

**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 December 19, 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 the 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 “**Sale Recognition and Vesting Order**”), among other things, recognizing the Sale Order (as defined below), approving the Canadian Transactions (as defined below), vesting the Canadian Acquired Assets in the applicable Canadian Purchaser (each as defined below), and granting certain related relief, as discussed further herein.

2. The Foreign Representative seeks recognition of the 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 Sale Order and the related relief sought in the proposed Sale Recognition and Vesting Order is necessary and appropriate to administer and maximize the value of the Canadian Debtors’ estates, and respectfully requests that this Court issue the Sale Recognition and Vesting Order.

¹ Capitalized terms used but not otherwise defined in this Factum have the meanings set out in the Affidavit of Matthew A. Doheny sworn December 13, 2023 (the “**Fifth Doheny Affidavit**”) or the Sale Order, as applicable, including terms therein defined by way of cross-reference.

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

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 sale of their portfolio of real estate and trucking assets.⁵

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

³ Fifth Doheny Affidavit at para 2 [CL p [A6381:A17](#)].

⁴ Fifth Doheny Affidavit at para 3 [CL p [A6381:A17](#)].

⁵ Fifth Doheny Affidavit at para 6 [CL p [A6382:A18](#)].

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.⁶

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 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 orders issued by the U.S. Bankruptcy Court, and (iv) granting the Administration Charge, the D&O Charge and the DIP Charge.⁷

9. In the period following the First Day Hearing, the Debtors sought and obtained a number of additional orders from the U.S. Bankruptcy Court, including (a) the Bidding Procedures Order, among other things, approving the Bidding Procedures through which the Debtors’ sale efforts are to be conducted during the Chapter 11 Cases, and (b) the Real Estate Stalking Horse Order, among other things, approving Estes Express Lines as the Real Estate Stalking Horse Bidder for all of the Debtors’ Owned Properties (as defined below) for an aggregate purchase price of \$1.525 billion (the “**Real Estate Stalking Horse Bid**”).⁸

⁶ Fifth Doheny Affidavit at para 4 [CL p [A6381:A17](#)].

⁷ Fifth Doheny Affidavit at para 5 [CL p [A6382:A18](#)].

⁸ Fifth Doheny Affidavit at para 7 [CL p [A6382:A18](#)].

10. On September 29, 2023, this Court granted the Second Supplemental Order (the “**Second Supplemental Order**”), among other things, recognizing and enforcing in Canada various orders granted by the U.S. Bankruptcy Court, including the Bidding Procedures Order and the Real Estate Stalking Horse Order.⁹

11. This Court has also recognized certain additional orders granted by the U.S. Bankruptcy Court in the Chapter 11 Cases pursuant to the Third Supplemental Order granted November 8, 2023 (the “**Third Supplemental Order**”) and the Fourth Supplemental Order granted December 5, 2023, as applicable.¹⁰

B. THE DEBTORS’ REAL PROPERTY SALE PROCESS EFFORTS TO DATE

12. 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, among other things, worked closely with the Debtors’ management team to develop and implement a robust marketing process for the sale of the Debtors’ assets.¹¹

13. On July 31, 2023, prior to the Petition Date, Ducera had commenced an extensive process to market the Debtors’ assets, including, among other things, the Debtors’ (a) 174 owned real properties (the “**Owned Properties**”), and (b) 149 leased properties (the “**Leased Properties**”, and together with the Owned Properties, the “**Real Property Assets**”). As part of this process, Ducera contacted over 650 parties, including all or substantially all of the Debtors’ industry

⁹ Fifth Doheny Affidavit at para 8 [CL p [A6383:A19](#)].

¹⁰ Fifth Doheny Affidavit at para 11 [CL p [A6383:A19](#)].

