

**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 November 8, 2023)**

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PART I – INTRODUCTION¹

1. Yellow Corporation (the “**Yellow Parent**”) files this factum in its capacity as the Foreign Representative in respect of the proceedings commenced by Yellow Parent and certain of its affiliates (collectively, the “**Debtors**”), including YRC Freight Company 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 “**Third Supplemental Order**”), among other things:

- (a) recognizing and enforcing the Rolling Stock Sale Order (as defined below) pursuant to section 49 of the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”), provided that prior to the distribution of Net Proceeds from the sale of any Canadian Rolling Stock Assets (as defined below) (the “**Canadian Net Proceeds**”) pursuant to the Rolling Stock Sale Order, the Canadian Debtors shall hold back from the Canadian Net Proceeds an amount equal to the aggregate of the Administration Charge and the D&O Charge (the “**Holdback Amount**”), which Holdback Amount shall be subject to further order of this Court; and
- (b) notwithstanding paragraph 5 of the Initial Recognition Order, authorizing the Canadian Debtors to sell, transfer or otherwise dispose of the Canadian Rolling Stock Assets in accordance with the Rolling Stock Sale Order and the Third Supplemental Order, and ordering that any sale, transfer or other disposal of the

¹ Capitalized terms used but not otherwise defined in this Factum have the meanings set out in the Affidavit of Matthew A. Doheny dated September 22, 2023 (the “**Third Doheny Affidavit**”) or the Rolling Stock Sale Order, as applicable, including terms therein defined by way of cross-reference.

Canadian Rolling Stock Assets shall be free and clear of all liens, claims, encumbrances, and other interests of any kind and every kind whatsoever, provided that all such liens, claims, encumbrances, and interests shall attach to the Net Proceeds of the applicable sale, transfer or other disposal in the same order and priority as they existed immediately prior to such sale, transfer or other disposal.

2. The Foreign Representative seeks recognition of the Rolling Stock Sale Order and such other related relief pursuant to the Court's jurisdiction under subsection 49(1) of the CCAA. For the reasons discussed herein, the Foreign Representative submits that recognition of the Rolling Stock Sale Order and the related relief sought in the proposed Third 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 Third Supplemental Order.

PART II – SUMMARY OF THE FACTS

A. SUMMARY OF CERTAIN KEY MATTERS IN CONNECTION WITH THE PROCEEDINGS TO DATE

3. The Debtors, including the Canadian Debtors, are part of an approximately 100 year-old trucking and logistics company (“**Yellow**”), 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 Yellow's overall business.²

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

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.³

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.⁴

6. 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 liquidation of their portfolio of real estate and trucking assets, including rolling stock assets.

7. 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 "**First Day Hearing**"), the U.S. Bankruptcy Court granted certain orders, including the Foreign Representative Order appointing the Yellow Parent as the Foreign Representative in respect of the Chapter 11 Cases. In the period following the First Day Hearing, the U.S. Bankruptcy Court also granted certain additional orders (including the Interim DIP Order).⁵

8. 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 45 of the CCAA; and

³ Third Doheny Affidavit at para 2, being Exhibit D to the Affidavit of Brennan Caldwell sworn November 2, 2023 (the "**Caldwell Affidavit**"), Motion Record of the Applicant ("**Motion Record**"), Tab 2D [CL p [A6158:A1004](#)].

⁴ Third Doheny Affidavit at para 3 [CL p [A6158:A1004](#)].

⁵ Third Doheny Affidavit at paras 4 and 6. [CL p [A6158:A1004](#) - [A6159:A1005](#)].

(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 orders issued by the U.S. Bankruptcy Court, and (iv) granting the Administration Charge, the D&O Charge and the DIP Charge.⁶

9. Following the granting of the Interim DIP Order, the Debtors worked to finalize definitive documentation contemplated by the DIP Term Sheet, and on September 6, 2023, the Yellow Parent and the Debtors that are guarantors pursuant to the DIP Financing (including the Canadian Debtors) entered into the DIP Agreements.⁷ The Final DIP Order approving the DIP Financing on a final basis was granted by the U.S. Bankruptcy Court on September 15, 2023.

10. The Debtors also worked to finalize the Bidding Procedures in connection with the Debtors seeking bids for the sale or sales of substantially all of their assets, which Bidding Procedures were approved by the U.S. Bankruptcy Court pursuant to the Bidding Procedures Order on September 15, 2023.⁸

11. On September 21, 2023, the Debtors obtained approval by the U.S. Bankruptcy Court of the *Order (I) Approving the Debtors' Selection of a Stalking Horse Bidder, (II) Approving Bid Protections in Connection Therewith, (III) and Granting Related Relief* (the “**Real Estate Stalking Horse Order**”).⁹

⁶ Third Doheny Affidavit at para 7 [CL p [A6159:A1005](#) – [A6160:A1006](#)].

⁷ Third Doheny Affidavit at para 11 [CL p [A6161:A1007](#)].

⁸ Third Doheny Affidavit at paras 65-66 [CL p [A6183:A1029](#)].

⁹ Third Doheny Affidavit at para 41 [CL p [6172:A1018](#)].

