

**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
(Application for Initial Recognition Order and Supplemental Order)**

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PART I – INTRODUCTION

1. This factum is filed in support of an application under Part IV of the CCAA and section 106 of the CJA by Yellow Corporation (the “**Yellow Parent**”) as the foreign representative (the “**Foreign Representative**”) of the Canadian Debtors for, among other things, recognition of the chapter 11 proceedings (the “**Chapter 11 Cases**”) commenced by the Yellow Parent and certain of its affiliates, including the Canadian Debtors (collectively, the “**Debtors**”), on August 6, 2023 (the “**Petition Date**”) in the United States Bankruptcy Court for the District of Delaware (the “**U.S. Bankruptcy Court**”), and recognition of certain orders of the U.S. Bankruptcy Court.¹

2. On August 8, 2023, the Yellow Parent, in its capacity as the proposed Foreign Representative, sought and obtained from this Court the Interim Stay Order, among other things, granting a stay of proceedings in respect of the Canadian Debtors and the Yellow Parent, and their respective directors and officers, in Canada.

3. On August 9, 2023, following a hearing in respect of certain of the Debtors’ First Day Motions, the U.S. Bankruptcy Court granted certain First Day Orders, including the Foreign Representative Order authorizing the Yellow Parent to act as the Foreign Representative for purposes of these recognition proceedings. In the period following the First Day Hearing, the U.S. Bankruptcy Court also entered certain additional First Day Orders and certain second interim orders (collectively with the First Day Orders, the “**U.S. Orders**”).²

4. On this application, the Yellow Parent, as the Foreign Representative, seeks the proposed Initial Recognition Order and the proposed Supplemental Order (each substantially in the form

¹ Capitalized terms not otherwise defined in this Factum have the meanings set out in the [Affidavit of Matthew A. Doheny](#) dated August 7, 2023 (the “**Initial Affidavit**”) or the [Affidavit of Matthew A. Doheny](#) sworn August 24, 2023 (the “**Supplemental Affidavit**”).

² Supplemental Affidavit at paras 3-7 [CL p [A967:A277](#) - [A968:A278](#)].

attached to the Applicant's Supplemental Application Record) pursuant to Part IV of the CCAA and section 106 of the CJA, as applicable.

PART II – SUMMARY OF THE FACTS

5. The facts with respect to this application are more fully set out in the Initial Affidavit, the First Day Declaration and the Supplemental Affidavit.

A. OVERVIEW

6. The Debtors, including the Canadian Debtors, are part of an approximately 100 year-old trucking and logistics company (“**Yellow**” or the “**Company**”), which boasted one of the largest less-than-truckload networks in North America. While Yellow operated an integrated, global business, by far its largest presence was in the United States. The Canadian Debtors are members of the broader integrated Yellow corporate group, with the Canadian Business representing approximately 2% of the Company's overall business.³

7. Yellow has faced a severe liquidity crisis in recent months, resulting in large part due to the resistance of the International Brotherhood of Teamsters (the “**Union**”) to the implementation of the Company's multi-phase vital strategic initiative, referred to as “One Yellow”. The inability to implement the One Yellow initiative significantly impaired the Company's liquidity and ability to refinance its \$1.2 billion in principal amount of funded debt.

8. Following the Company deferring payment of certain contractual contributions to the Central States Health and Welfare Fund and Central States Pension Fund as part of the Company's liquidity preserving measures, the Union issued a strike notice on July 17, 2023,

³ Initial Affidavit at paras 6 and 9 [CL [A23;A23](#) and [A24;A24](#)].

which devastated the Company's business. Yellow's customers, facing the uncertainty of the threatened strike, began dropping the Company as a carrier, and within days of the announcement of the strike, Yellow's shipment levels dropped from 40,000 to nearly zero.

9. Facing a dire liquidity shortfall and no prospects for the significant additional financing required to complete a turnaround of the business, Yellow, with the assistance of its advisors, determined that it was appropriate to clear the Debtors' freight network, close their facilities and commence layoffs of their workforce, and began taking the first steps towards implementing a full scale wind-down of their business operations in order to maximize value and minimize the impact of the shutdown for all stakeholders.⁴

B. THE CHAPTER 11 CASES

10. The Debtors, including the Canadian Debtors, commenced the Chapter 11 Cases to preserve value and effectuate an orderly, value-maximizing wind-down of their businesses for the benefit of all parties in interest. To that end, Yellow intends as part of the Chapter 11 Cases to market substantially all of the Company's assets to one or more buyers and conduct certain post-petition activities in connection with preserving the value of its assets and clearing freight from its network.⁵

11. As discussed in further detail in the Supplemental Affidavit, the First Day Hearing of the U.S. Bankruptcy Court was heard by Judge Goldblatt on August 9, 2023. The Debtors obtained various First Day Orders from the U.S. Bankruptcy Court, and adjourned certain of the other First Day Motions pending the Debtors advancing their DIP financing alternatives given two

⁴ Initial Affidavit at paras 11, 13-14 and 77 [CL p [A24:A24](#), [A25:2A5-A26:A26](#) and [A44:A44](#)].

⁵ Initial Affidavit at para 15 [CL p [A26:A26](#)].

unsolicited proposals that had been received prior to the First Day Hearing, in addition to the DIP financing the Debtors had negotiated in connection with commencing the Chapter 11 Cases.

12. Following a hearing on August 11, 2023, the U.S. Bankruptcy Court granted certain additional First Day Orders, and on August 18, 2023, the U.S. Bankruptcy Court granted the Interim DIP and Cash Collateral Order and the UST Cash Collateral Order. In addition, on August 21, 2023, the U.S. Bankruptcy Court granted certain second interim orders.⁶

C. **REQUESTED RELIEF**

(i) Recognition of Foreign Main Proceeding

13. The Yellow Parent, as Foreign Representative, seeks recognition of the Chapter 11 Cases as a “foreign main proceeding” in respect of the Canadian Debtors under Part IV of the CCAA.⁷

(ii) Stay of Proceedings

14. By operation of the U.S. Bankruptcy Code, the Debtors (including the Canadian Debtors) obtained the benefit of an automatic stay of proceedings upon the filing of the Petitions with the U.S. Bankruptcy Court. In issuing the Interim Stay Order, this Court granted a stay of proceedings in Canada in favour of the Canadian Debtors and the Yellow Parent, and their respective directors and officers, in Canada.⁸

15. The Foreign Representative is seeking the same stay of proceedings granted under the Interim Stay Order pursuant to the proposed Supplemental Order. It is critical to the preservation of the value of the Canadian Business and the Company’s overall efforts to implement an orderly

⁶ Supplemental Affidavit at paras 15-21 [CL p [A970:A280-A972:A282](#)].