¹¹ Fifth Doheny Affidavit at paras 10 and 15 [CL pp [A6383:A19](#) and [A6386:A22](#)].

competitors, that Ducera, in consultation with the Debtors' management team, considered to be likely or potential participants in a sale process for the Real Property Assets.¹²

14. On August 7, 2023 the Debtors filed the Bidding Procedures Motion and on September 15, 2023, the U.S. Bankruptcy Court entered the Bidding Procedures Order, which, as noted above, was recognized by this Court pursuant to the Second Supplemental Order on September 29, 2023.¹³

15. On September 13, 2023, to establish a competitive price floor for the Debtors' Real Property Assets, the Debtors filed the Real Estate Stalking Horse Motion. On September 21, 2023, the U.S. Bankruptcy Court entered the Real Estate Stalking Horse Order approving the \$1.525 billion Real Estate Stalking Horse Bid by Estes Express Lines, as the Real Estate Stalking Horse Bidder, for all of the Debtors' Owned Properties. As noted above, the Real Estate Stalking Horse Order was also recognized by this Court pursuant to the Second Supplemental Order on September 29, 2023.¹⁴

16. To advance the Debtors' objective of maximizing value for the benefit of all stakeholders, during the first three months of the Chapter 11 Cases, the Debtors, with guidance from Ducera, entered into non-disclosure agreements with over 400 interested parties in an effort to reach a higher and better result compared to the Real Estate Stalking Horse Bid. Parties were provided with due diligence materials and access to the Debtors' data room.¹⁵

17. Pursuant to the Bidding Procedures, the bid deadline for the Real Property Assets was November 9, 2023 at 4:00 p.m. (E.T.) (the "**Bid Deadline**"). Prior to the Bid Deadline, Ducera

¹² Fifth Doheny Affidavit at para 15 [CL p [A6386:A22](#)].

¹³ Fifth Doheny Affidavit at para 16 [CL p [A6386:A22](#)].

¹⁴ Fifth Doheny Affidavit at para 17 [CL p [A6386:A22](#)].

¹⁵ Fifth Doheny Affidavit at paras 18-19 [CL p [A6387:A23](#)].

had received over 120 indications of interest for the Real Property Assets. As of the Bid Deadline, over 70 parties had submitted bids for Real Property Assets.¹⁶

C. REAL ESTATE AUCTION

18. Pursuant to the Bidding Procedures, on November 28, 2023 at 9:00 a.m. (E.T.), the Debtors, led by Ducera, commenced an auction for the Real Property Assets (the “**Real Estate Auction**”), pursuant to which 62 Qualified Bidders were invited to participate to bid on 128 Owned Properties and two Leased Properties (collectively, the “**Initial Properties**”), including the two Canadian Initial Properties.¹⁷

19. In accordance with the Bidding Procedures, the Debtors, in close consultation with the Consultation Parties, designed the procedures governing bidding for the Initial Properties (the “**Auction Procedures**”) to create a format that the Debtors and the Consultation Parties agreed would best maximize estate value.¹⁸

20. As most bids were to acquire five or fewer properties, the Debtors decided to design an auction process, in consultation with the Consultation Parties, where there would be competitive bidding for each individual Initial Property and where all Qualified Bidders could bid on and compete for each such property for which they expressed bidding interest.¹⁹

21. Accordingly, the Debtors, with the support of and in consultation with the Consultation Parties, proceeded with bidding for the Initial Properties on a property-by-property basis in an

¹⁶ Fifth Doheny Affidavit at para 20 [CL p [A6387:A23](#)].

¹⁷ Fifth Doheny Affidavit at para 21 [CL p [A6387:A23](#)].

¹⁸ Fifth Doheny Affidavit at para 23 [CL p [A6388:A24](#)].