12. On September 29, 2023, this Court granted the Second Supplemental Order, among other things, recognizing and enforcing in Canada various orders granted by the U.S. Bankruptcy Court, including the Final DIP Order, the Bidding Procedures Order and the Real Estate Stalking Horse Order.¹⁰

13. On October 27, 2023, the U.S. Bankruptcy Court entered the *Order (I) Approving Agency Agreement with Nations Capital, LLC, Ritchie Bros. Auctioneers (America) Inc., IronPlanet, Inc., Ritchie Bros. Auctioneers (Canada) Ltd. and IronPlanet Canada Ltd. Effective as of October 16, 2023; (II) Authorizing the Sale of Rolling Stock Assets Free and Clear of Liens, Claims, Interests and Encumbrances; and (III) Granting Related Relief* (the “**Rolling Stock Sale Order**”), which is the subject of this motion and discussed in further detail below.¹¹

B. THE DEBTORS’ SALE PROCESS EFFORTS TO DATE

14. The Debtors retained Ducera Partners LLC (“**Ducera**”) in February 2023 to serve as their investment banker and financial advisor in connection with the Debtors’ efforts to consider alternatives to address liquidity needs. During the engagement, Ducera has rendered investment banking services to the Debtors in connection with the evaluation of various strategic and financial alternatives and has worked closely with the Debtors’ management team to develop and implement a robust marketing process for the sale of the Debtors’ assets (the “**Sale Process**”).¹²

¹⁰ [Yellow Corporation, et al \(29 September 2023\), Toronto, Ont Sup Ct J \[Commercial List\] CV-23-00704038-00CL \(Second Supplemental Order\)](#) [*Second Supplemental Order*].

¹¹ Rolling Stock Sale Order, being Exhibit A to the Caldwell Affidavit, Motion Record, Tab 2A [CL p [A5175:A21](#)].

¹² Third Doheny Affidavit at para 63 [CL p [A6182:A1028](#)]; Declaration of Cody Leung Kaldenberg (the “**Ducera Declaration**”) at para 7, being Exhibit C to the Caldwell Affidavit, Motion Record, Tab 2C [CL p [A6148:A994](#)].

15. On July 31, 2023, prior to the commencement of the Chapter 11 Cases, Ducera launched the Sale Process, pursuant to which it has contacted over 600 prospective purchasers and provided such parties with marketing materials. In response to Ducera's outreach, more than 350 interested parties executed confidentiality agreements and were provided access to a virtual data room for the purpose of conducting further due diligence on the Debtors' assets. The process generated more than 120 indications of interest. Of the total parties contacted, approximately 300 were contacted based on their potential interest in the Rolling Stock Assets (among other assets) and of these parties, over 150 executed confidentiality agreements and were provided data room access.¹³

16. In parallel with the foregoing efforts, the Debtors worked with Ducera and their other advisors to develop the Bidding Procedures through which the Debtors' sale efforts would be conducted during the Chapter 11 Cases. As noted above, on September 15, 2023, the U.S. Bankruptcy Court entered the Bidding Procedures Order, which was recognized by this Court on September 29, 2023.¹⁴

17. The Bidding Procedures provide for separate timelines for the sale of the Debtors' (a) rolling stock assets (*i.e.*, owned or leased vehicles, tractors, trucks, trailers, tank trailer and other trailers, or similar vehicles and trailers, railroad cars, locomotives, stacktrains and other rolling stock and accessories used on such railroad cars, locomotives or other rolling stock (including superstructures and racks)), and (b) non-rolling stock assets (*i.e.*, owned or leased real estate, owned or licensed intellectual property, and any inventory, spare parts, supplies, accounts receivable, or other assets not constituting any of the foregoing).¹⁵ Pursuant to the Bidding

¹³ Third Doheny Affidavit at para 63 [CL p [A6182;A1028](#)]; Ducera Declaration at para 8 [CL p [A6148;A994](#)].

¹⁴ Third Doheny Affidavit at paras 65-66 [CL p [A6183;A1029](#)].

¹⁵ Third Doheny Affidavit at para 72 [CL p [A6187;A1033](#)].

Procedures, the deadline for submissions of bids on the Rolling Stock Assets was set for October 13, 2023 at 5:00 p.m., and an auction (if any) was to be held on October 18, 2023.¹⁶

18. Based on information gathered through the Debtors' sale efforts, including indications of interest received from potential purchasers of the Rolling Stock Assets, the Debtors, in consultation with Ducera and their other advisors, determined that retention of a liquidator would provide the best path for the Debtors to maximize the value of the Rolling Stock Assets while addressing other logistical constraints, such as removing the Rolling Stock Assets from the Debtors' properties and refurbishing the assets where necessary.¹⁷

19. Ducera, in consultation with the Debtors' management, negotiated with a number of potential liquidators of the Rolling Stock Assets to achieve the best terms possible under the circumstances. This process included engagement with six potential liquidators who provided proposals with respect to their proposed strategy and pricing to monetize the Rolling Stock Assets on behalf of the Debtors.¹⁸

20. The Debtors ultimately selected Nations Capital, LLC, Ritchie Bros. Auctioneers (America) Inc., IronPlanet, Inc., Ritchie Bros. (Canada) Ltd., and IronPlanet Canada Ltd. (collectively, the "**Agent**"), based upon, among other reasons, the Agent's market access, selling platform, ability to remove and transport the Rolling Stock Assets from the Debtors' facilities and house the Rolling Stock Assets on their facilities, and experience with bankruptcy proceedings. On October 16, 2023, the Debtors entered into an agreement with the Agent (the "**Agency**

¹⁶ Third Doheny Affidavit at para 72 [CL p [A6187:A1033](#)].