⁷ Supplemental Affidavit at para 41 [CL p [A979:A289](#)].

⁸ [Yellow Corporation \(8 August 2023\)](#), Toronto, Ont Sup Ct J [Commercial List] CV-23-00704038-00CL (Interim Stay Order (Foreign Main Proceeding)) at para 2; Supplemental Affidavit at para 42 [CL p [A979:A289](#)].

wind-down of the business that the Canadian Debtors and the Yellow Parent, as well as their directors and officers, be protected by a stay of proceedings and from enforcement rights in Canada pursuant to a Canadian court order.⁹

(iii) Recognition of Certain U.S. Orders

16. Pursuant to the proposed Supplemental Order, the Foreign Representative seeks this Court's recognition of the following U.S. Orders, each of which is described in the Supplemental Affidavit and attached as an Exhibit thereto: (a) Foreign Representative Order;¹⁰ (b) Interim DIP and Cash Collateral Order;¹¹ (c) Interim UST Cash Collateral Order;¹² (d) Interim Cash Management Order;¹³ (e) Second Interim Wages Order;¹⁴ (f) Second Interim Critical Vendors Order;¹⁵ (g) Interim Utilities Order;¹⁶ (h) Second Interim Insurance and Surety Bond Order;¹⁷ (i) Interim Taxes Order;¹⁸ (j) Interim Customer Collections Order;¹⁹ (k) Interim Creditor Matrix Order;²⁰ (l) Joint Administration Order;²¹ and (m) Interim Equity Trading Procedures Order.²²

(iv) Appointment of Information Officer

17. The Yellow Parent seeks the appointment of A&M as the Information Officer in these recognition proceedings pursuant to the proposed Supplemental Order. A&M has consented to acting as Information Officer in these proceedings.

⁹ Supplemental Affidavit at paras 43-44 [CL p [A979:A289](#)].

¹⁰ Supplemental Affidavit at para 46 and Exhibit L [CL p [A980:A290](#) and [A1328:A638](#)].

¹¹ Supplemental Affidavit at paras 48-61 and Exhibit M [CL p [A980:A290-A990:A300](#) and [A1332:A642](#)].

¹² Supplemental Affidavit at paras 63-66 and Exhibit N [CL p [A990:A300-A991:A301](#) and [A1472:A782](#)].

¹³ Supplemental Affidavit at paras 67-69 and Exhibit O [CL p [A991:A301-A992:A302](#) and [A1528:A838](#)].

¹⁴ Supplemental Affidavit at paras 70-77 and Exhibit P [CL p [A992:A302-A995:A305](#) and [A1547:A857](#)].

¹⁵ Supplemental Affidavit at paras 78-80 and Exhibit Q [CL p [A996:A306](#); [A997:A307](#) and [A1555:A865](#)].

¹⁶ Supplemental Affidavit at paras 81-83 and Exhibit R [CL p [A997:A307](#) and [A1563:A873](#)].

¹⁷ Supplemental Affidavit at paras 84-85 and Exhibit S [CL p [A998:A308](#) and [A1572:A882](#)].

¹⁸ Supplemental Affidavit at paras 86-87 and Exhibit T [CL p [A998:A308-A999:A309](#) and [A1589:A899](#)].

¹⁹ Supplemental Affidavit at paras 88-90 and Exhibit U [CL p [A999:A309](#) and [A1595:A905](#)].

²⁰ Supplemental Affidavit at paras 91-92 and Exhibit V [CL p [A999:A309-A1000:A310](#) and [A1601:A911](#)].

²¹ Supplemental Affidavit at paras 93-94 and Exhibit W [CL p [A1000:A310](#) and [A1613:A923](#)].

²² Supplemental Affidavit at paras 95-96 and Exhibit X [CL p [A1000:A310-A1001:A311](#) and [A1622:A932](#)].

18. Prior to the commencement of the Chapter 11 Cases, A&M's affiliate, Alvarez & Marsal North America, LLC, was retained by the Debtors to serve as their financial advisor.²³

(v) *Granting of Charges*

(a) *The Administration Charge*

19. The proposed Supplemental Order provides that Goodmans LLP, as counsel to the Canadian Debtors, the Information Officer and its counsel will be granted a charge in the maximum amount of CDN\$700,000 (the "**Administration Charge**") on the Collateral of the Canadian Debtors (the "**Canadian Collateral**") to secure the fees and disbursements of such professionals incurred in respect of these proceedings. The Administration Charge does not extend to the assets or property of any Debtors other than the Canadian Debtors.²⁴

(b) *D&O Charge*

20. The Canadian Debtors require the continued support and involvement of their directors and officers. Accordingly, the Yellow Parent, as the Foreign Representative, seeks the granting of a charge on the Canadian Collateral in favour of the Canadian Debtors' directors and officers in the maximum amount of CDN\$3.5 million (the "**D&O Charge**"). The D&O Charge does not extend to the assets or property of any Debtors other than the Canadian Debtors.

21. While the Canadian Debtors' directors and officers are potential beneficiaries of the director and officer liability insurance maintained by the Yellow Parent for itself and its subsidiaries (the "**D&O Insurance**"), such insurance may not provide sufficient coverage

²³ Supplemental Affidavit at paras 97-99 [CL p [A1001:A311](#)].

²⁴ Supplemental Affidavit at para 100 [CL p [A1001:A311-A1002:A312](#)].

against the potential liability that the directors and officers of the Canadian Debtors could incur during these proceedings.

22. The D&O Charge would secure the indemnity provided by the Canadian Debtors to the directors and officers pursuant to the proposed Supplemental Order in respect of liabilities they may incur during these proceedings in their capacities as directors and officers. Such liabilities include any liabilities in respect of, among other things, wages, vacation pay, and termination or severance pay due to employees of the Canadian Debtors, whether or not any such employees are terminated prior to or after the commencement of these proceedings.

