

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

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C 36, AS AMENDED**

**AND IN THE MATTER OF YRC FREIGHT CANADA COMPANY, YRC LOGISTICS  
INC., USF HOLLAND INTERNATIONAL SALES CORPORATION AND 1105481  
ONTARIO INC.**

**APPLICATION OF YELLOW CORPORATION UNDER SECTION 46 OF THE  
*COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

Applicant

**FACTUM OF THE APPLICANT  
(Motion Returnable June 19, 2024)**

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## TABLE OF CONTENTS

<b>PART I – INTRODUCTION .....</b>	<b>1</b>
<b>PART II – SUMMARY OF THE FACTS .....</b>	<b>2</b>
<b>A.    Background .....</b>	<b>2</b>
<b>B.    Settlement Agreements with Possessory Lienholders.....</b>	<b>4</b>
<b>C.    Deletion of Mailboxes and Accounts .....</b>	<b>6</b>
<b>PART III - ISSUES AND THE LAW .....</b>	<b>8</b>
<b>A.    The Court has Jurisdiction to Grant the Sixth Supplemental Order .....</b>	<b>8</b>
<b>B.    The U.S. Orders Ought to be Recognized in Canada .....</b>	<b>10</b>
(i)    Recognition of the Lienholder Rolling Stock Settlement Order.....	11
(ii)   Recognition of the Mailbox Destruction Order .....	13
<b>PART IV – RELIEF REQUESTED.....</b>	<b>16</b>

## PART I – INTRODUCTION

1. Yellow Corporation (the “**Yellow Parent**”) files this factum in its capacity as the Foreign Representative in respect of the proceedings commenced by the Yellow Parent and certain of its affiliates (collectively, the “**Debtors**”), including YRC Freight Canada Company (“**YRC Freight Canada**”), YRC Logistics Inc., USF Holland International Sales Corporation and 1105481 Ontario Inc. (collectively, the “**Canadian Debtors**”), under chapter 11 of the United States Code (the “**Chapter 11 Cases**”) in support of its motion for an Order (the “**Sixth Supplemental Order**”), among other things, recognizing and enforcing the following orders (collectively, the “**U.S. Orders**”) granted by the U.S. Bankruptcy Court in the Chapter 11 Cases:<sup>1</sup>

(a) the *Order (I) Approving the Settlement Agreements By and Among the Debtors and Certain Possessory Lienholders and (II) Granting Related Relief* (the “**Lienholder Rolling Stock Settlement Order**”); and

(b) subject to its entry by the U.S. Bankruptcy Court, the *Order Authorizing the Abandonment and Destruction of Certain Digital Records* (the “**Mailbox Destruction Order**” together, with the Lienholder Rolling Stock Settlement Order, the “**U.S. Orders**”).

2. The Foreign Representative seeks recognition of the U.S. Orders pursuant to the Court’s jurisdiction under subsection 49(1) of the *Companies’ Creditors Arrangement Act* (Canada) (the

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<sup>1</sup> Capitalized terms not otherwise defined in this Factum have the meanings set out in the Affidavit of Matthew A. Doheny sworn June 12, 2024 (the “**Seventh Doheny Affidavit**”) or the U.S. Orders, as applicable, including terms therein defined by way of cross-reference. Unless otherwise indicated, dollar amounts referenced in this Factum are references to U.S. Dollars.

“CCAA”). For the reasons discussed herein, the Foreign Representative submits that recognition of the U.S. Orders pursuant to the proposed Sixth Supplemental Order is necessary and appropriate to administer and maximize the value of the Canadian Debtors’ estates, and respectfully requests that this Court issue the Sixth Supplemental Order.