¹⁷ Ducera Declaration at para 9 [CL p [A6149:A995](#)].

¹⁸ Ducera Declaration at para 9 [CL p [A6149:A995](#)].

Agreement”) providing for the Agent to act as the Debtors’ exclusive marketer, broker, and auctioneer of the Rolling Stock Assets and to provide certain other critical and related services.¹⁹

21. The Debtors’ sale efforts in respect of their non-rolling stock assets are ongoing. Pursuant to the Bidding Procedures, the deadline for submissions of bids on non-rolling stock assets is November 9, 2023 at 5:00 p.m. An auction (if required) is scheduled for November 28, 2023.²⁰

C. THE AGENCY AGREEMENT

22. The Agency Agreement was heavily negotiated between the Debtors and the Agent at arm’s-length and in good faith over the course of multiple weeks. A table summarizing the material terms of the Agency Agreement is set out in the Debtors’ motion for approval of the Rolling Stock Sale Order.²¹ It is Ducera’s opinion that each of the terms and provisions of the Agency Agreement, including its economic components (i.e., the sale commission and expense reimbursement structure) are fair and commercially reasonable.²²

23. In summary, the Agency Agreement provides that the Agent will act as the Debtors’ exclusive marketer, broker, and auctioneer of the Rolling Stock Assets, including the Rolling Stock Assets of the Canadian Debtors (the “**Canadian Rolling Stock Assets**”), and also provides for certain other critical and related services, including refurbishment of the Rolling Stock Assets if needed, removal of the Rolling Stock Assets from the Debtors’ properties within six months

¹⁹ Ducera Declaration at para 9 and 10 [CL p [A6149:A995](#)].

²⁰ Third Doheny Affidavit at para 72 [CL p [A6187:A1033](#)].

²¹ *Motion of Debtors for Entry of an Order (I) Approving Agency Agreement with Nations Capital, LLC, Ritchie Bros. Auctioneers (America) Inc., IronPlanet, Inc., Ritchie Bros. Auctioneers (Canada) Ltd. and IronPlanet Canada Ltd. Effective as of October 16, 2023; (II) Authorizing the Sale of Rolling Stock Assets Free and Clear of Liens, Claims, Interests and Encumbrances; and (III) Granting Related Relief* (the “**Rolling Stock Sale Motion**”) at para 16, Exhibit B to the Caldwell Affidavit, Motion Record, Tab 2B [CL p [A6123:A969](#)].

²² Ducera Declaration at para 15 [CL p [A6151:A997](#)].

following the U.S. Bankruptcy Court's entry of the Rolling Stock Sale Order (the "**Removal Date**"), and transportation to and storage of the Rolling Stock Assets at facilities owned or possessed by the Agent ("**Agent Properties**"), from which further sales may be conducted.²³

24. Pursuant to the Agency Agreement, the Agent will ready the Debtors' Rolling Stock Assets for sale and disposition through private treaty, online, webcast, or unreserved public auctions to maximize the value of the Rolling Stock Assets. These marketing and sale strategies will be consented to by the Debtors and in consultation with the Consultation Parties (including the Junior DIP Lender, the B-2 Lenders, the Prepetition ABL Agent, the Prepetition UST Secured Parties, and the Creditors' Committee).²⁴

25. The Debtors terminated or laid off nearly all of their prepetition workforce as they work to wind-down operations pursuant to the Chapter 11 Cases, and currently lack the personnel and other resources to perform many of the critical tasks contemplated by the Agency Agreement.²⁵

26. Clearing the Rolling Stock Assets from the Company Properties as soon as commercially practicable is essential to minimizing rent expenses to future purchaser(s) of the Real Property Assets and to maximize the value of the Real Property Assets pursuant to the ongoing Sale Process under the Bidding Procedures Order. Critically, the Agency Agreement provides for free storage of the Rolling Stock Assets on the Agent Properties, allowing the Rolling Stock Assets to be

²³ Ducera Declaration at para 10 [CL p [A6149:A995](#)].

²⁴ Ducera Declaration at para 11 [CL p [A6149:A995](#)].

²⁵ Ducera Declaration at para 12 [CL p [A6149:A995](#)]; Third Doheny Affidavit at paras 23-24 [CL p [A6164:A1010](#) – [A6165:A1011](#)].

monetized over a value-maximizing time period while minimizing occupancy costs that would be incurred if the Rolling Stock Assets were to remain on the Company Properties.²⁶

27. The Agent is an industry-leading marketer, auctioneer, and broker of assets of this type with vast industry connections and experience (including in Canada). It is the opinion of Ducera that, to best maximize the value of the Rolling Stock Assets and the estates, it is in the Debtors' best interest to retain the Agent so that the Debtors and their estates can directly benefit from the Agent's expertise, experience, and market access.²⁷

28. Based on Ducera's professional experience and knowledge of these Chapter 11 Cases, Ducera believes that the Agency Agreement will provide a greater recovery for the Debtors' estates on account of the Rolling Stock Assets than any other available alternative.²⁸

D. THE ROLLING STOCK SALE ORDER

29. On October 27, 2023, the U.S. Bankruptcy Court entered the Rolling Stock Sale Order. The Rolling Stock Sale Order, among other things:

- (a) approves the Agency Agreement and the sales of Rolling Stock Assets as contemplated therein;
- (b) authorizes the Debtors and the Agent, without further order of the U.S. Bankruptcy Court, to take all steps they deem necessary or appropriate to sell the Rolling Stock Assets in accordance with the Agency Agreement;

²⁶ Ducera Declaration at para 12 [CL p [A6149:A995](#)].