23. The amount of the proposed D&O Charge has been estimated, in consultation with the proposed Information Officer, with reference to the Canadian Debtors' payroll, vacation pay, termination and severance, and federal and provincial sales tax liability exposure.²⁵

(c) DIP Charge

24. Consistent with the Company's prepetition secured funded debt, the Canadian Debtors are each guarantors of the DIP Facilities. The DIP Term Sheet contemplates the granting of a court-ordered charge in favour of the DIP Secured Parties on the Canadian Collateral, other than the UST Tranche B Priority Collateral (the "**DIP Charge**"), to secure the obligations outstanding from time to time under the DIP Facilities.²⁶

25. With respect to the liquidity needs of the Canadian Debtors, since the Petition Date, the Canadian Debtors have had sufficient funding based on cash on hand and accounts receivable without accessing the DIP Facilities to fund their immediate liquidity needs, other than the Company is funding the Prepetition ABL Agent, on behalf of the Canadian Debtors, amounts

²⁵ Supplemental Affidavit at paras 102-107 [CL p [A1002:A312-A1004:A314](#)].

²⁶ Supplemental Affidavit at para 108 [CL p [A1004:A314](#)].

equal to 80% of the Canadian Debtors' accounts receivable collections as required pursuant to the Interim DIP and Cash Collateral Order.²⁷

PART III – ISSUES AND THE LAW

26. The issues to be considered on this application are:

- (a) whether this Court should grant the relief sought in the Initial Recognition Order, including:
 - (i) recognizing the Yellow Parent as the Foreign Representative in respect of the Chapter 11 Cases; and
 - (ii) recognizing the Chapter 11 Cases as a “foreign main proceeding” in respect of the Canadian Debtors; and
- (b) whether this Court should grant the relief sought in the Supplemental Order, including:
 - (i) recognizing certain U.S. Orders (including the Interim DIP and Cash Collateral Order),
 - (ii) granting a stay of proceedings in respect of the Canadian Debtors and the Yellow Parent, and their respective directors and officers, in Canada;
 - (iii) appointing A&M as Information Officer;
 - (iv) granting the Administration Charge;
 - (v) granting the D&O Charge; and
 - (vi) granting the DIP Charge.

27. 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 application to give effect to the

²⁷ Supplemental Affidavit at para 108 [CL p [A988:A298](#)].

Chapter 11 Cases in Canada and to preserve the value of the Canadian Debtors and the Canadian Business while the Company pursues its wind-down efforts pursuant to the Chapter 11 Cases.

A. THE CHAPTER 11 CASES ARE A “FOREIGN MAIN PROCEEDING”

(a) *The Chapter 11 Cases are a “foreign proceeding” and the Yellow Parent is the “foreign representative”*

28. Pursuant to subsection 46(1) of the CCAA, a person who is a foreign representative may apply to the court for recognition of a foreign proceeding in respect of which that person is a foreign representative.²⁸

29. Pursuant to subsection 47(1) of the CCAA, two requirements must be met for an order recognizing a foreign proceeding: (a) the proceeding is a “foreign proceeding”; and (b) the applicant is a “foreign representative” in respect of that foreign proceeding.²⁹

30. Proceedings pursuant to chapter 11 of the U.S. Bankruptcy Code under the supervision of a U.S. bankruptcy court satisfy the definition of “foreign proceeding” under subsection 45(1) of the CCAA, and are consistently recognized by Canadian courts to be a “foreign proceeding” under the CCAA.³⁰

31. On August 9, 2023, the U.S. Bankruptcy Court issued the Foreign Representative Order appointing the Yellow Parent as the Foreign Representative of the Chapter 11 Cases. Accordingly, the Yellow Parent is a foreign representative within the meaning of subsection 45(1) of the CCAA.³¹

²⁸ [CCAA s 46\(1\)](#).

²⁹ [CCAA s 47\(1\)](#).

³⁰ [CCAA s 45\(1\)](#); *Lightsquared LP, Re*, 2012 ONSC 2994 at para 18 [*Lightsquared*]; *Hollander Sleep Products, LLC et al., Re*, 2019 ONSC 3238 at para 27 [*Hollander*]; *Paladin Labs Canadian Holding Inc*, 2022 ONSC 4931 at paras 13-14 [*Paladin Initial Recognition Endorsement*].

³¹ Supplemental Affidavit at para 7; [CCAA s 45\(1\)](#).

32. Pursuant to subsection 46(2) of the CCAA, the application for recognition of a foreign representative must be accompanied by certain required documentation, including: (a) a certified copy of the instrument that commenced the foreign proceeding, (b) a certified copy of the instrument authorizing the foreign representative to act in that capacity, and (c) a statement identifying all foreign proceedings in respect of the debtor company that are known to the foreign representative.³²

33. Certified copies of the Petitions filed by each of the Canadian Debtors and the Yellow Parent commencing the Chapter 11 Cases and a certified copy of the Foreign Representative Order are attached as Exhibits to the Supplemental Affidavit, and there are no other foreign proceedings in respect of the Debtors that are known to the Yellow Parent.³³

34. Accordingly, all of the requirements for recognizing the Yellow Parent as “foreign representative” and the Chapter 11 Cases as a “foreign proceeding” pursuant to Sections 46 and 47 of the CCAA have been satisfied.

(b) The Chapter 11 Cases are a “foreign main proceeding”

35. Once the Court recognizes a foreign proceeding, the Court is required to specify whether the foreign proceeding is a “foreign main proceeding” or a “foreign non-main proceeding.”³⁴ Subsection 45(1) of the CCAA defines a “foreign main proceeding” to be a foreign proceeding in a jurisdiction where the debtor company has the “centre of its main interests” (“COMI”).

36. While the CCAA does not define what constitutes a debtor’s COMI, subsection 45(2) provides that, absent evidence to the contrary, a debtor’s COMI is deemed to be the location of

³² [CCAA s 46\(2\)](#).

³³ Supplemental Affidavit at paras 4 [CL p [A967:A277](#)] and 46 [CL p [A980:A290](#)] and Exhibits A [CL p [A967:A277](#), [A1006:A316](#)], B [CL p [A1040:A350](#)], C [CL p [A1073:A383](#)], D [CL p [A1106:A416](#)], E [CL p [A1139:A449](#)] and L [CL p [A1328:A638](#)]; Initial Affidavit at para 18 [CL p [A27:A27](#)].