## **PART II – SUMMARY OF THE FACTS**

### **A. BACKGROUND**

3. The Debtors, including the Canadian Debtors, are part of an approximately 100 year-old trucking and logistics company (“**Yellow**” or the “**Company**”), which boasted one of the largest less-than-truckload networks in North America. While Yellow operated an integrated, global business, by far its largest presence was in the United States. Yellow’s Canadian business represented approximately 2% of the Company’s overall business.<sup>2</sup>

4. On August 6, 2023, the Debtors (including the Canadian Debtors) commenced the Chapter 11 Cases in the U.S. Bankruptcy Court by filing voluntary petitions for relief under the U.S. Bankruptcy Code.<sup>3</sup>

5. On August 8, 2023, this Court granted an interim stay order which, among other things, granted a stay of proceedings in respect of the Canadian Debtors and the Yellow Parent, and their respective directors and officers, in Canada.<sup>4</sup>

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<sup>2</sup> [Affidavit of Matthew A. Doheny dated August 7, 2023 at paras 6 and 9, Application Record of the Applicant returnable August 8, 2023, Tab 2.](#)

<sup>3</sup> Seventh Doheny Affidavit at para 3. [[A7187:A16](#)].

<sup>4</sup> Seventh Doheny Affidavit at para 4. [[A7187:A16](#)].

6. Following a hearing on August 9, 2023, in respect of the first day motions filed by the Debtors in the U.S. Bankruptcy Court, the U.S. Bankruptcy Court granted certain First Day Orders, including an order appointing the Yellow Parent as the Foreign Representative.<sup>5</sup>

7. On August 29, 2023, this Court granted: (a) the Initial Recognition Order, *inter alia*, recognizing the Yellow Parent as the “foreign representative” in respect of the Chapter 11 Cases and the Chapter 11 Cases as a “foreign main proceeding” pursuant to section 47 of the CCAA; and (b) the First Supplemental Order, among other things, (i) ordering a stay of proceedings in respect of the Canadian Debtors and the Yellow Parent, and their respective directors and officers, in Canada, (ii) appointing Alvarez & Marsal Canada Inc. as the Information Officer, (iii) recognizing certain of the orders issued by the U.S. Bankruptcy Court, and (iv) granting the Administration Charge, the D&O Charge and the DIP Charge.<sup>6</sup>

8. The Debtors commenced the Chapter 11 Cases and these CCAA recognition proceedings to facilitate an orderly wind-down of the Debtors’ operations and conduct an orderly and value-maximizing sale of their portfolio of real estate and trucking assets.<sup>7</sup>

9. Additional updates and information regarding the Debtors’ efforts and activities during the Chapter 11 Cases and these CCAA recognition proceedings are discussed in the Seventh Doheny Affidavit and the Information Officer’s Sixth Report dated June 17, 2024 (the “**Sixth Report**”).

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<sup>5</sup> Seventh Doheny Affidavit at para 5. [[A7188:A717](#)].

<sup>6</sup> Seventh Doheny Affidavit at para 6. [[A7188:A717](#)]; *Yellow Corporation et al* (29 August 2023) Toronto, Ont Sup Ct J [Commercial List] CV-23-00704038-00CL ([Initial Recognition Order \(Foreign Main Proceeding\)](#)) [*Initial Recognition Order*]; *Yellow Corporation et al* (29 August 2023) Toronto, Ont Sup Ct J [Commercial List] CV-23-00704038-00CL ([Supplemental Order \(Foreign Main Proceeding\)](#)).

<sup>7</sup> Seventh Doheny Affidavit at para 9. [[A7190:A19](#)].

**B. SETTLEMENT AGREEMENTS WITH POSSESSORY LIENHOLDERS**

10. In the ordinary course of business, the Debtors routinely relied on the services of third parties, including providers of mechanic, towing, storage yard, and other similar services, for the operation and maintenance of their Rolling Stock Assets.<sup>8</sup>

11. When the Debtors commenced the Chapter 11 Cases and these CCAA recognition proceedings, certain Rolling Stock Assets were in the possession of numerous such third parties (the “**Possessory Lienholders**”) who held a variety of statutory, common law or possessory liens (collectively, “**Possessory Liens**”) on such Rolling Stock Assets for prepetition amounts due and owing for services provided in respect of such Rolling Stock Assets.<sup>9</sup> The Debtors have used the relief granted to them by the U.S. Bankruptcy Court to pay certain prepetition claims related to the Possessory Liens where the Debtors believed, in an exercise of their business judgment, that the benefit to their estates from making such payments during their ongoing wind-down would exceed the costs to the estates.<sup>10</sup>