²⁷ Ducera Declaration at para 13 [CL p [A6151:A997](#)].

²⁸ Ducera Declaration at para 16 [CL p [A6152:A998](#)].

- (c) orders that the Rolling Stock Assets shall be sold, pursuant to the Agency Agreement, free and clear of any liens, claims, encumbrances and other interests of any kind and every kind whatsoever (effective upon the sale thereof), provided that all liens, claims, encumbrances, and interests of which the Rolling Stock Assets are sold free and clear pursuant to the Agency Agreement and the Rolling Stock Sale Order shall attach to the Net Proceeds of the applicable sale, for the benefit of the Prepetition Secured Parties, the Prepetition UST Secured Parties and the Junior DIP Secured Parties, and (as applicable) BNSF Railway Company (“**BNSF**”), in the order of priority of such liens, claims, encumbrances, and interests, with the same validity, force, and effect which they had against the applicable Rolling Stock Asset(s) prior to the entry of the Rolling Stock Sale Order, including, solely with respect to Rolling Stock Assets held at BNSF storage locations, prior to the removal of such Rolling Stock Assets from any such BNSF storage locations;
- (d) orders that for each Rolling Stock Asset sold or collective group of Rolling Stock Assets sold to a single purchaser, the Debtors shall provide a statement (a “**Rolling Stock Lien Statement**”) to the advisors to each of the Prepetition Secured Parties, the Prepetition UST Secured Parties, the Junior DIP Secured Parties, the Committee, BNSF (solely with respect to Rolling Stock Assets stored at BNSF’s storage locations as of or subsequent to the date of the entry of the Rolling Stock Sale Order (such Rolling Stock Assets, the “**Possible BNSF Lien Collateral**”)), and the Information Officer (solely with respect to Canadian Rolling Stock Assets), that indicates the relative lien priorities of each such secured party on each Rolling

Stock Asset sold and the Net Proceeds attributable to the sale of each Rolling Stock Asset;

- (e) orders that as soon as reasonably practicable following the Agent's transfer of Net Proceeds to the Client Account, but in no event later than 10 calendar days thereafter (except with respect to certain disputed Net Proceeds as set out in the Rolling Stock Sale Order), the Debtors shall distribute the Net Proceeds from the sale of each Rolling Stock Asset to the Prepetition Secured Parties, the Prepetition UST Secured Parties, the Junior DIP Secured Parties (collectively, the "**Secured Parties**"), and/or (as applicable and only with respect to Possible BNSF Lien Collateral) BNSF in satisfaction of those parties' claims against the Debtors' estates in the order of priority of such liens, claims, encumbrances, and interests against the Rolling Stock Asset sold, consistent with the Final DIP Order and the applicable Rolling Stock Lien Statement, until such time as the Secured Parties' claims against the Debtors' estates are paid in full in cash (subject to certain provisions set forth in further detail in the Rolling Stock Sale Order); and
- (f) provides that the Rolling Stock Sale Order (including, as applicable with respect to the Canadian Rolling Stock Assets, subject to the entry by this Court of the Third Supplemental Order recognizing the Rolling Stock Sale Order) shall be the sole and sufficient evidence of authority to transfer title to any particular purchaser of the Rolling Stock Assets (including any Canadian Rolling Stock Assets).²⁹

²⁹ Rolling Stock Sale Order at paras 3-7, and 10-11 and 13 [CL p [A5178:A24-A5179:A25](#), [A5181:A27](#) and [A5183:A29](#)].

E. THE THIRD SUPPLEMENTAL ORDER

30. The Foreign Representative seeks the Third Supplemental Order, among other things:

- (a) recognizing and enforcing the Rolling Stock Sale Order pursuant to section 49 of the CCAA, provided that, prior to the distribution of Canadian Net Proceeds pursuant to the Rolling Stock Sale Order, the Canadian Debtors shall hold back from the Canadian Net Proceeds the Holdback Amount, which Holdback Amount shall be subject to further order of this Court; and
- (b) providing that, notwithstanding paragraph 5 of the Initial Recognition Order (which provides that except with leave of the Court, each of the Canadian Debtors is prohibited from selling or otherwise disposing of: (i) outside the ordinary course of business, any of its property in Canada that relates to the business; and (ii) any of its other property in Canada³⁰), the Canadian Debtors are authorized to sell, transfer or otherwise dispose of the Canadian Rolling Stock Assets in accordance with the Rolling Stock Sale Order and the Third Supplemental Order, and that any such sale, transfer or other disposal shall be free and clear of all liens, claims, encumbrances, and other interests of any kind and every kind whatsoever, provided that all such liens, claims, encumbrances, and interests shall attach to the Net Proceeds of the applicable sale, transfer or other disposal in the same order and priority as they existed immediately prior to such sale, transfer or other disposal.