³⁴ [CCAA s 47\(2\)](#).

its registered office. The wording of subsection 45(2) and case law interpreting it establishes that this presumption can be rebutted with evidence demonstrating that a debtor company's COMI is located in a jurisdiction other than the location of its registered office.³⁵ The determination of COMI is substantive, rather than technical, and the integration of a specific debtor with a larger enterprise is a significant factor.³⁶

37. The following principal factors set out in *Lightsquared*, considered as a whole, are relevant to a determination of whether the location in which the foreign proceeding has been filed is the debtor's COMI: (a) the location is readily ascertainable by creditors; (b) the location is one in which the debtor's principal assets or operations are found; and (c) the location is where the management of the debtor takes place.³⁷

38. Canadian courts have looked to the following factors, among others, to supplement their analysis of a debtor company's COMI:

- (a) the location where corporate decisions are made;
- (b) the location of employee administrations, including human resource functions;
- (c) the location of the company's marketing and communication functions;
- (d) whether the enterprise is managed on a consolidated basis;
- (e) the extent of integration of an enterprise's international operations;
- (f) the centre of an enterprise's corporate, banking, strategic and management functions;
- (g) the existence of shared management within entities and in an organization;
- (h) the location where cash management and accounting functions are overseen;

³⁵ [Paladin Initial Recognition Endorsement at para 20.](#)

³⁶ [CHC Group Ltd \(Re\), 2016 BCSC 2623 at para 9.](#)

³⁷ [Lightsquared at para 25; Paladin Initial Recognition Endorsement at para 21.](#)

- (i) the location where pricing decisions and new business development initiatives are created; and
- (j) the seat of an enterprise's treasury management functions, including management of accounts receivable and accounts payable.³⁸

39. In appropriate cases, this Court has determined that a Canadian debtor with significant business operations in Canada nevertheless had its COMI in the United States as a result of being an integrated member of the broader corporate group.³⁹

40. The following elements of the Canadian Debtors and Canadian Business, among others, are integrated with the Yellow corporate group:

- (a) the Canadian Debtors are indirect, wholly-owned subsidiaries of the Yellow Parent, which is a Delaware company listed on the NASDAQ;
- (b) Yellow's senior leadership located in the United States exercises primary strategic management and control of the corporate group, including the Canadian Debtors;
- (c) YRC Freight Canada's operations are integrated with those of its U.S. parent, YRC Inc., as part of the larger "YRC Freight" brand to provide seamless cross-boarder service;
- (d) the revenue generated by the Canadian Business for the financial year ended December 31, 2022, represented approximately 2% of Yellow's consolidated worldwide revenue for such period;
- (e) prior to the Petition Date, the Canadian Debtors employed approximately 2% of Yellow's overall workforce;

³⁸ [*Hollander* at para 32; *Massachusetts Elephant & Castle Group Inc., Re*, 2011 ONSC 4201 at para 26 \[*Massachusetts Elephant*\]; *Paladin Initial Recognition Endorsement* at para 23.](#)

³⁹ [*Massachusetts Elephant* at paras 25 and 32; *Paladin Initial Recognition Endorsement* at paras 23-24.](#)

- (f) all of the Company's approximately \$1.2 billion in principal amount of funded indebtedness is advanced by United States-based lenders and the loan documentation is governed by United States law;
- (g) the Canadian Debtors are guarantors of the Company's funded indebtedness and have granted security over their assets in respect thereof;
- (h) the Company's overall financial position is managed on a consolidated basis principally from Yellow's office in Nashville, Tennessee, and for financial reporting purposes, Yellow reports the financial results of the entire corporate group, including the Canadian Debtors, on a consolidated basis;
- (i) the Canadian Debtors are integrated into the Company's system of intercompany loans and transactions;
- (j) the Canadian Debtors (in particular YRC Freight Canada as the principal Canadian operating entity) participate in the Company's centralized Cash Management Systems, through which Yellow exercises oversight of cash management controls from the United States; and
- (k) payroll processing for employees of YRC Freight Canada is processed in the United States through Yellow's third-party payroll services provider, with some assistance from a Canadian payroll team.⁴⁰

41. The fact that the Canadian Debtors are guarantors of all of the Company's funded indebtedness is an important factor for purposes of the COMI analysis. As Yellow's secured creditors are a critical stakeholder group and have obtained security over substantially all of the assets of the Company, including the assets of the Canadian Debtors, there is a commonality of

⁴⁰ Initial Affidavit at paras 45 and 54-55 [CL p [A35:A35](#) and [A37:A37-A38:A38](#)]; Supplemental Affidavit at paras 27 and 33-34 [CL p [A973:A283](#) and [A975:A285-A976:A286](#)].

key creditors across the entire corporate group. The Chapter 11 Cases will be the primary forum in which the Company will seek to implement an efficient and value maximizing wind-down of their business.⁴¹ In the context of the *Lightsquared* factors, the United States is the “location that is readily ascertainable by creditors” as the jurisdiction in which to complete an orderly and coordinated wind-down of the business and sale of the assets of the Debtors, including the Canadian Debtors.⁴²

42. In summary, while the Canadian Debtors’ registered offices are in Canada, they are integrated members of the broader Yellow group, which is centrally managed from a strategic and financial perspective by its senior leadership team in the United States. Taking into account the key factors discussed above, the Yellow Parent submits that the COMI of each Canadian Debtor is the United States and that the Chapter 11 Cases ought to be recognized as a “foreign main proceeding” pursuant to subsection 47(2) of the CCAA.⁴³

B. THE INITIAL RECOGNITION ORDER SHOULD BE GRANTED

43. Once the Court has recognized a foreign proceeding as a foreign main proceeding, subsection 48(1) of the CCAA requires the Court to grant an order, subject to any terms and conditions it considers appropriate, staying proceedings against the debtor company and certain related relief set forth in subsection 48(1).⁴⁴

44. The Yellow Parent is seeking an Initial Recognition Order in substantially the form of the Ontario model order for foreign main proceedings. The primary effect of the proposed Initial Recognition Order is to recognize the Chapter 11 Cases as a foreign main proceeding and to

⁴¹ Initial Affidavit at paras 38-41 [CL p [A33:A33-A34:A34](#)]; Supplemental Affidavit at para 40 [CL p [A978:A288](#)].