¹⁹ Fifth Doheny Affidavit at para 24 [CL p [A6388:A24](#)].

effort to maximize the proceeds of each individual property sold. Bidding on the Initial Properties took place over the course of four days and was extremely competitive.²⁰

22. On December 4, 2023, the Debtors filed the Notice of Winning Bidders, announcing that the Debtors had received binding offers, pursuant to 21 Asset Purchase Agreements, to purchase the Initial Properties (collectively, the “**Winning Bids**”) for an aggregate purchase price amount of \$1,882,637,655.²¹

23. The Winning Bids for the Initial Properties provide for an increase by approximately \$350 million in aggregate sale proceeds across just the Initial Properties as compared to the “all properties” Real Estate Stalking Horse Bid. The Winning Bids represent the highest or otherwise best offer for the Initial Properties (as applicable).²²

D. THE SALE ORDER

24. On December 12, 2023, the hearing in respect of the Sale Order was held before the U.S. Bankruptcy Court, at which the U.S. Bankruptcy Court approved the Sale Order. The Debtors received a limited number of objections relating to certain transactions proposed to be approved by the Sale Order, which the Debtors were able to consensually resolve in advance of the hearing such that the Sale Order was granted by the U.S. Bankruptcy Court on a consensual basis.²³

²⁰ Fifth Doheny Affidavit at para 25 [CL p [A6388:A24](#)].

²¹ Fifth Doheny Affidavit at para 27 [CL p [A6390:A26](#)] and Exhibit H [CL p [A6760:A396](#)].

²² Fifth Doheny Affidavit at para 29 [CL p [A6390:A26](#)].

²³ Fifth Doheny Affidavit at para 31 [CL p [A6391:A27](#)].

25. The Sale Order, among other things:²⁴

- (a) approves each Asset Purchase Agreement set forth at Schedule 1 to the Sale Order, and each Sale and related transactions contemplated thereby;
- (b) authorizes the Debtors to enter into each Asset Purchase Agreement, and to take any and all actions necessary or appropriate to, among other things, consummate and close the applicable Sale pursuant to and in accordance with the terms and conditions of the applicable Asset Purchase Agreement;
- (c) orders that, pursuant to and except to the extent expressly set forth in the applicable Asset Purchase Agreement, the applicable Acquired Assets shall be transferred free and clear of all Adverse Interests (as set forth in the applicable Asset Purchase Agreement), (provided, however, that solely to the extent expressly set forth in the applicable Asset Purchase Agreement, Adverse Interests shall not include Assumed Liabilities (as defined in the applicable Asset Purchase Agreement), Permitted Encumbrances (as defined in the applicable Asset Purchase Agreement), and the Purchaser's obligations with respect to Designation Rights Assets), with all such Adverse Interests to attach to the proceeds of the applicable Sale for the benefit of the holders of such Adverse Interests, including the Prepetition Secured Parties, the Prepetition UST Secured Parties, and the DIP Secured Parties (collectively, the **"Secured Parties"**), in each case until such holders have been paid in full in cash;

²⁴ Fifth Doheny Affidavit at para 32 [CL p [A6391:A27](#) – [A6393:A29](#)].

- (d) provides, among other things, that (i) each Purchaser and its Affiliates are not and shall not be deemed a “successor” in any respect to the Debtors or their estates as a result of the consummation of the transactions contemplated by the Asset Purchase Agreement or any other event occurring in the Debtors’ Chapter 11 Cases; (ii) each Purchaser shall not assume, nor be deemed to assume, or in any way be responsible for any liability or obligation of any of the Debtors and/or their estates including, but not limited to, any bulk sales law, successor liability, liability or responsibility for any claim against the Debtors or against an insider of the Debtors, or similar liability except to the extent expressly provided in the Asset Purchase Agreement; and (iii) without limiting the effect or scope of the foregoing, except to the extent expressly provided in the applicable Asset Purchase Agreement, as of the applicable Closing Date, the applicable Purchaser Entities shall have no successor or vicarious liabilities of any kind or character with respect to the applicable Acquired Assets;
- (e) approves the Sellers’ assumption, assignment and sale to the Purchaser of the Assigned Contracts, free and clear of all Adverse Interests of any kind or nature whatsoever (except to the extent expressly set forth in the Asset Purchase Agreement), and provides for the payment of any applicable Cure Costs;
- (f) provides for the distribution of net proceeds (including, net of any Break Up Fee and Expense Reimbursement amounts payable to the Real Estate Stalking Horse Bidder) from the Sales to the applicable Secured Parties, with such funds to be distributed by the Debtors to the Secured Parties in the order of priority of the Secured Parties’ claim and liens against the Acquired Assets sold until such time

as those Secured Parties' claims against the Debtors' estates, as applicable, are paid in full in cash; and

(g) grants certain related relief.