³⁰ [*Yellow Corporation et al* \(29 August 2023\) Toronto, Ont Sup Ct J \[Commercial List\] CV-23-00704038-00CL \(Initial Recognition Order \(Foreign Main Proceeding\)\)](#) at para 5 [*Initial Recognition Order*].

PART III – ISSUES AND THE LAW

31. The issue on this motion is whether the Court should grant the Third Supplemental Order recognizing the Rolling Stock Sale Order in Canada pursuant to section 49 of the CCAA and providing for certain other related relief.

32. For the reasons set out below, the Yellow Parent submits that it is necessary and appropriate for this Court to grant the relief sought on this motion to maximize the value of the Canadian Debtors, and their assets and property, while the Debtors pursue their wind-down and sale efforts pursuant to the Chapter 11 Cases.

A. The Court has Jurisdiction to Grant the Third Supplemental Order

33. This Court recognized the Chapter 11 Cases as a “foreign main proceeding” under section 47 of the CCAA pursuant to the Initial Recognition Order.³¹ When a foreign main proceeding has been recognized under Part IV of the CCAA, subsection 49(1) provides the Court with broad 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.³²

34. 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.”³³ 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

³¹ [Initial Recognition Order at para 3.](#)

³² [CCAA, s 49\(1\).](#)

³³ [Zochem Inc. \(Re\), 2016 ONSC 958 at para 15.](#)

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.³⁴

35. 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 jurisdictions have assumed jurisdiction on a basis consistent with principles of order, predictability and fairness.³⁵ Section 52 of the CCAA provides that if a proceeding is recognized by a Canadian court 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.”³⁶

36. 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.³⁷

37. 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.”³⁸ Canadian courts have held that this exception to recognition should be interpreted narrowly.³⁹

³⁴ [CCAA, s 44.](#)

³⁵ [In the Matter of Voyager Digital Ltd, 2022 ONSC 4553 at para 9.](#)

³⁶ [CCAA, s 52.](#)

³⁷ [Babcock & Wilcox Canada Ltd, 18 CBR \(4th\) 157, \[2000\] OJ No 786 \(QL\) \(Ont Sup Ct\) at para 9 \[Babcock\].](#)

³⁸ [CCAA, s 61\(2\).](#)

³⁹ [Hartford Computer Hardware, Inc. Re, 2012 ONSC 964 at paras 17-18.](#)

38. In considering whether to recognize a foreign order, including an order made in a Chapter 11 proceeding, a Canadian court should consider, among 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.⁴⁰ A consideration of these factors supports the Court's recognition of the Rolling Stock Sale Order pursuant to the Third Supplemental Order.

B. The Rolling Stock Sale Order Ought to be Recognized in Canada

39. Recognition of the Rolling Stock Sale Order by this Court is consistent with Part IV of the CCAA, the principles of comity, and the approval of similar agency and liquidation arrangements commonly granted in Canadian restructuring proceedings.⁴¹ It is also consistent with previous recognition orders in Part IV proceedings where this Court has ordered the sale, and free and clear vesting, of Canadian assets pursuant to various transactions.⁴²

40. Comity requires that a Canadian court give deference to the judgment of a U.S. court charged with overseeing a restructuring.⁴³ In granting the Rolling Stock Sale Order, the U.S. Bankruptcy Court determined, among other things, that (a) the Debtors' entry into the Agency Agreement and retention of the Agent represent a sound exercise of the Debtors' business

⁴⁰ [*Xerium Technologies Inc. Re*, 2010 ONSC 3974 at paras 26-27.](#)

⁴¹ [*Sears Canada Inc \(Re\)*, 2017 ONSC 6235 at para 6; *Target Canada Co \(Re\)*, 2015 ONSC 846 at paras 2 and 6; *Phoena Holdings Inc*, 2023 ONSC 2881 at paras 5-7; *Nordstrom Canada Retail, Inc*, 2023 ONSC 1814 at paras 6 and 10.](#)

⁴² [*Brooks Brother Group, Inc., et al* \(25 September 2020\), Toronto, Ont Sup Ct J \[Commercial List\] CV-20-00647463-00CL \(Recognition, Approval and Vesting Order\) at para 6; *Jack Cooper Ventures, Inc., et al* \(18 October 2019\), Toronto, Ont Sup Ct J \[Commercial List\] CV-19-626200-00CL \(Sale Recognition and Vesting Order\) at para 5.](#)

⁴³ [*Babcock* at para 6.](#)

judgment under the circumstances, (b) the Debtors demonstrated good, sufficient, and sound business purposes and justifications for entry into the Agency Agreement, (c) approval of the Agency Agreement is in the best interests of the Debtors, their estates, their creditors, and other parties in interest, and (d) the Agency Agreement was negotiated, proposed and entered into by the Debtors and the Agent without collusion, in good faith, and from arm's length bargaining positions.⁴⁴

41. As the Rolling Stock Assets include Canadian Rolling Stock Assets, it is appropriate and necessary for the efficient administration of the Chapter 11 Cases that the Canadian Rolling Stock Assets be dealt with alongside the rest of the Debtors' Rolling Stock Assets pursuant to the Agency Agreement. The efficient and coordinated sale of the Debtors' Canadian Rolling Stock Assets pursuant to the Agency Agreement will reduce costs and maximize value for the benefit of the Debtors' stakeholders.