⁴² *Lightsquared* at para 25.

⁴³ Initial Affidavit at paras 43, 48-50 and 54 [CL p [A34:A34](#), [A35:A35](#) and [A37:A37](#)].

⁴⁴ [CCAA s 48\(1\)](#).

make the order required pursuant to subsection 48(1) of the CCAA. Consistent with the Ontario model order and the Court's jurisdiction under subsection 48(1) to grant a stay "for any period that the court considers necessary", the proposed Initial Recognition Order provides that the stay will remain effective until otherwise ordered by the Court. Ontario courts regularly grant initial recognition orders with indefinite stay periods in Part IV proceedings.⁴⁵ Accordingly, the Yellow Parent submits that the granting of the Initial Recognition Order in the form sought is necessary and appropriate and within the jurisdiction of the Court.

C. THE SUPPLEMENTAL ORDER SHOULD BE GRANTED

(a) *Stay of Proceedings in Canada*

45. The proposed Supplemental Order provides for a stay of proceedings in respect of the Canadian Debtors and the Yellow Parent, and their respective directors and officers, in Canada. The Yellow Parent submits that the requested stay of proceedings is appropriate to give effect in Canada to the stay of proceedings pursuant to the Chapter 11 Cases and to preserve and protect the value of the Canadian Business. It is important for such parties to be protected pursuant to a Canadian court order from the exercise of rights or remedies to maintain stability and preserve the value of the Canadian Business while the Company pursues its wind-down efforts in the Chapter 11 Cases.⁴⁶ The Yellow Parent also relies on its submissions in respect of the Interim Stay Order, including paragraphs [36](#) to [47](#) of the [factum filed in support of the Interim Stay Order](#).

⁴⁵ [David's Bridal, LLC \(18 April 2023\), Toronto, Ont Sup Ct J \[Commercial List\] CV-23-00698107-00CL \(Endorsement of Conway J\) at para 15 \[David's Bridal\]; Paladin Initial Recognition Endorsement at paras 28 and 39.](#)

⁴⁶ Supplemental Affidavit at paras 43-44 [CL p [A979:A289](#)].

46. Consistent with the Ontario model order and the Court's jurisdiction pursuant to subsection 49(1) of the CCAA to make any order that it considers appropriate, the proposed Supplemental Order provides for a more expansive stay of proceedings that goes beyond the more limited stay of proceedings provided for in subsection 48(1) of the CCAA. In that regard, the proposed Supplemental Order prohibits the exercise of rights or remedies against the Canadian Debtors and the Yellow Parent or affecting their business or property in Canada, prohibits the discontinuance or termination of contracts with the any of the Canadian Debtors or the Yellow Parent or affecting their business or property in Canada, requires the continued supply of goods and/or services in Canada pursuant to existing agreements with any of the Canadian Debtors or the Yellow Parent, and stays all proceedings in respect of directors and officers of the Canadian Debtors and the Yellow Parent in their capacity as such.

(b) Recognition of Certain U.S. Orders

47. The U.S. Orders for which the Yellow Parent is seeking recognition are listed above and described in further detail in the Supplemental Affidavit.⁴⁷

48. Subsection 49(1) of the CCAA provides the Court with broad jurisdiction to grant "any order that it considers appropriate" with respect to 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. Subsection 52(1) of the CCAA requires that the Court "cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the

⁴⁷ Supplemental Affidavit at paras 48-96 [CL p [A980:A290-A1001:A311](#)].

foreign proceeding.”⁴⁸ In the context of Part IV recognition proceedings, this Court commonly grants orders recognizing first day orders granted in Chapter 11 proceedings.⁴⁹

49. The Yellow Parent submits that it is appropriate for this Court to recognize the requested U.S. Orders given, among other things:

- (a) the U.S. Bankruptcy Court has assumed jurisdiction over the Chapter 11 Cases and comity will be furthered by this Court’s recognition of orders granted by the U.S. Bankruptcy Court in those proceedings;
- (b) as Yellow operates a global, integrated business that is predominantly in the United States, it is appropriate for the Chapter 11 Cases overseen by the U.S. Bankruptcy Court to be the primary forum for the Company’s insolvency proceedings; and
- (c) the U.S. Orders have been sought by the Debtors to enable them to carry on certain critical post-petition activities in connection with preserving the value of their assets and clearing freight from their network, to minimize the adverse effects of the Chapter 11 Cases, and to preserve value of the Debtors’ assets for the benefit of stakeholders as the Company advances its wind-down and sale efforts.⁵⁰

50. The Yellow Parent submits that recognition of the U.S. Orders is necessary for the protection of the Canadian Debtors, to preserve the value of the Canadian Business and facilitate

⁴⁸ [CCAA s 52\(1\)](#).

⁴⁹ [Hollander](#) at paras 41-43; [Lightsquared](#) at paras 35-36; [Paladin Initial Recognition Endorsement](#) at paras 32-34; [Revlon, Inc, Re](#) (20 June 2022), Toronto, Ont Sup Ct J [Commercial List] CV-22-00682880-00CL (Supplemental Order (Foreign Main Proceeding)) at para 4 [[Revlon Supplemental Order](#)]; [Pier 1 Imports, Inc](#) (18 February 2023), Toronto, Ont Sup Ct J [Commercial List] CV-20-00636511-00CL (Amended and Restated Supplemental Order (Foreign Main Proceeding)) at para 4 [[Pier 1](#)].

⁵⁰ Supplemental Affidavit at paras 7 and 40 [CL p [A968:A278](#) and [A978:A288](#)]; Initial Affidavit at paras 9 and 15 [CL p [A24:A24](#) and [A26:A26](#)].

Yellow's overall efforts to implement an orderly wind-down of the business, including the Canadian Business, pursuant to the Chapter 11 Cases.