E. THE CANADIAN TRANSACTIONS

26. As referenced above, two Owned Properties of YRC Freight Canada were included in the Initial Properties. One of such Owned Properties is located in Ontario, and the other is located in Quebec.²⁵

27. Pursuant to the Real Estate Auction, the RGH Purchaser and Allstar Purchaser were determined to be the successful bidders of the two Canadian Initial Properties.²⁶

28. Pursuant to the RGH APA, the RGH Purchaser will acquire the Owned Property of YRC Freight Canada at 1187 Welford Place, Woodstock, Ontario N4S 7Y5 for a purchase price that includes a cash payment of \$2,950,000, subject to adjustments as specified in the RGH APA. The RGH APA does not contemplate any Assigned Contracts being assigned to the RGH Purchaser.²⁷

29. Pursuant to the Allstar APA, the Allstar Purchaser will acquire the Owned Property of YRC Freight Canada at 930 Route 147, Stanhope, Quebec J0B 3C0, for a purchase price that includes a cash payment of \$550,000, subject to adjustments as specified in the Allstar APA. The Allstar APA does not contemplate any Assigned Contracts being assigned to the Allstar Purchaser.²⁸

²⁵ Fifth Doheny Affidavit at para 33 [CL p [A6394:A30](#)].

²⁶ Fifth Doheny Affidavit at para 34 [CL p [A6394:A30](#)].

²⁷ Fifth Doheny Affidavit at para 37 [CL p [A6394:A30](#)].

²⁸ Fifth Doheny Affidavit at para 38 [CL p [A6394:A30](#)].

30. The material terms of the RGH APA and Allstar APA are summarized in the Fifth Doheny Affidavit.²⁹

F. THE SALE RECOGNITION AND VESTING ORDER

31. The Foreign Representative seeks the Sale Recognition and Vesting Order, among other things:

- (a) recognizing and enforcing in Canada the *Order (I) Approving Certain Asset Purchase Agreements; (II) Authorizing and Approving Sales of Certain Real Property Assets of the Debtors Free and Clear of Liens, Claims, Interests, and Encumbrances, in Each Case Pursuant to the Applicable Asset Purchase Agreement; (III) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection Therewith, in Each Case as Applicable Pursuant to the Applicable Asset Purchase Agreement; and (IV) Granting Related Relief* (the “**Sale Order**”) pursuant to section 49 of the CCAA, provided that, prior to the distribution of Canadian Net Proceeds pursuant to the Sale Order, the Canadian Debtors are to hold back from the Canadian Net Proceeds an amount that, when combined with any Holdback Amount that is required to be held back pursuant to the Third Supplemental Order, is equal to the aggregate of the Administration Charge and the D&O Charge (the “**Real Property Holdback Amount**”). The Real Property Holdback Amount shall be subject to further order of this Court;

²⁹ Fifth Doheny Affidavit at para 40 [CL p [A6395:A31](#) – [A6397:A33](#)].