12. The Debtors, with the assistance of their advisors, identified 55 Rolling Stock Assets (collectively, the “**Lienholder Rolling Stock Assets**”) that have been in the possession of Possessory Lienholders since before the Petition Date.<sup>11</sup> The Debtors’ Financial Advisor conducted a comprehensive analysis of the Lienholder Rolling Stock Assets, which included, without limitation:

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<sup>8</sup> Seventh Doheny Affidavit at para 42. [[A7201:A30](#)].

<sup>9</sup> Seventh Doheny Affidavit at para 42. [[A7202:A31](#)].

<sup>10</sup> Seventh Doheny Affidavit at para 43. [[A7202:A31](#)].

<sup>11</sup> Seventh Doheny Affidavit at para 43. [[A7202:A31](#)].

- (a) identifying, in consultation with the Rolling Stock Agent, the likely value of these assets based on an analysis of the results of the Rolling Stock Asset sales to date; and
- (b) estimating the value of the claims of each of the Possessory Lienholders against the Lienholder Rolling Stock Assets, including all known prepetition and postpetition amounts owing to the Possessory Lienholders, including estimated unliquidated, unbilled amounts, that the Debtors would need to satisfy to release such assets for sale.<sup>12</sup>

13. The analysis showed that the estimated aggregate claims related to prepetition repairs and storage costs of approximately \$794,000 materially exceeded the recovery threshold value of Lienholder Rolling Stock Assets, not including the costs to recover each Lienholder Rolling Stock Asset from its Possessory Lienholder location.<sup>13</sup>

14. Further, these assets have not been used in the Debtors' operations nor have these assets been included in marketing materials prepared by the Rolling Stock Agent or the Debtors since the commencement of the Chapter 11 Cases and these CCAA recognition proceedings given that they have been held at the Possessory Lienholder locations since prior to the Petition Date.<sup>14</sup>

15. Based on the foregoing, the Debtors engaged in good faith, arms' length negotiations with the Possessory Lienholders, and entered into settlement agreements with seven Possessory

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<sup>12</sup> Seventh Doheny Affidavit at para 44. [[A702:A31](#) & [A7203:A32](#)].

<sup>13</sup> Seventh Doheny Affidavit at para 45. [[A7203:A32](#)].

<sup>14</sup> Seventh Doheny Affidavit at para 46. [[A7203:A32](#)].

Lienholders (the “**Settlement Agreements**”).<sup>15</sup> The Settlement Agreements result in a waiver or reduction of the known claims held by the Possessory Lienholders against the Debtors’ estates in the aggregate amount of \$679,320 in exchange for surrendering title of the applicable Lienholder Rolling Stock Assets to such Possessory Lienholders.<sup>16</sup>

16. The Settlement Agreements include the Davidson Protruck Settlement Agreement in respect of the transfer of title to eight Semi-Tractor Units owned by and registered to YRC Freight Canada, one of the Canadian Debtors, as consideration for the release by Davidson Protruck of the Yellow Parent and its subsidiaries, among others, from any and all claims, actions and causes of action that Davidson Protruck has or may have against the Yellow Parent and its subsidiaries, respective affiliates, agents, servants, employees, successors or assigns, employees, arising from or out of unpaid towing, repair and/or storage fees for the Semi-Tractor Units and the withdrawal of Davidson Protruck’s proof of claim filed in the Chapter 11 Cases.<sup>17</sup>

17. On May 31, 2024, the U.S. Bankruptcy Court granted the Lienholder Rolling Stock Settlement Order approving the Settlement Agreements and the transactions contemplated thereby, including the transfer of title to the Semi-Tractor Units to Davidson Protruck.