(c) *Recognition of the Interim DIP and Cash Collateral Order*

51. Immediate access to additional liquidity is critical to preserving the value of the Debtors' business, including the Canadian Business. The Debtors' liquidity position rapidly deteriorated in the weeks leading up to the Petition Date, and as such, the Debtors require the additional liquidity provided by the DIP Facilities to, among other things, preserve the value of their assets, execute a comprehensive and efficient sale process, wind-down their affairs, and pay remaining employees for their work during the wind-down period.⁵¹

52. The DIP Facilities, which are being provided on a consensual basis following extensive efforts on the part of the Debtors and their advisors to secure the best available DIP financing terms, will provide the Debtors with access to up to \$212.5 million of liquidity (taking into account the Additional Junior DIP Commitment, as needed). The terms of the DIP Facilities are described in further detail in the Supplemental Affidavit. As of August 21, 2023, the first \$60 million draw has been funded to the Debtors.

53. The Canadian Debtors are each guarantors under the DIP Facilities, consistent with the Canadian Debtors also being guarantors of, and granting security in respect of, the Company's existing approximately \$1.2 billion of prepetition funded debt obligations.⁵²

54. This Court has established various relevant factors when considering a Canadian guarantee of a cross-border DIP.⁵³ Many of those factors, among others, apply here, including:

⁵¹ Supplemental Affidavit at para 49 [CL p [A981:A291](#)].

⁵² Supplemental Affidavit at paras 54-55 [CL p [A983:A293](#) – [A988:A298](#)].

- (a) the DIP Facilities are essential for the Debtors, including the Canadian Debtors, to effect an orderly wind-down of operations and conduct a value-maximizing sale process for their assets, thereby furthering the objectives of the CCAA;
- (b) the Canadian Debtors are dependent on the Yellow Parent, and will benefit from the Yellow Parent, as borrower, being able to access the financing provided by the DIP Facilities;
- (c) creditors of the Canadian Debtors are not expected to be prejudiced by the guarantees of the DIP Facilities because, among other things, the assets of the Canadian Debtors are already encumbered in connection with the Canadian Debtors being guarantors of Yellow's approximately \$1.2 billion of prepetition funded indebtedness, the Canadian Debtors are also debtors under the Chapter 11 Cases and subject the global wind-down and sale efforts of the Company pursuant to such Chapter 11 Cases, distribution matters for all unsecured creditors will be subject to future court orders, and the unsecured creditors of the Canadian Debtors will be represented together with all other unsecured creditors of the Company by the official committee of unsecured creditors in the Chapter 11 Cases;
- (d) Canadian stakeholders will benefit from the Debtors, including the Canadian Debtors, undertaking an orderly wind-down and implementing a value-maximizing sale process, which efforts are only possible with funding from the DIP Facilities; and

⁵³ [*Indalex Limited, Re* \(8 April 2009\), Toronto, Ont Sup Ct J \[Commercial List\] CV-09-8122-00CL \(Endorsement of Morawetz J\) at paras 8-9; *Hollander* at para 50; *Revlon, Inc., Re* \(20 June 2023\), Toronto, Ont Sup Ct J \[Commercial List\] CV-00682880-00CL \(Endorsement of Conway J\).](#)

(e) the DIP Lenders require the Canadian Debtors to guarantee the DIP Facilities.⁵⁴

55. It is a milestone under the DIP Term Sheet that the Court shall have recognized the Interim DIP and Cash Collateral Order within 15 days of such order being entered by the U.S. Bankruptcy Court.⁵⁵ The Yellow Parent submits that recognition of the Interim DIP and Cash Collateral Order by this Court is consistent with Part IV of the CCAA, the principles of comity, and the approval of interim financing commonly granted in Canadian restructuring proceedings.

(d) *Appointment of the Information Officer*

56. The Yellow Parent seeks the appointment of A&M as the Information Officer.⁵⁶ Although the CCAA does not require that an information officer be appointed, it has become common practice in proceedings under Part IV of the CCAA for the Court to appoint an information officer pursuant to the Court's broad discretionary powers under sections 49 and 50 of the CCAA.⁵⁷ The information officer's role is to help facilitate cooperation between the Canadian proceeding, the foreign representative and the foreign court, including to keep the Court apprised of the status of the foreign proceeding and to act as a point of contact to respond to inquiries from interested parties in Canada.

57. The terms of the Supplemental Order relating to the appointment, role and protections of the Information Officer are based on the terms of the Ontario model order and are consistent with the terms of orders granted in other recent Part IV recognition proceedings.⁵⁸

⁵⁴ Supplemental Affidavit at paras 40 and 49 [CL p [A978;A288](#) and [A981;A291](#)]; Declaration of Cody Leung Kaldenberg at paras 19 and 21 [CL [A1189;A499](#) and [A1192;A502](#)].

⁵⁵ Supplemental Affidavit at para 56 [CL p [A988;A298](#)].

⁵⁶ Supplemental Affidavit at para 97 [CL p [A1001;A311](#)].

⁵⁷ [CCAA, s 49 and 50](#).

⁵⁸ [Pier 1 at para 12](#); [Revlon Supplemental Order at para 12](#).

(e) *Administration Charge*

58. The proposed Supplemental Order provides for the Administration Charge on the Canadian Collateral in the maximum amount of CDN\$700,000 to secure the fees and disbursements of Canadian counsel to the Canadian Debtors, the Information Officer and counsel to the Information Officer incurred in respect of these proceedings. The Administration Charge is proposed to rank in priority to all other encumbrances in respect of the Canadian Debtors, other than those not given notice of the application for the proposed Supplemental Order.⁵⁹

59. While not directly applicable in the context of a Part IV recognition proceeding, it is instructive that section 11.52 of the CCAA expressly provides that the Court has the jurisdiction to grant an administration charge.⁶⁰ In the context of Part IV proceedings, this Court commonly grants administration charges to secure obligations owing to the debtor's counsel and the information officer and its counsel.⁶¹

60. Factors that the Court has considered when approving an administration charge pursuant to section 11.52 of the CCAA include: (a) the size and complexity of the business being restructured; (b) the proposed role of the beneficiaries of the charge; (c) whether there is unwarranted duplication of roles; (d) whether the quantum of the proposed charge appears to be fair and reasonable; (e) the position of the secured creditors likely to be affected by the charge; and (f) the position of the Monitor.⁶²

61. The Yellow Parent submits that the amount of the proposed Administration Charge is reasonable in the circumstances having regard to the size and complexity of these proceedings

⁵⁹ Supplemental Affidavit at para 100 [CL p [A1001;A311](#)].

⁶⁰ [CCAA, s 11.52](#).