- (b) approving the sale transaction (the “**RGH Transaction**”) contemplated by the Asset Purchase Agreement dated December 11, 2023 (the “**RGH APA**”) by and among Royal Group Holdings Inc. (the “**RGH Purchaser**”) and the Yellow Parent and certain of its subsidiaries (collectively, the “**Sellers**”), including YRC Freight Canada, and vesting in the RGH Purchaser all of YRC Freight Canada’s right, title and interest in and to the Acquired Assets (as defined in the RGH APA (the “**RGH Acquired Assets**”));
- (c) approving the sale transaction (the “**Allstar Transaction**”, and together with the RGH Transaction, the “**Canadian Transactions**” and each a “**Canadian Transaction**”) contemplated by the Asset Purchase Agreement dated December 12, 2023 (the “**Allstar APA**”, and together with the RGH APA, the “**Canadian APAs**” and each a “**Canadian APA**”) by and among Allstar Investments Inc. (the “**Allstar Purchaser**”, and together with the RGH Purchaser, the “**Canadian Purchasers**” and each a “**Canadian Purchaser**”) and the Sellers, including YRC Freight Canada, and vesting in the Allstar Purchaser all of YRC Freight Canada’s right, title and interest in and to the Acquired Assets (as defined in the Allstar APA (the “**Allstar Acquired Assets**” together with the RGH Acquired Assets, the “**Canadian Acquired Assets**”)); and
- (d) vesting in the applicable Canadian Purchaser of all of YRC Freight Canada’s right, title and interest in and to the RGH Acquired Assets and the Allstar Acquired Assets, as applicable, free and clear of all Claims and Encumbrances (each as defined in the proposed Sale Recognition and Vesting Order), other than the Permitted Encumbrances (as defined in the respective Canadian APAs).

PART III – ISSUES AND THE LAW

32. The issue on this motion is whether the Court should grant the Sale Recognition and Vesting Order, among other things, recognizing the Sale Order in Canada pursuant to section 49 of the CCAA, approving the Canadian Transactions and granting the other requested related relief.

33. 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 in order to maximize the value of the Canadian Debtors for the benefit of their stakeholders.

A. The Court has Jurisdiction to Grant the Sale Recognition and Vesting Order

34. This Court recognized the Chapter 11 Cases as a “foreign main proceeding” under section 47 of the CCAA pursuant to the Initial Recognition Order.³⁰ 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.³¹

35. 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.”³² 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

³⁰ [*YRC Freight Canada Company et al* \(29 August 2023\), Toronto, Ont Sup Ct J \[Commercial List\] CV-23-00704038-00CL \(Initial Recognition Order \(Foreign Main Proceeding\)\) at para 3.](#)

³¹ [CCAA, s 49\(1\).](#)

³² [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.³³

36. 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.³⁴ 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.”³⁵

37. 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.³⁶

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

³³ [CCAA, s 44.](#)

³⁴ [In the Matter of Voyager Digital Ltd, 2022 ONSC 4553 at para 9.](#)

³⁵ [CCAA, s 52.](#)

³⁶ [Babcock & Wilcox Canada Ltd, 18 CBR \(4th\) 157, \[2000\] OJ No 786 \(QL\) \(Ont Sup Ct\) at para 9 \[Babcock\].](#)

³⁷ [CCAA, s 61\(2\).](#)

³⁸ [Hartford Computer Hardware, Inc. Re, 2012 ONSC 964 at paras 17-18.](#)

39. 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.³⁹ A consideration of these factors supports the Court's recognition of the Sale Order pursuant to the Sale Recognition and Vesting Order.

B. The Sale Order Ought to be Recognized in Canada

40. Recognition of the Sale Order by this Court is consistent with Part IV of the CCAA, the principles of comity, and the approval of similar approval and vesting orders commonly granted in Canadian restructuring proceedings, including those in Part IV proceedings where this Court has ordered the sale, and free and clear vesting, of Canadian assets pursuant to various transactions.⁴⁰

41. Comity requires that a Canadian court give deference to the judgment of a U.S. court charged with overseeing a restructuring.⁴¹ In granting the Sale Order, the U.S. Bankruptcy Court determined, among other things, that: (a) the Bidding Procedures were executed in good faith as a result of arms'-length negotiations, including with the Consultation Parties, and were substantively and procedurally fair to all parties; (b) based on the evidence adduced at the hearing to approve

³⁹ [*Xerium Technologies Inc, Re*, 2010 ONSC 3974 at paras 26-27.](#)

⁴⁰ [*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 paras 3-6; and *David's Bridal, LLC* \(19 July 2023\), Toronto, Ont Sup Ct J \[Commercial List\] CV-23-00698107-00CL \(Recognition, Approval and Vesting Order\) at paras 3-5.](#)