### **C. DELETION OF MAILBOXES AND ACCOUNTS**

18. YRC Enterprise Services, Inc., a Debtor in the Chapter 11 Cases, and Microsoft Corporation (“**Microsoft**”) are parties to certain enrollment agreements (collectively, the “**Enrollment**”) through which the Debtors obtained licenses to use certain Microsoft software and

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<sup>15</sup> Seventh Doheny Affidavit at para 48. [[A7204:A33](#)].

<sup>16</sup> Seventh Doheny Affidavit at para 49. [[A7204:A33](#)].

<sup>17</sup> Seventh Doheny Affidavit at para 50. [[A7204:A33](#)].



products. Under the Enrollment, the Debtors may annually reduce, or True-Down, the number of subscription licenses that the Debtors maintain related to each product accessible under the Enrollment in return for a reduced annual fee commensurate with the reduction in services and licenses.<sup>18</sup>

19. Pursuant to terms of the Enrollment, given the shut-down of the Debtors' businesses, the Debtors and Microsoft agreed to True-Down the Debtors' license enrollment and use, and in turn, reduce the annual cost under the Enrollment from \$3.9 million to \$300,000.<sup>19</sup>

20. The Debtors have identified approximately 6,100 mailboxes (the "**Mailboxes**") associated with Microsoft user accounts ("**Accounts**") that were disabled in 2023 after the Petition Date. These Mailboxes are Mailboxes that are: (i) not on legal hold; (ii) of previous employees below the status of Vice President; (iii) in which the active directory account is disabled; (iv) that were not used in the year 2024; and (v) that are not shared with any current employee.<sup>20</sup> The Debtors have no reason to believe that the Mailboxes, or the digital data contained therein, are needed any longer.<sup>21</sup>

21. If the Mailboxes associated with the Accounts are not deleted, the Debtors will be liable for the \$2.9 million annual fee for the associated licenses billed by Microsoft pursuant to the original Enrollment. Accordingly, the Debtors filed the Mailbox Destruction Motion seeking authorization of the U.S. Bankruptcy Court to destroy, or cause to be destroyed, the Mailboxes.<sup>22</sup>

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<sup>18</sup> Seventh Doheny Affidavit at para 53. [[A7204:A34](#)].

<sup>19</sup> Seventh Doheny Affidavit at para 54. [[A7206:A35](#)].

<sup>20</sup> Seventh Doheny Affidavit at para 55. [[A7206:A35](#)].

<sup>21</sup> Seventh Doheny Affidavit at para 56. [[A7206:A35](#)].

<sup>22</sup> Seventh Doheny Affidavit at para 56. [[A7206:A35](#)].

22. The Mailbox Destruction Motion was originally scheduled to be heard by the U.S. Bankruptcy Court on June 3, 2024. The Debtors have adjourned the hearing of the Mailbox Destruction Motion – initially to June 12, 2024, and most recently to June 28, 2024 – to allow the Debtors time to work to address a limited objection and certain reservation of rights that have been filed.<sup>23</sup>

### **PART III - ISSUES AND THE LAW**

23. The issue on this motion is whether the Court should grant the Sixth Supplemental Order recognizing the Lienholder Rolling Stock Settlement Order and, if granted by the U.S. Bankruptcy Court, the Mailbox Destruction Order, pursuant to section 49 of the CCAA.

24. For the reasons set out below, the Yellow Parent submits that the relief sought on this motion is necessary and appropriate in order to facilitate the efforts of the Yellow group, including the Canadian Debtors and the Yellow Parent, to pursue an orderly wind-down of their business and operations in the Chapter 11 Cases with a view to maximizing value for the benefit of the Company's creditors, including the Company's Canadian creditors.

#### **A. THE COURT HAS JURISDICTION TO GRANT THE SIXTH SUPPLEMENTAL ORDER**

25. This Court recognized the Chapter 11 Cases as a “foreign main proceeding” under section 47 of the CCAA pursuant to the Initial Recognition Order.<sup>24</sup> When a foreign main proceeding has been recognized under Part IV of the CCAA, subsection 49(1) provides the Court with broad

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<sup>23</sup> Seventh Doheny Affidavit at para 60. [[A7207:A36](#)].

