

Court File No. CV-23-00704038-00CL

**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 February 28, 2024)**

GOODMANS LLP
Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Robert J. Chadwick LSO# 35165K
rchadwick@goodmans.ca

Caroline Descours LSO# 58251A
cdescours@goodmans.ca

Andrew Harmes LSO# 73221A
aharmes@goodmans.ca

Brennan Caldwell LSO# 81627N
bcaldwell@goodmans.ca

Tel: 416.979.2211
Fax: 416.979.1234

Lawyers for the Applicant

TABLE OF CONTENTS

PART I – INTRODUCTION	1
PART II – SUMMARY OF THE FACTS	2
A. Background	2
B. Abandonment and Destruction of Documents and Records.....	4
C. Sale Process and Efforts to Complete the Allstar Sale Transaction	5
D. Lease Assumption	7
PART III - ISSUES AND THE LAW	10
A. The Court has Jurisdiction to Grant the Fifth Supplemental Order.....	10
B. The U.S. Orders Ought to be Recognized in Canada	12
(i) Recognition of the Documents Order	13
(ii) Recognition of the Order to Compel.....	15
(iii) Recognition of the Lease Assumption Order.....	16
PART IV – RELIEF REQUESTED.....	18

PART I – INTRODUCTION

1. Yellow Corporation (the “**Yellow Parent**”) files this factum in its capacity as the Foreign Representative in respect of the proceedings commenced by the Yellow Parent and certain of its affiliates (collectively, the “**Debtors**”), including YRC Freight 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 “**Fifth Supplemental Order**”), among other things, recognizing and enforcing the following orders (collectively, the “**U.S. Orders**”) granted by the U.S. Bankruptcy Court in the Chapter 11 Cases:¹

- (a) *Order Authorizing the Abandonment and Destruction of Documents and Records* (the “**Documents Order**”);
- (b) *Order Enforcing Sale Order and Compelling Specific Performance by All Star Investments Inc. Under the All Star Asset Purchase Agreement* (the “**Order to Compel**”); and
- (c) *Order (A) Authorizing the Debtors to Assume Certain Unexpired Leases and (B) Granting Related Relief* (the “**Lease Assumption Order**”).

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

¹ Capitalized terms not otherwise defined in this Factum have the meanings set out in the Affidavit of Matthew A. Doheny sworn February 21, 2024 (the “**Sixth Doheny Affidavit**”) or the U.S. Orders, as applicable, including terms therein defined by way of cross-reference.

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

PART II – SUMMARY OF THE FACTS

A. BACKGROUND

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

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

³ Sixth Doheny Affidavit at para 3 [CL p [A6859:A17](#)].

⁴ Sixth Doheny Affidavit at para 4 [CL p [A6859:A17](#)].

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

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 U.S. Bankruptcy Court granted certain First Day Orders, including an order appointing the Yellow Parent as the Foreign Representative.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 information officer (in such capacity, the "**Information Officer**"), (iii) recognizing certain of the orders issued by the U.S. Bankruptcy Court, and (iv) granting the Administration Charge, the D&O Charge and the DIP Charge.⁷

9. Information on subsequent recognition orders and relief granted in these proceedings to date is described in the Sixth Doheny Affidavit and the Fifth Report of the Information Officer dated February 26, 2024 (the "**Fifth Report**").

⁵ Sixth Doheny Affidavit at para 7 [CL p [A6860:A18](#)].

⁶ Sixth Doheny Affidavit at para 5 [CL p [A6860:A18](#)].

⁷ Sixth Doheny Affidavit at para 6 [CL p [A6860:A18](#)]; [Yellow Corporation et al \(29 August 2023\) Toronto, Ont Sup Ct J \[Commercial List\] CV-23-00704038-00CL \(Initial Recognition Order \(Foreign Main Proceeding\)\) \[Initial Recognition Order\]](#) at para 2.

10. The Foreign Representative now seeks the Fifth Supplemental Order recognizing and enforcing the U.S. Orders.

B. ABANDONMENT AND DESTRUCTION OF DOCUMENTS AND RECORDS

11. Approximately 31,000 boxes of the Debtors' documents and records are currently being held by Iron Mountain, a third-party records and information management company, for storage, shredding, or transport, and at least 12,000 boxes of the Debtors' documents and records are physically present on the properties that have been sold or continue to be part of the Debtors' sale process, including on leased properties for which the leases may be abandoned (collectively, the **"Documents and Records"**). Approximately 438 (5.7%) of the boxes are located in Canada.⁸

12. Given the Debtors are selling their assets, they are without, or are expected to soon be without, storage space for the Documents and Records held on those properties. To continue storing them, the Debtors would be required to move those Documents and Records to Iron Mountain or another third-party storage facility.⁹

13. The vast majority of the Documents and Records are believed to be original copies or physical duplicates of documents held electronically by the Debtors.¹⁰

14. While maintenance of the Documents and Records was necessary for the Debtors to operate as a going-concern trucking enterprise, the Debtors have no reason to believe they are needed any longer. Either none or almost none of the Documents and Records are necessary for the Debtors to complete the sales and wind down that the Debtors are currently pursuing through the Chapter