42. In determining whether to exercise its discretion under subsection 49(1) of the CCAA to recognize the Rolling Stock Sale Order, this Court may also wish to consider the factors generally considered by Canadian courts in plenary CCAA proceedings with respect to the approval of liquidator arrangements.

43. There is no specific test set out in the CCAA regarding the approval of liquidator arrangements. In prior CCAA cases involving the approval of liquidation processes, the Court has considered the following *Nortel* factors for determining generally whether a sale process is appropriate and should be approved:

⁴⁴ Rolling Stock Sale Order at page 3 [CL p [A5178:A24](#)].

- (a) is a sale transaction warranted at this time?
- (b) will the sale benefit the whole economic community?
- (c) do any of the debtors' creditors have a *bona fide* reason to object to a sale?
- (d) is there a better viable alternative?⁴⁵

44. Further, when considering whether to recognize a sale approval order granted by a foreign court in a Part IV proceeding, while not determinative under Part IV of the CCAA, Canadian courts have considered the factors set out in subsection 36(3) of the CCAA, as well as the *Soundair* factors.⁴⁶ The *Soundair* test considers: (a) whether sufficient efforts were made to obtain the best price and that the debtor had not acted improvidently; (b) whether the interests of all parties were considered; (c) the integrity and efficacy of that process; and (d) whether there was any unfairness in working out the process. The subsection 36(3) factors are:

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the monitor approved the process leading to the proposed sale or disposition;
- (c) whether the monitor filed a report stating that in its opinion the sale or disposition would be more beneficial to creditors than a bankruptcy;
- (d) the extent to which creditors were consulted;
- (e) the effects of the proposed sale or disposition on creditors and stakeholders; and

⁴⁵ [Nortel Networks Corp \(Re\)](#) 2009, 55 CBR (5th) 229, [2009] OJ No 3169 (Ont Sup Ct) at para 49; [Nordstrom Canada Retail, Inc.](#), 2023 ONSC 1814 at paras 6 and 10.

⁴⁶ See, for example, [David's Bridal et al](#) (19 July 2023), Toronto, Ont Sup Ct J [Commercial List] CV-23-00698107-00CL ([Endorsement of Kimmel, J](#)) at para 13; [Royal Bank of Canada v Soundair Corp](#) (1991), 4 OR (3d) 1, [1991] OJ No 1137 at para 16.

- (f) whether the consideration to be received for the assets is fair and reasonable, taking into account their market value.⁴⁷

45. The Foreign Representative submits that the relief pursuant to the proposed Third Supplemental Order is necessary to protect the interests of creditors, satisfying the requirement under subsection 49(1) of the CCAA, and that consideration of the *Nortel*, *Soundair* and subsection 36(3) factors further supports this Court's recognition of the Rolling Stock Sale Order pursuant to the Third Supplemental Order.

46. Regarding the *Nortel* factors, as noted above, the U.S. Bankruptcy Court determined in granting the Rolling Stock Sale Order that the Debtors demonstrated good, sufficient, and sound business purposes and justifications for entry into the Agency Agreement at this time, and that approval of the Agency Agreement is in the best interests of the Debtors, their estates, their creditors, and other parties in interest. The Debtors have advanced their sale efforts (including pursuant to the court-approved Bidding Procedures) and based on information gathered through this process, have determined, in consultation with their advisors, that pursuing the sale of their Rolling Stock Assets through the retention of a liquidator would provide the best path for the Debtors to maximize the value of their Rolling Stock Assets.⁴⁸

47. The Debtors further submit that the *Soundair* and subsection 36(3) factors are satisfied in the circumstances as:

- (a) as part of the Debtors' sale efforts, Ducera reached out to over 600 potential purchasers, approximately half of whom were contacted specifically because of

⁴⁷ [CCAA s. 36\(3\)](#).

⁴⁸ Ducera Declaration at para 9 [CL p [A6149:A995](#)].

their potential interest in the Rolling Stock Assets. The information gathered through this process, including indications of interest received from potential purchasers of the Rolling Stock Assets, led the Debtors, in consultation with its advisors, to determine that retaining a liquidator would provide the best path for the Debtors to maximize value;⁴⁹

- (b) Ducera, in consultation with the Debtors' management, negotiated with a number of potential liquidators of the Rolling Stock Assets to achieve the best terms possible under the circumstances, and has advised that the Agency Agreement, including its economic components (*i.e.*, the sale commission and expense reimbursement structure) are fair and commercially reasonable;⁵⁰
- (c) the Agent is an industry-leading marketer, auctioneer, and broker of assets of this type, including in Canada;⁵¹
- (d) the Agency Agreement provides that the Agent will provide certain critical services in connection with the marketing, disposal and sale of the Rolling Stock Assets that the Debtors either lack the personnel or resources to provide given their wholesale wind-down of operations and extremely limited workforce;⁵²
- (e) the Agent has the capability to remove the Rolling Stock Assets from the Debtors' properties by the Removal Date and thereafter store the Rolling Stock Assets at Agent Properties (for no rent), at which locations the Agent may conduct further

⁴⁹ Ducera Declaration at paras 8 and 9 [CL p [A6148:A994](#) – [A6149:A995](#)].