<sup>24</sup> [Initial Recognition Order](#) at para 3.

jurisdiction to grant “any order that it considers appropriate” with respect to such foreign proceedings if the Court is satisfied that it is necessary for the protection of the debtor company’s property or the interests of a creditor or creditors.<sup>25</sup>

26. This Court has noted that “[t]he purpose of Part IV of the CCAA is to effect cross-border insolvencies and create a system under which foreign insolvency proceedings can be recognized in Canada.”<sup>26</sup> This statement corresponds with the stated purposes of Part IV of the CCAA set out in section 44 of the CCAA, which include the promotion of: (a) cooperation between the courts and other competent authorities in Canada with those of foreign jurisdictions; and (b) the fair and efficient administration of cross-border insolvencies that protects the interests of creditors and other interested persons, and those of debtor companies.<sup>27</sup>

27. The principle of comity is central to achieving these objectives. Comity requires that Canadian courts recognize and enforce the judicial acts of other jurisdictions, provided that those other jurisdictions have assumed jurisdiction on a basis consistent with principles of order, predictability and fairness.<sup>28</sup> Section 52 of the CCAA provides that if a proceeding is recognized by a Canadian court under the CCAA as a foreign proceeding, “the court shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.”<sup>29</sup>

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<sup>25</sup> [CCAA, s 49\(1\)](#).

<sup>26</sup> [Zochem Inc. \(Re\)](#), 2016 ONSC 958 at para [15](#).

<sup>27</sup> [CCAA, s 44](#).

<sup>28</sup> [In the Matter of Voyager Digital Ltd](#), 2022 ONSC 4553 at para [9](#).

<sup>29</sup> [CCAA, s 52](#).

28. Where a cross-border insolvency proceeding is most closely connected to another jurisdiction, it is appropriate for the court in that jurisdiction to exercise principal control over the process given the principles of comity and to avoid a multiplicity of proceedings.

29. Typically, a Canadian court will only refuse to recognize an order of another court in situations where subsection 61(2) of the CCAA is engaged. Subsection 61(2) of the CCAA provides that “Nothing in this Part [IV] prevents the court from refusing to do something that would be contrary to public policy.”<sup>30</sup> Canadian courts have held that this exception to recognition should be interpreted narrowly.<sup>31</sup>

#### **B. THE U.S. ORDERS OUGHT TO BE RECOGNIZED IN CANADA**

30. In considering whether to recognize an order made in a foreign insolvency proceeding, a Canadian court will consider, among other things: (a) the principles of comity and the need to encourage cooperation between courts of various jurisdictions; (b) the need to respect foreign bankruptcy and insolvency legislation; (c) the equitable treatment of stakeholders, and, to the extent reasonably possible, the equal treatment of stakeholders regardless of the jurisdiction in which they reside; and (d) that the appropriate level of court involvement depends to a significant degree upon the court’s nexus to the enterprise.<sup>32</sup> A consideration of these factors supports this Court’s recognition of the U.S. Orders pursuant to the Sixth Supplemental Order.

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<sup>30</sup> [CCAA, s 61\(2\)](#).

<sup>31</sup> [Hartford Computer Hardware, Inc. Re](#), 2012 ONSC 964 at paras [17-18](#).

<sup>32</sup> [Xerium Technologies Inc. Re](#), 2010 ONSC 3974 at paras [26-27](#).

(i) **Recognition of the Lienholder Rolling Stock Settlement Order**

31. On May 31, 2024, the U.S. Bankruptcy Court granted the Lienholder Rolling Stock Settlement Order, among other things, approving the Settlement Agreements and the transfer of the Lienholder Rolling Stock Assets to the applicable Possessory Lienholders as contemplated by the Settlement Agreements.