⁴¹ [*Babcock* at para 6.](#)

the Sale Order, the Debtors and their professionals have adequately marketed and conducted the sale process for the Acquired Assets in accordance with, and have otherwise complied in all respects with, the Bidding Procedures Order and the Bidding Procedures; (c) the sale process established by the Bidding Procedures Order, including the auction procedures set forth therein, afforded a full, fair, and reasonable opportunity for any entity to make an offer to purchase, and to competitively bid on, the Acquired Assets under each Asset Purchase Agreement; (d) the Debtors' determination, in consultation with the Consultation Parties, that the Asset Purchase Agreements constitute, in each case, the highest or otherwise best offer for the applicable Acquired Assets constitutes a valid and sound exercise of the Debtors' business judgment; and (e) consummation of the transactions contemplated by the Asset Purchase Agreements will maximize the value of each of the Debtors' estates and are in the best interests of the Debtors, their estates, their creditors, and all other parties in interest.⁴²

42. The Sale Recognition and Vesting Order would give effect in Canada to the Sale Order, which approves each Asset Purchase Agreement (including the Canadian APAs), and each Sale and related transactions contemplated thereby (including the Canadian Transactions).

43. It is a condition of each Canadian APA that the Debtors obtain an order recognizing the Sale Order in Canada, and thus the Sale Recognition and Vesting Order is necessary to give effect to the Canadian Transactions.⁴³

⁴² Sale Order at paras J and L, being Exhibit A to the Fifth Doheny Affidavit [CL p [A6409:A45](#) – [A6410:A46](#)].

⁴³ Fifth Doheny Affidavit at para 40 [CL p [A6397:A33](#)]; RGH APA at para 7.1(d), being Exhibit D to Fifth Doheny Affidavit [CL p [A6583:A219](#)]; Allstar APA at para 7.1(d), being Exhibit E to Fifth Doheny Affidavit [CL p [A6660:A296](#)].

44. When considering whether to recognize a sale approval order granted by a foreign court in a Part IV proceeding, the Court must determine whether the order meets the requirements of Section 49(1), and in doing so, may consider the factors set out in subsection 36(3) of the CCAA, as well as the *Soundair* factors.⁴⁴ 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 process⁴⁵. 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
- (f) whether the consideration to be received for the assets is fair and reasonable, taking into account their market value.⁴⁶

45. The Foreign Representative submits that the relief pursuant to the proposed Sale Recognition and Vesting Order is necessary to protect the interests of creditors, satisfying the

⁴⁴ 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](#); [*Instant Brands Acquisition Holdings Inc. et al.*, \(16 October 2023\), Ont Sup Ct J \[Commercial List\] CV-23- 00701159-00CL \(Endorsement of Osborne, J\) at paras 18-19](#); and [*Royal Bank of Canada v Soundair Corp* \(1991\), 4 OR \(3d\) 1, \[1991\] OJ No 1137 at para 16](#).

⁴⁵ [*Royal Bank of Canada v Soundair Corp* \(1991\), 4 OR \(3d\) 1, \[1991\] OJ No 1137 at para 16](#).

⁴⁶ [CCAA s. 36\(3\)](#).

requirement under subsection 49(1) of the CCAA, and that consideration of the *Soundair* and subsection 36(3) factors further supports this Court's recognition of the Sale Order pursuant to the Sale Recognition and Vesting Order.