⁵⁰ Ducera Declaration at paras 4 and 15 [CL p [A6146:A992](#) – [A6151:A997](#)].

⁵¹ Ducera Declaration at para 13 [CL p [A6151:A997](#)].

⁵² Ducera Declaration at paras 10-12 [CL p [A6150:A996](#)].

sales of the Rolling Stock Assets, thereby (i) minimizing the Debtors' rent obligations, (ii) permitting the Rolling Stock Assets to be sold over a more extended period of time, and (iii) maximizing the value of the Debtors' real property assets pursuant to the ongoing sale process under the Bidding Procedures Order by permitting eventual purchaser(s) of the Debtors' real property assets to enter and utilize those premises sooner than otherwise possible;⁵³

- (f) the Debtors obtained the Rolling Stock Sale Order with the support of their key creditor constituents, including the official committee of unsecured creditors, the Prepetition UST Secured Parties (which hold a significant number of first-priority liens on the Rolling Stock Assets), the B-2 Parties, and the Junior DIP Secured Parties;⁵⁴
- (g) the Agency Agreement and Rolling Stock Sale Order provide for certain ongoing consultation rights for the Consultation Parties, and for the Information Officer with respect to Canadian Rolling Stock Assets;⁵⁵ and
- (h) the Agency Agreement is expected to provide a greater recovery for the Debtors' estates on account of the Rolling Stock Assets than any other available alternative.⁵⁶

48. In addition, consistent with subsection 36(6) of the CCAA, the proposed Third Supplemental Order provides that all liens, claims, encumbrances, and interests, including, without limitation, the Charges, of which the Canadian Rolling Stock Assets are sold free and clear

⁵³ Ducera Declaration at para 12 [CL p [A6150:A996](#)].

⁵⁴ Rolling Stock Sale Motion at para 13 [CL p [A6151:A997](#)].

⁵⁵ Ducera Declaration at para 13 [CL p [A6151:A997](#)].

⁵⁶ Ducera [Declaration](#) at para 16 [CL p [A6152:A998](#)].

pursuant to the Rolling Stock Sale Order and the Third Supplemental Order shall attach to the Net Proceeds of the applicable sale, transfer or other disposal in the same order and priority as they existed immediately prior to such sale, transfer or other disposal.⁵⁷

49. Notice of the Foreign Representative's motion for the Third Supplemental Order was provided to all secured creditors with registrations in Canadian personal property registries based on the searches of the relevant provincial personal property registries performed by the Foreign Representative's counsel.⁵⁸

C. Distribution of Canadian Net Proceeds

50. The Rolling Stock Sale Order requires the Debtors to distribute the Net Proceeds from the sale of each Rolling Stock Asset to the Prepetition Secured Parties, the Prepetition UST Secured Parties, the Junior DIP Secured Parties and/or BNSF (as applicable) in satisfaction of those parties' claims against the Debtors' estates in the order of priority of such liens, claims, encumbrances, and interests against such Rolling Stock Asset consistent with the Final DIP Order and the applicable Rolling Stock Lien Statement, until such time as such secured parties' claims against the Debtors' estates are paid in full in cash.

51. As discussed in the pre-filing report of the then proposed Information Officer (the "**Pre-Filing Report**"), its counsel conducted a review of the Canadian law governed security delivered by the Canadian Debtors to the applicable agents (the "**Agents**") in respect of the Debtors' pre-

⁵⁷ CCAA s. 36(6).

⁵⁸ Affidavit of Service of Brennan Caldwell sworn November 2, 2023.

petition secured debt facilities. Subject to customary qualifications and assumptions set out therein, the security opinions confirmed, among other things:⁵⁹

- (a) the personal property security agreements (which are governed by Ontario law) delivered by the Canadian Debtors to the Agents create valid security interests in the personal property collateral of the Canadian Debtors described therein and in respect of which the applicable personal property security act applies in each of Ontario, Alberta and British Columbia, and such security interests have been perfected by the filing of financing statements by each applicable agent in each of Ontario, Alberta and British Columbia;^{60 61} and
- (b) the security documents delivered to the Agents and governed by the laws of the Province of Quebec create valid movable hypothecs by YRC Freight Canada and USF in favour of each Agent and each Agent filed registrations in the Quebec Movable Register (Quebec's movable/personal property lien register) against the correct names of YRC Freight Canada and USF to render the hypothecs opposable to third parties.

52. In connection with the recognition of the Final DIP Order, legal counsel to Teamsters Local Union 938, Teamsters Local Union No. 879, General Teamsters Local Union No. 979, Teamsters

⁵⁹ [Report of the Proposed Information Officer dated August 25, 2023 at para 4.10.](#)

⁶⁰ The agent for the ABL Facility did not file an Ontario financing statement against USF, and accordingly, does not have a perfected security interest in the tangible assets of USF located in the Province of Ontario. USF is a dormant company with no operations, employees or assets, and accordingly, the non-filing has no practical effect.