32. The Initial Recognition Order restricts the Canadian Debtors from “selling or otherwise disposing of: (a) outside the ordinary course of its business, any of its property in Canada that relates to the business; and (b) any of its other property in Canada” except with leave of the Court. Accordingly, pursuant to the proposed Sixth Supplemental Order, the Foreign Representative seeks recognition of the Lienholder Rolling Stock Settlement Order and authorization for YRC Freight Canada to transfer title of the Semi-Tractor Units to Davidson Protruck as part of the settlement under the Davidson Protruck Settlement Agreement. As the relevant ownership documents were located within the Semi-Tractor Units (which were in Davidson Protruck’s possession), resulting in the transfer of titles in respect of the Semi-Tractor Units to Davidson Protruck having effectively been implemented, the Foreign Representative is seeking the Court’s approval of such title transfers on a *nunc pro tunc* basis.<sup>33</sup>

33. The Courts have granted similar relief in approving settlement agreements in plenary CCAA proceedings. When approving a settlement under the CCAA, the Court will consider whether: (a) the transaction is fair and reasonable; (b) the transaction will be beneficial to the debtor and its stakeholders generally; and (c) the settlement is consistent with the purpose and

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<sup>33</sup> Seventh Doheny Affidavit at para 52. [[A7205:A34](#)].

spirit of the CCAA.<sup>34</sup> While not required in the context of a Part IV recognition proceeding, the Foreign Representative submits that the Davidson Protruck Settlement Agreement satisfies the test for approval of a settlement in the context of a plenary CCAA proceeding.

34. The Debtors entered into the Settlement Agreements in order to maximize and preserve value for the Debtors' estates. Based on the Debtors' Financial Advisor's comprehensive analysis, the Debtors determined that, among other things, (i) the costs to release such the Lienholder Rolling Stock Assets, including the Semi-Tractor Units, and bring such assets to working order and prepare for sale, significantly exceeded their value, (ii) the Lienholder Rolling Stock Assets provided no value to the administration of the Debtors' estates, and (iii) it would be value-destructive for the Debtors to expend any further estate resources to retrieve the Lienholder Rolling Stock Assets.<sup>35</sup>

35. The Debtors engaged in good faith, arms' length negotiations with the Possessory Lienholders and entered into the Settlement Agreements with seven Possessory Lienholders providing for the waiver or reduction of the known claims held by the Possessory Lienholders against the Debtors' estates in exchange for the Debtors surrendering title of the applicable Lienholder Rolling Stock Assets to such Possessory Lienholders.

36. With respect to the Davidson Protruck Settlement Agreement, which provides for the transfer of title to the eight Semi-Tractor Units owned by and registered to YRC Freight Canada

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<sup>34</sup> *Robertson v ProQuest Information & Learning Co.*, 2011 ONSC 1647 at para 22; *Air Canada, Re* (2004), 47 C.B.R. (4th) 169 at para 9 (ONSC); *Calpine Canada Energy Limited, Re*, 2007 ABQB 504 at paras 59 and 75.

<sup>35</sup> Seventh Doheny Affidavit at paras 45 and 47. [[A7203:A32](#)].

held by Davidson Protruck, the settlement results in a reduction of an estimated claim of \$102,814.<sup>36</sup>

37. The Information Officer believes the Lienholder Rolling Stock Settlement Order is fair and reasonable in the circumstances and recommends that this Court recognize the Lienholder Rolling Stock Settlement Order.<sup>37</sup>

38. The Foreign Representative respectfully submits that recognition of the Lienholder Rolling Stock Settlement Order and the authorization for YRC Freight Canada to transfer the title to the Semi-Tractor Units to Davidson Protruck is fair, reasonable and appropriate in the circumstances, reduces the amounts of claims against the Debtors on a consensual basis, and is beneficial to the Debtors and their stakeholders.

(ii) **Recognition of the Mailbox Destruction Order**

39. The Foreign Representative also requests that this Court grant recognition to the Mailbox Destruction Order, if granted by the U.S. Bankruptcy Court, pursuant to section 49 of the CCAA. The Mailbox Destruction Order will authorize the Debtors to destroy, or cause to be destroyed, the Mailboxes.