46. Regarding the *Soundair* and subsection 36(3) factors, the Debtors submit that these factors are satisfied in the circumstances as:

- (a) at the outset of the process, Ducera contacted over 650 parties, including all or substantially all of the Debtors' industry competitors, that Ducera, in consultation with the Debtors' management team, considered to be likely or potential participants in a sale process for the Real Property Assets;
- (b) the Real Estate Auction, with respect to bidding on the Initial Properties, was conducted fairly and competitively pursuant to the Bidding Procedures and the Auction Procedures, both of which were devised in close consultation with the Consultation Parties;
- (c) to establish a competitive price floor for the Debtors' Real Property Assets, the Debtors sought and obtained approval by the U.S. Bankruptcy Court of the Real Estate Stalking Horse Bid by Estes Express Lines with a purchase price of \$1.525 billion for all of the Debtors' Owned Properties;
- (a) to advance the Debtors' objective of maximizing value for the benefit of all stakeholders, during the first three months of the Chapter 11 Cases, the Debtors, with guidance from Ducera, entered into non-disclosure agreements with over 400 interested parties in an effort to reach a higher and better result compared to the Real Estate Stalking Horse Bid;

- (b) pursuant to the Bidding Procedures, the Debtors, led by Ducera, conducted the Real Estate Auction, pursuant to which 62 Qualified Bidders were invited to participate to bid on the Initial Properties, including the two Canadian Initial Properties;
- (c) the Debtors, with the support of and in consultation with the Consultation Parties, proceeded with bidding for the Initial Properties on a property-by-property basis in an effort to maximize the proceeds of each individual property sold;
- (d) the Consultation Parties' advisors were invited to attend, and did attend and/or monitor, the Real Estate Auction for the Initial Properties, and Ducera kept such parties apprised with respect to each round of competitive bidding and each communication conveyed to Qualified Bidders;
- (e) Ducera conducted several rounds of bidding, imposing "minimum bid requirements" and other procedural rules agreed to by each of the Consultation Parties and communicated in advance to each applicable Qualified Bidder;
- (f) the Winning Bids for the Initial Properties provide for an increase by approximately \$350 million in aggregate sale proceeds across just the Initial Properties as compared to the "all properties" Real Estate Stalking Horse Bid; and
- (g) the Winning Bids represent the highest or otherwise best offer for the Initial Properties (as applicable) and the proceeds to be earned from the consummation of

the various sale transactions achieved pursuant to the Real Estate Auction reflect the maximization of value for the Initial Properties and the Debtors' estates.⁴⁷

47. In addition, consistent with subsection 36(6) of the CCAA, the proposed Sale Recognition and Vesting Order provides that all liens, claims, encumbrances, and interests, including, without limitation, the Charges, of which the Canadian Acquired Assets are sold free and clear pursuant to the Sale Order and the Sale Recognition and Vesting 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.⁴⁸

48. Notice of the Foreign Representative's motion for the Sale Recognition and Vesting Order was provided to all secured creditors with registrations in Canadian personal property registries and land registries based on the searches of the relevant provincial personal property and land registries performed by the Foreign Representative's counsel.⁴⁹

C. Distribution of Canadian Net Proceeds

49. The Sale Order requires the Debtors to distribute the net proceeds from the sales of the Acquired Assets to the Secured Parties in the order of priority of the Secured Parties' claim and liens against the Acquired Assets sold until such time as those Secured Parties' claims against the Debtors' estates, as applicable, are paid in full in cash. With respect to the Canadian Transactions,

⁴⁷ Fifth Doheny Affidavit at paras 7, 15, 18, 21, 25-26, 29 and 46 [CL pp [A6382:A18](#), [A6386:A22](#) – [A6390:A26](#) and [A6399:A35](#)]; Fourth Report of the Information Officer dated December 15, 2023 ("**Fourth Report**") at para 5.4.

⁴⁸ [CCAA s. 36\(6\)](#); Fifth Doheny Affidavit at para 32 [CL p [A6392:A28](#)]; Proposed Form of Sale and Recognition Order at para 10, Tab 3 of Motion Record of the Applicants [CL p [A6784:A420](#)].