⁶¹ [Lightsquared](#) at para 37; [Hollander](#) at para 56; [David's Bridal](#) at para 17; [Revlon Supplemental Order](#) at para 21(a); [Paladin Initial Recognition Endorsement](#) at para 37.

⁶² [Canwest Publishing Inc.](#), 2010 ONSC 222 at paras 54-55 [Canwest]; [Timminco Ltd. Re.](#), 2012 ONSC 106 at para 26 [Timminco].

and the roles that will be required of Canadian counsel to the Canadian Debtors and the proposed Information Officer and its counsel, and that the granting of the proposed Administration Charge is appropriate in the circumstances.⁶³

(f) D&O Charge

62. The proposed Supplemental Order also provides for the D&O Charge in a maximum aggregate amount of CDN\$3.5 million on the Canadian Collateral as security for the indemnity obligations of the Canadian Debtors to their directors and officers under the proposed Supplemental Order in respect of obligations and liabilities that such directors and officers may incur during these proceedings in their capacities as directors and officers.⁶⁴ The D&O Charge would be subordinate to the proposed Administration Charge and rank in priority to the DIP Charge and all other encumbrances, except to the extent of any encumbrances in favour of any person that did not receive notice of the application for the Supplemental Order.

63. Similar to the discussion above, while not directly applicable in the context of a Part IV recognition proceeding, section 11.51 of the CCAA expressly provides that the Court has the jurisdiction to grant a charge in favour of directors and officers.⁶⁵ In deciding whether to grant a director's charge, the Court must be satisfied that: (i) notice has been given to the likely affected secured creditors; (ii) the amount is appropriate; (iii) the debtor company could not obtain adequate indemnification insurance for the directors and officers at a reasonable cost; and (iv) the charge does not apply to obligations incurred by a director or officer as a result of their gross

⁶³ Supplemental Affidavit at para 101 [CL p [A1002:A312](#)].

⁶⁴ Supplemental Affidavit at para 104 [CL p [A1003:A313](#)].

⁶⁵ [CCAA, s 11.51](#).

negligence or wilful misconduct.⁶⁶ In the context of Part IV proceedings, this Court has granted charges to secure debtor companies' indemnity obligations to their directors and officers.⁶⁷

64. The Yellow Parent seeking the D&O Charge is consistent with the purpose of the CCAA and is appropriate in the circumstances for the following reasons:

- (a) the Canadian Debtors require the continued support and involvement of their directors and officers in connection with effectuating an orderly wind-down of the Canadian Business;
- (b) the D&O Insurance may not provide sufficient coverage against the potential liability that the directors and officers of the Canadian Debtors could incur during these proceedings;
- (c) the D&O Charge does not cover willful misconduct or gross negligence;
- (d) the amount of the proposed D&O Charge has been estimated, in consultation with the proposed Information Officer, with reference to the Canadian Debtors' payroll, vacation pay, termination and severance, and sales tax liability exposure;
- (e) the secured creditors affected by the D&O Charge have been, or prior to the hearing of the within application will be, provided with notice of the proposed Supplemental Order; and
- (f) the Information Officer is supportive of the proposed D&O Charge.⁶⁸

65. The Foreign Representative respectfully submits that, taking into account the above factors, it is reasonable and appropriate to grant the requested D&O Charge.

⁶⁶ [CCAA ss. 11.51\(3\) and 11.51\(4\); Canwest Global Communications Corp, 59 CBR \(5th\) 72, \[2009\] OJ No 4286 \(QL\) \(Ont Sup Ct\) at paras 44-46; Timminco at paras 31-32 and 36.](#)

⁶⁷ [Allied Systems Holdings, Inc, \(22 April 2023\), Toronto, Ont Sup Ct J \[Commercial List\] 12-CV-9757-00CL \(Order of Morawetz J\) at para 5; David's Bridal, LLC, at para 17; Pier I at para 21.](#)

⁶⁸ Supplemental Affidavit at paras 103-107 [CL p [A1002;A312-A1004;A314](#)].

(g) ***DIP Charge***

66. The DIP Term Sheet contemplates the granting of the DIP Charge to secure the obligations outstanding from time to time under the DIP Facilities.⁶⁹ The DIP Charge would be subordinate to the proposed Administration Charge and the D&O Charge, and rank in priority to all other encumbrances, except (i) to the extent of any encumbrances in favour of any person that did not receive notice of the application for the Supplemental Order, and (ii) to the extent the Interim DIP and Cash Collateral Order provides that any such encumbrance ranks in priority to or *pari passu* with the liens granted in favour of the DIP Secured Parties pursuant to the Interim DIP and Cash Collateral Order.

67. Again, while not directly applicable in the context of a Part IV recognition proceeding, Section 11.2 of the CCAA provides the Court with express jurisdiction to grant a DIP financing charge. When considering whether to grant a DIP financing charge under Section 11.2 of the CCAA, the Court refers to the factors outlined in Section 11.2(4) of the CCAA.⁷⁰

68. The DIP Charge is reasonable in the circumstances taking into account:

- (a) the time sensitive nature of these proceedings and the need for liquidity;
- (b) the Debtors require DIP financing to preserve the value of their assets, execute a comprehensive, value-maximizing sale process, wind-down their affairs, and pay remaining employees for their work during this period;
- (c) given the integration of the Canadian Debtors with the Yellow group, and the existing guarantees and security granted by the Canadian Debtors in respect of the Company's existing prepetition funded debt, a coordinated wind-down of the

⁶⁹ Supplemental Affidavit at para 108 [CL p [A1004:A314](#)].

⁷⁰ [CCAA s 11.2\(4\)](#); [Canwest at para 44](#).

Canadian Business as part of the Company's overall wind-down efforts is the best and most efficient path; and

- (d) for the reasons discussed above regarding the guarantees of the DIP Facilities by the Canadian Debtors, creditors are not expected to be materially prejudiced by the proposed DIP Charge, and the priority of the DIP Charge vis-à-vis the other secured creditors has been negotiated and accepted on a consensual basis by such parties.⁷¹

PART IV – RELIEF REQUESTED

69. The Yellow Parent, in its capacity as Foreign Representative, respectfully requests that the Court grant the Initial Recognition Order and the Supplemental Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25th day of August, 2023.