⁶¹ The Information Officer's counsel is not licensed to practice law in the Provinces of Saskatchewan, Manitoba or Nova Scotia and did not deliver any opinions regarding the creation of valid security interests or the perfection of same in such provinces. However, the Information Officer's counsel did confirm that each Agent filed an "all asset" financing statements against each Canadian Debtor which correctly list the applicable Canadian Debtor's name as the debtor, in the provinces in which the applicable Canadian Debtor is organized or in which the security documents indicate that such Canadian Debtor has assets.

Local Union No. 362, and Unifor Canada and its Local 4209 (the “**Unions**”) representing the employees and former employees of the Canadian Debtors expressed concerns with respect to the restriction in the Final DIP Order which does not permit the Debtors to make payments in respect of accrued vacation obligations on account of employees terminated prior to the Petition Date until all of the Debtors’ secured funded debt obligations (including the pre-filing secured debt obligations) have been fully repaid in cash. In Canada, the accrued vacation obligations on account of employees terminated or laid off prior to the Petition Date totaled approximately CAD\$2.45 million.⁶²

53. At the hearing for the Second Supplemental Order, counsel to the Foreign Representative advised the Court that the Debtors and the Unions agreed to a reservation of rights by the Unions with respect to unpaid prepetition vacation pay.

54. Part IV of the CCAA provides the Court with broad discretion to make an order under Part IV “on any terms and conditions that the court considers appropriate in the circumstances.”⁶³ The Foreign Representative is proposing that under the Third Supplemental Order, prior to distributing the Canadian Net Proceeds pursuant to the Rolling Stock Sale Order, the Canadian Debtors shall first hold back from the Canadian Net Proceeds the Holdback Amount. The Holdback Amount is an amount equal to the aggregate of the Administration Charge and the D&O Charge (which was calculated taking into account, among other things, the Canadian Debtors’ outstanding accrued vacation pay obligations), and shall be subject to further order of this Court.

⁶² Third Doheny Affidavit at paras 25-26 [CL p [A6165:A1011](#)].

⁶³ [CCAA s. 50](#).

55. Accordingly, the Foreign Representative submits there is no prejudice as a result of approving the Third Supplemental Order.

PART IV – RELIEF REQUESTED

56. The Yellow Parent, in its capacity as Foreign Representative, submits that the recognition of the Rolling Stock Sale Order pursuant to the proposed Third Supplemental Order is fair and appropriate in the circumstances. Canadian stakeholders are treated fairly under the proposed Third Supplemental Order, and will benefit from the maximization of value expected to result from the Debtors' retention of the Agent and the sale of the Canadian Rolling Stock Assets pursuant to the Agency Agreement.

57. The Foreign Representative respectfully requests that the Court grant the proposed Third Supplemental Order recognizing and giving full force and effect in Canada to the Rolling Stock Sale Order subject to the terms of the proposed Third Supplemental Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 6th day of November, 2023.

GOODMANS LLP

Goodmans LLP

SCHEDULE A
LIST OF AUTHORITIES

Tab	Description
1.	<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))
2.	<i>Yellow Corporation, et al</i> (29 September 2023), Toronto, Ont Sup Ct J [Commercial List] CV-23-00704038-00CL (Second Supplemental Order)
3.	<i>Zochem Inc. (Re)</i>, 2016 ONSC 958
4.	<i>In the Matter of Voyager Digital Ltd</i>, 2022 ONSC 4553
5.	<i>Babcock & Wilcox Canada Ltd</i>, 18 CBR (4th) 157, [2000] OJ No 786 (QL) (Ont Sup Ct)
6.	<i>Hartford Computer Hardware, Inc, Re</i>, 3012 ONSC 964
7.	<i>Xerium Technologies Inc., Re</i>, 2010 ONSC 3974
8.	<i>Sears Canada Inc (Re)</i>, 2017 ONSC 6235
9.	<i>Target Canada Co (Re)</i>, 2015 ONSC 846
10.	<i>Phoena Holdings Inc</i>, 2023 ONSC 2881
11.	<i>Nordstrom Canada Retail, Inc</i>, 2023 ONSC 1814
12.	<i>Brooks Brother Group, Inc., et al</i> (25 September 2020), Toronto, Ont Sup Ct J [Commercial List] CV-20-00647463-00CL (Recognition, Approval and Vesting Order)
13.	<i>Jack Cooper Ventures, Inc., et al</i> (18 October 2019), Toronto, Ont Sup Ct J [Commercial List] CV-19-626200-00CL (Sale Recognition and Vesting Order)
14.	<i>Nortel Networks Corp (Re)</i> 2009, 55 CBR (5th) 229, [2009] OJ No 3169 (Ont Sup Ct)
15.	<i>David's Bridal et al</i> (19 July 2023), Toronto, Ont Sup Ct J [Commercial List] CV-23-00698107-00CL (Endorsement of Kimmel, J)
16.	<i>Royal Bank of Canada v Soundair Corp</i> (1991), 4 OR (3d) 1, [1991] OJ No 1137 (Ont CA)

SCHEDULE B
STATUTORY REFERENCES

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

s. 36(3)

In deciding whether to grant the authorization, the court is to consider, among other things,

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the monitor approved the process leading to the proposed sale or disposition;
- (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

s. 36(6)

The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

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. 50

An order under this Part may be made on any terms and conditions that the court considers appropriate in the circumstances.

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

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