40. As noted above, the Initial Recognition Order imposes limitations on the ability for the Canadian Debtors to dispose of property in Canada without Court approval.<sup>38</sup> Accordingly, the Foreign Representative is seeking recognition of the Mailbox Destruction Order by this Court

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<sup>36</sup> Exhibit A to the Declaration of Brian Whittman dated May 13, 2024 in support of in *Support of Entry of Order (I) Approving the Settlement Agreements by and Among the Debtors and Certain Possessory Lienholders and (II) Granting Related Relief*. [[A7742:A571](#)].

<sup>37</sup> Sixth Report at para 6.8.

<sup>38</sup> [Initial Recognition Order](#) at para 5.

pursuant to the Sixth Supplemental Order to authorize the Canadian Debtors to abandon or destroy the Mailboxes in accordance with the Mailbox Destruction Order.

41. This Court granted similar relief in these proceedings on February 29, 2024, pursuant to the Fifth Supplemental Order, in recognizing the Documents Order (as defined therein) authorizing the Debtors to destroy, or cause to be destroyed, or abandon the Documents and Records (as defined in the Documents Order) located in Canada.<sup>39</sup>

42. This Court has also granted similar relief to that set forth in the Mailbox Destruction Order in plenary CCAA proceedings. In *Nortel*, this Court granted an order that, among other things, authorized the applicants to dispose of certain records pursuant to those CCAA proceedings.<sup>40</sup>

43. The Foreign Representative submits that the Mailbox Destruction Order should be recognized in Canada because, among other things:

- (a) the digital data is not necessary for the Debtors to complete the sales and wind down the Debtors are currently pursuing through the Chapter 11 Cases;
- (b) the Debtors have no reason to believe that the digital data is germane to any pending litigation and/or to any of the proofs of claim that have been filed with the U.S. Bankruptcy Court;

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<sup>39</sup> [\*Yellow Corporation et al.\*](#), Endorsement of Morawetz, C.J dated February 29, 2024, Court File No. CV-23-00704038-00CL (Ont. Sup. Ct. J. [Commercial List]).

<sup>40</sup> [\*Nortel Networks Corporation et al.\*](#) (26 August 2015), Toronto, Ont Sup Ct J [Commercial List] 09-CL-7950 (Order (Disposal of Records)) at para 10.



- (c) the Debtors have no reason to believe that Mailboxes have any information pertaining to Canadian tax or employee records that are not otherwise available to the Canadian Debtors and stored elsewhere; and
- (d) the costs of maintaining the Mailboxes and the associated licenses significantly exceed their value.<sup>41</sup>

44. The Debtors are seeking to resolve the limited objections and reservation of rights that have been filed in the Chapter 11 Cases in respect of the Mailbox Destruction Order, and will provide a further update to the Court on the return of this motion.

45. The Information Officer believes that, subject to reviewing the final form of the proposed order, the proposed Mailbox Destruction Order is fair and reasonable in the circumstances and recommends that this Court recognize the Mailbox Destruction Order, if granted by the U.S. Bankruptcy Court.<sup>42</sup>

46. The Foreign Representative respectfully submits that it is appropriate for this Court to recognize the Mailbox Destruction Order, if granted by the U.S. Bankruptcy Court, pursuant to subsection 49(1) of the CCAA.

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<sup>41</sup> Seventh Doheny Affidavit at paras 57, 58 and 59. [[A7206:A35](#) & [A7207: A36](#)].

<sup>42</sup> Sixth Report at para 6.14.

**PART IV – RELIEF REQUESTED**

47. The Yellow Parent, in its capacity as Foreign Representative, respectfully requests that the Court grant the Sixth Supplemental Order.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 17<sup>th</sup> day of June, 2024.