GOODMANS LLP

Goodmans LLP

⁷¹ Initial Affidavit at para 54 [CL p [A37:A37](#)]; Declaration of Cody Leung Kaldenberg at paras 16 and 21 [CL p [A1188:A498](#) and [A1192:A502](#)].

SCHEDULE A
LIST OF AUTHORITIES

Tab	Description
1.	<i>Lightsquared LP, Re</i>, 2012 ONSC 2994
2.	<i>Hollander Sleep Products, LLC et al, Re</i>, 2019 ONSC 3238
3.	<i>Paladin Labs Canadian Holding Inc</i>, 2022 ONSC 4931
4.	<i>CHC Group Ltd (Re)</i>, 2016 BCSC 2623
5.	<i>Massachusetts Elephant & Castle Group Inc, Re</i>, 2011 ONSC 4201
6.	<i>David's Bridal, LLC</i> (18 April 2023), Toronto, Ont Sup Ct J [Commercial List] CV-23-00698107-00CL (Endorsement of Conway J)
7.	<i>Revlon, Inc, Re</i> (20 June 2022), Toronto, Ont Sup Ct J [Commercial List] CV-22-00682880-00CL (Supplemental Order (Foreign Main Proceeding))
8.	<i>Pier 1 Imports, Inc.</i> (18 February 2023), Toronto, Ont Sup Ct J [Commercial List] CV-20-00636511-00CL (Amended and Restated Supplemental Order (Foreign Main Proceeding))
9.	<i>Indalex Limited, Re</i> (8 April 2009), Toronto, Ont Sup Ct J [Commercial List] CV-09-8122-00CL (Endorsement of Morawetz J)
10.	<i>Revlon, Inc, Re</i> (20 June 2023), Toronto, Ont Sup Ct J [Commercial List] CV-00682880-00CL (Endorsement of Conway J)
11.	<i>Canwest Publishing Inc</i>, 2010 ONSC 222
12.	<i>Timminco Ltd., Re</i>, 2012 ONSC 106
13.	<i>Canwest Global Communications Corp</i>, 59 CBR (5th) 72, [2009] OJ No 4286 (QL) (Ont Sup Ct)
14.	<i>Allied Systems Holdings, Inc</i> (22 April 2023), Toronto, Ont Sup Ct J [Commercial List] 12-CV-9757-00CL (Order of Morawetz J)

SCHEDULE B
STATUTORY REFERENCES

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

s. 11.2(1)

On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

s. 11.2(2)

The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

s. 11.2(3)

The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

s. 11.2(4)

In deciding whether to make an order, the court is to consider, among other things,

- (a) the period during which the company is expected to be subject to proceedings under this Act
- (b) how the company's business and financial affairs are to be managed during the proceedings;
- (c) whether the company's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
- (e) the nature and value of the company's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge; and

s. 11.51(1)

On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of the company is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of proceedings under this Act.

s. 11.51(2)

The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

s. 11.51(3)

The court may not make the order if in its opinion the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

s. 11.51(4)

The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

s. 11.52(1)

On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

- (g) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;
- (h) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and
- (i) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

s. 11.52(2)

The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

s. 45(1) (“**Foreign Main Proceeding**”)

“foreign main proceeding” means a foreign proceeding in a jurisdiction where the debtor company has the centre of its main interests.

s. 45(1) (“**Foreign Proceeding**”)

foreign proceeding means a judicial or an administrative proceeding, including an interim proceeding, in a jurisdiction outside Canada dealing with creditors’ collective interests generally under any law relating to bankruptcy or insolvency in which a debtor company’s business and financial affairs are subject to control or supervision by a foreign court for the purpose of reorganization.

s. 45(1) (“**Foreign Representative**”)

foreign representative means a person or body, including one appointed on an interim basis, who is authorized, in a foreign proceeding respect of a debtor company, to

- (a) monitor the debtor company’s business and financial affairs for the purpose of reorganization; or
- (b) act as a representative in respect of the foreign proceeding.

s. 45(2)

For the purposes of this Part, in the absence of proof to the contrary, a debtor company’s registered office is deemed to be the centre of its main interests.

s. 46(1)

A foreign representative may apply to the court for recognition of the foreign proceeding in respect of which he or she is a foreign representative.

s. 46(2)

Subject to subsection (3), the application must be accompanied by

- (a) a certified copy of the instrument, however designated, that commenced the foreign proceeding or a certificate from the foreign court affirming the existence of the foreign proceeding;
- (b) a certified copy of the instrument, however designated, authorizing the foreign representative to act in that capacity or a certificate from the foreign court affirming the foreign representative’s authority to act in that capacity; and
- (c) a statement identifying all foreign proceedings in respect of the debtor company that are known to the foreign representative.

s. 46(3)

The court may, without further proof, accept the documents referred to in paragraphs (2)(a) and (b) as evidence that the proceeding to which they relate is a foreign proceeding and that the applicant is a foreign representative in respect of the foreign proceeding.

s. 46(4)

In the absence of the documents referred to in paragraphs (2)(a) and (b), the court may accept any other evidence of the existence of the foreign proceeding and of the foreign representative's authority that it considers appropriate.

s. 47(1)

If the court is satisfied that the application for the recognition of a foreign proceeding relates to a foreign proceeding and that the applicant is a foreign representative in respect of that foreign proceeding, the court shall make an order recognizing the foreign proceeding.

s. 47(2)

The court shall specify in the order whether the foreign proceeding is a foreign main proceeding or a foreign non-main proceeding.

s. 48(1)

Subject to subsections (2) to (4), on the making of an order recognizing a foreign proceeding that is specified to be a foreign main proceeding, the court shall make an order, subject to any terms and conditions it considers appropriate,

- (a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken against the debtor company under the Bankruptcy and Insolvency Act or the Winding-up and Restructuring Act;
- (b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the debtor company;
- (c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the debtor company; and
- (d) prohibiting the debtor company from selling or otherwise disposing of, outside the ordinary course of its business, any of the debtor company's property in Canada that relates to the business and prohibiting the debtor company from selling or otherwise disposing of any of its other property in Canada.

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.

COURTS OF JUSTICE ACT
R.S.O. 1990, c. C.43, as amended

s. 106

A court, on its own initiative or on motion by any person, whether or not a party, may stay any proceeding in the court on such terms as are considered just.

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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(Application Returnable August 29, 2023)**

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