given the current state of the Axios business, it is critical that Farber be appointed as Receiver so that it can take immediate steps to preserve and maintain the property of the Respondents for the benefit of its creditors. This urgency is heightened given the risk of destruction of the pallets if they remain stranded at retail distribution centres for an extended period of time.

64. Farber is a licensed trustee, as defined in the BIA, with experience in Canadian and cross-border insolvency engagements, including receiverships. Farber has provided a written consent to act as Receiver in this proceeding. If appointed, I am advised by Hylton Levy, Partner at Farber, that he anticipates that the initial phase of the proposed receivership will be an investigative one, including but not limited to, a review of the state of the books and records of the Respondents, a determination of the extent of any government and employee arrears, a determination as to which Axios entity owns which collateral, and certain preservation steps to protect the collateral.

65. Given the limited cash resources of the Respondents, it is expected that the cost of the proposed receivership will be funded by EDC up to a maximum amount of \$300,000 for this initial phase. Accordingly, the proposed Receiver is requesting the power to borrow from EDC on security of “Receiver Certificates” and a court-ordered “Receiver’s Borrowings Charge”, if it determines necessary to do so.

66. In addition, to minimize costs associated with the proposed enforcement and increase efficiency, the proposed Appointment Order expressly authorizes the Receiver to retain counsel to the Applicant, Blakes, as its counsel to advise and represent it in these proceedings, save and except for circumstances where the Receiver requires independent legal advice, in which case, the proposed Appointment Order also authorizes the Receiver to retain

independent counsel. It is proposed that the fees and expenses of the proposed Receiver and its legal counsel in carrying out the Receiver's duties, once appointed, will be secured by a "Receiver's Charge" over all of the assets and undertakings of the Respondents.

#### **A. Chapter 15 Application**

67. Given a significant portion of Axios' inventory is located in the United States, if the relief requested by EDC is granted, it is intended that an application seeking recognition of the Appointment Order will be filed in Delaware under Chapter 15 of the U.S. Bankruptcy Code on the basis that Mississauga, Ontario is Axios' "centre of main interest". It is intended that Farber, as proposed Receiver, would be the foreign representative in the Chapter 15 proceedings.


#### **CONCLUSION**

68. As EDC has security over the assets of Axios Canada, EDC requests the appointment of the Receiver in respect of Axios Canada pursuant to both section 243 of the *Bankruptcy and Insolvency Act* ("BIA") and section 101 of the *Courts of Justice Act* (Ontario) (the "CJA"). As EDC has unsecured guarantees from the EDC Guarantors (Axios Corp., Axios USA, and Axios Logistics), EDC requests the appointment of the Receiver pursuant to section 101 of the CJA only. Section 101 does not require that a creditor have security to appoint a receiver, but rather that it be just or convenient to do so.

69. In the view of EDC, it is both just and convenient to appoint the Receiver over Axios Canada and the EDC Guarantors. EDC's understanding is that the companies are an integrated business dependent on the Head Office. In order to best address the financial challenges facing the Axios Group, it is important that the court-appointed Receiver have comprehensive oversight of the corporate enterprise to determine, among other things, asset ownership, asset location, creditor constituencies, and entitlement to realization.

70. I swear this affidavit in support of EDC's application for the appointment of Farber as Receiver, on the terms of the proposed Appointment Order and for no other or improper purpose.

**SWORN BEFORE ME** at the City of )  
Ottawa, in the Province of Ontario, this )  
23<sup>rd</sup> day of February, 2017 )

  
A Commissioner for taking affidavits )

CAROL WEMERT

  
Geoff Bleich

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

Export Development Canada and Axios Mobile Assets Corp. et al.  
Applicant Respondents

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

Proceeding commenced at [Toronto](#)

**AFFIDAVIT OF GEOFF BLEICH  
(re: Appointment of Receiver)**

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