*Goodmans LLP*

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Goodmans LLP

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

<b>Tab</b>	<b>Description</b>
1.	<a href="#"><i>Yellow Corporation et al</i> (29 August 2023) Toronto, Ont Sup Ct J [Commercial List] CV-23-00704038-00CL (Initial Recognition Order (Foreign Main Proceeding))</a>
2.	<a href="#"><i>Yellow Corporation et al</i> (29 August 2023) Toronto, Ont Sup Ct J [Commercial List] CV-23-00704038-00CL (Supplemental Order (Foreign Main Proceeding))</a>
3.	<a href="#"><i>Yellow Corporation et al</i> (29 September 2023) Toronto, Ont Sup Ct J [Commercial List] CV-23-00704038-00CL (Second Supplemental Order)</a>
4.	<a href="#"><i>Zochem Inc. (Re)</i>, 2016 ONSC 958</a>
5.	<a href="#"><i>In the Matter of Voyager Digital Ltd</i>, 2022 ONSC 4553</a>
6.	<a href="#"><i>Hartford Computer Hardware, Inc, Re</i>, 3012 ONSC 964</a>
7.	<a href="#"><i>Re Paladin Canadian Holding Inc.</i>, 2024 ONSC 219 [Paladin Representative Plaintiff Decision]</a>
8.	<a href="#"><i>Xerium Technologies Inc., Re</i>, 2010 ONSC 3974</a>
9.	<a href="#"><i>Robertson v ProQuest Information &amp; Learning Co.</i>, 2011 ONSC 1647</a>
10.	<a href="#"><i>Air Canada, Re</i> (2004), 47 C.B.R (4th) 169 (ONSC)</a>
11.	<a href="#"><i>Calpine Canada Energy Limited, Re</i>, 2007 ABQB 504</a>
12.	<a href="#"><i>Yellow Corporation et al.</i>, Endorsement of Morawetz, C.J dated February 29, 2024, Court File No. CV-23-00704038-00CL (Ont. Sup. Ct. J. [Commercial List])</a>
13.	<a href="#"><i>Nortel Networks Corporation et al</i> (26 August 2015), Toronto, Ont Sup Ct J [Commercial List] 09-CL-7950 (Order (Disposal of Records))</a>

**SCHEDULE B**  
**STATUTORY REFERENCES**

**COMPANIES' CREDITORS ARRANGEMENT ACT**  
**R.S.C. 1985, c. C-36, as amended**

s. 44

The purpose of this Part is to provide mechanisms for dealing with cases of cross-border insolvencies and to promote

- (a) cooperation between the courts and other competent authorities in Canada with those of foreign jurisdictions in cases of cross-border insolvencies;
- (b) greater legal certainty for trade and investment;
- (c) the fair and efficient administration of cross-border insolvencies that protects the interests of creditors and other interested persons, and those of debtor companies;
- (d) the protection and the maximization of the value of debtor company's property; and
- (e) the rescue of financially troubled businesses to protect investment and preserve employment.

s. 49(1)

If an order recognizing a foreign proceeding is made, the court may, on application by the foreign representative who applied for the order, if the court is satisfied that it is necessary for the protection of the debtor company's property or the interests of a creditor or creditors, make any order that it considers appropriate, including an order

- (a) if the foreign proceeding is a foreign non-main proceeding, referred to in subsection 48(1);
- (b) respecting the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor company's property, business and financial affairs, debts, liabilities and obligations; and
- (c) authorizing the foreign representative to monitor the debtor company's business and financial affairs in Canada for the purpose of reorganization.

s. 52(1)

If an order recognizing a foreign proceeding is made, the court shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.

s. 61(2)

Nothing in this Part prevents the court from refusing to do something that would be contrary to public policy.

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED  
AND IN THE MATTER OF YRC FREIGHT CANADA COMPANY, YRC LOGISTICS INC., USF HOLLAND INTERNATIONAL  
SALES CORPORATION AND 1105481 ONTARIO INC.**

**APPLICATION OF YELLOW CORPORATION UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED**

Applicant

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

**FACTUM OF THE APPLICANT  
(Motion Returnable June 19, 2024)**

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