⁴⁹ Affidavit of Service of Brennan Caldwell sworn December 13, 2023 [CL p [A6794:A430](#)].

the Information Officer is to be provided with a copy of the statement of proposed distributions prior to any distributions to the Secured Parties.⁵⁰

50. 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-petition secured debt facilities. Subject to customary qualifications and assumptions set out therein, the security opinions confirmed, among other things:⁵¹

- (a) the real property charges against YRC Freight Canada’s owned real property in Ontario (which attach demand debentures which are governed by Ontario law) create valid charges of YRC Freight Canada’s interest in such owned real properties in favour of the Agents, and such charges have been registered against title to each of such owned real properties; and
- (b) the Quebec Security Documents create valid immovable (real property) hypothecs against the real property municipally known as 930 Route 147, Dixville Quebec (the “**Quebec Owned Real Property**”), and the Quebec real property search for the Quebec Owned Real Property current to August 11, 2023, confirmed that the Quebec Security Documents were registered against title to the Quebec Owned Real Property in favour of the Agents to render those hypothecs opposable to third parties.

⁵⁰ Fourth Report at para 5.2.

⁵¹ [Report of the Proposed Information Officer dated August 25, 2023 at para 4.10](#). Capitalized terms used and not otherwise defined in this paragraph shall have the meanings given to them in the Pre-Filing Report.

51. 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.”⁵² Consistent with the approval of the sale and the vesting of claims in respect of the Canadian Debtors’ Rolling Stock Assets pursuant to the Third Supplemental Order, the Foreign Representative is proposing that under the Sale Recognition and Vesting Order, prior to distributing the Canadian Net Proceeds pursuant to the Sale Recognition and Vesting Order, the Canadian Debtors shall first hold back from the Canadian Net Proceeds the Real Property Holdback Amount. The Real Property Holdback Amount is an amount that, when combined with any Holdback Amount pursuant to the Third Supplemental Order, is equal to the aggregate of the Administration Charge and the D&O Charge. The Real Property Holdback Amount shall be subject to further order of this Court.⁵³

PART IV – RELIEF REQUESTED

52. The Yellow Parent, in its capacity as Foreign Representative, submits that recognition of the Sale Order and approval of the Canadian Transactions pursuant to the Sale Recognition and Vesting Order is fair and appropriate in the circumstances. Canadian stakeholders are treated fairly under the proposed Sale Recognition and Vesting Order, and will benefit from the maximization of value expected to result from the sales of the Canadian Acquired Assets pursuant to the Canadian APAs.

⁵² [CCAA s 50](#).

⁵³ Fifth Doheny Affidavit at para 44 [CL p [A6398:A34](#)].

53. The Foreign Representative respectfully requests that the Court grant the proposed Sale Recognition and Vesting Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 15th day of December, 2023.

GOODMANS LLP

Goodmans LLP

SCHEDULE A
LIST OF AUTHORITIES

Tab	Description
1.	<u>Zochem Inc. (Re), 2016 ONSC 958</u>
2.	<u>In the Matter of Voyager Digital Ltd, 2022 ONSC 4553</u>
3.	<u>Babcock & Wilcox Canada Ltd, 18 CBR (4th) 157, [2000] OJ No 786 (QL) (Ont Sup Ct)</u>
4.	<u>Hartford Computer Hardware, Inc, Re, 3012 ONSC 964</u>
5.	<u>Xerium Technologies Inc., Re, 2010 ONSC 3974</u>
6.	<u>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)</u>
7.	<u>David's Bridal, LLC (19 July 2023), Toronto, Ont Sup Ct J [Commercial List] CV-23-00698107-00CL (Recognition, Approval and Vesting Order)</u>
8.	<u>David's Bridal et al (19 July 2023), Toronto, Ont Sup Ct J [Commercial List] CV-23-00698107-00CL (Endorsement of Kimmel, J)</u>
9.	<u>Instant Brands Acquisition Holdings Inc. et al, (16 October 2023), Ont Sup Ct J [Commercial List] CV-23- 00701159-00CL (Endorsement of Osborne, J)</u>
10.	<u>Royal Bank of Canada v Soundair Corp (1991), 4 OR (3d) 1, [1991] OJ No 1137 (Ont CA)</u>

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

**FACTUM OF THE APPLICANT
(Motion Returnable December 19, 2023)**

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