8 Sixth Doheny Affidavit at para 25 [CL p [A6866:A24](#)].

9 Sixth Doheny Affidavit at para 26 [CL p [A6866:A24](#)].

10 Sixth Doheny Affidavit at para 27 [CL p [A6866:A24](#)].

11 Cases. And the Debtors have no reason to believe that the Documents and Records are germane to any pending litigation and/or to any of the proofs of claim that have been filed with the U.S. Bankruptcy Court.¹¹

15. With respect to Documents and Records in Canada, the Canadian Debtors have and will continue to maintain at least seven years' worth of Canadian income tax and sales tax (GST / PST) returns and supporting data, as well as employee records from the past 7 years.¹²

16. In sum, the costs of maintaining the Documents and Records exceed their value, the Debtors are increasingly without manpower and storage space to continue storing the Documents and Records, and the Debtors thus sought and obtained the authority of the U.S. Bankruptcy Court to destroy, or cause to be destroyed, or abandon the Documents and Records pursuant to the Documents Order.¹³

C. SALE PROCESS AND EFFORTS TO COMPLETE THE ALLSTAR SALE TRANSACTION

17. Since the Petition Date, the Debtors have advanced their robust marketing and sale efforts to capitalize on the value of their assets for the benefit of all stakeholders.¹⁴

18. As described in further detail in the Sixth Doheny Affidavit, the Fifth Report, and the *Supplemental Declaration of Brian Whittman in Support of Debtors' Omnibus Motion for Entry of an Order (I) Authorizing the Debtors to Assume Certain Unexpired Leases and (II) Granting Related Relief* (the "**Supplemental Whittman Declaration**"), the Debtors' sale process efforts to

11 Sixth Doheny Affidavit at para 28 [CL p [A6867:A25](#)].

12 Sixth Doheny Affidavit at para 29 [CL p [A6867:A25](#)].

13 Sixth Doheny Affidavit at para 31 [CL p [A6867:A25](#)].

14 Sixth Doheny Affidavit at para 9 [CL p [A6861:A19](#)].

date have been overwhelmingly successful. The Debtors have entered into sale transactions in respect of approximately 130 Owned Properties and over 35 Leased Properties, with proceeds of approximately \$1.9 billion through sales that have closed or expected to close in the near term.¹⁵ Certain additional sale transactions are also expected to close in coming weeks, with proceeds of approximately \$64 million.¹⁶

19. From the proceeds generated by the transactions completed to date, the Debtors have repaid all prepetition secured debt and all postpetition debtor-in-possession financing, and have approximately \$314 million of cash on hand.¹⁷

20. The foregoing transactions include the sales of two Canadian Owned Properties: (a) the RGH Transaction, and (b) the Allstar Transaction (together, the “**Canadian Transactions**”). The Canadian Transactions were recognized and approved by this Court pursuant to the Sale Recognition and Vesting Order granted on December 19, 2023.¹⁸

21. The RGH Transaction was completed on January 23, 2024. To date, the Allstar Transaction has not yet been completed.¹⁹

22. The Allstar Purchaser had refused and failed to honor its obligations to close the Allstar Transaction concerning the Quebec Property.²⁰ Accordingly, on February 9, 2024, the Debtors filed the Motion to Compel with the U.S. Bankruptcy Court seeking entry of the Order to Compel. The Allstar Purchaser received service of and did not object to the Motion to Compel, nor did they attend the hearing in respect thereof. Shortly before the hearing, the Allstar Purchaser did contact

¹⁵ Fifth Report at para 4.3.

¹⁶ Supplemental Whittman Declaration at para 6, Exhibit A to the Supplemental Affidavit of Brennan Caldwell sworn February 26, 2024 (the “**Caldwell Affidavit**”).

¹⁷ Fifth Report at para 4.3

¹⁸ Sixth Doheny Affidavit at para 10 [CL p [A6861:A19](#)].

¹⁹ Sixth Doheny Affidavit at para 12-13 [CL p [A6862:A20](#)].

²⁰ Sixth Doheny Affidavit at paras 13 [CL p [A6863:A21](#)].

Kirkland & Ellis LLP, U.S. counsel to the Debtors, indicating their intention to close the transaction. Out of an abundance of caution and in an interest to close the transaction, the Debtors proceeded with the Motion to Compel, which was heard by the U.S. Bankruptcy Court on February 14, 2024. The U.S. Bankruptcy Court entered the Order to Compel the same day.²¹

23. The Debtors are continuing their efforts to advance all necessary matters to complete the Allstar Transaction as soon as practicable and by no later than the extended “Outside Date” of March 7, 2024, as per the Order to Compel.²²

24. The Debtors are also continuing to advance their marketing and sale efforts with regards to certain remaining Owned Properties and Leased Properties. In Canada, there is one remaining Owned Property located in Oshawa, Ontario, and 11 remaining Leased Properties.²³

25. The Debtors are also advancing their efforts to market and sell the Debtors’ Rolling Stock Assets pursuant to the Rolling Stock Sale Order.²⁴

D. LEASE ASSUMPTION

26. The Debtors have to date sold approximately 35 Leased Properties for aggregate cash proceeds of over \$90 million, and approximately 106 Leased Properties remain, of which 11 are in Canada (the “**Remaining Canadian Leased Properties**”).²⁵

27. The Debtors, with guidance from Ducera, intend to continue marketing their Leased Properties pursuant to a comprehensive and value-maximizing strategy. This strategy entails the Debtors assuming certain “high-value” leases and continuing to thoroughly market them.²⁶

21 Sixth Doheny Affidavit at para 14 [CL p [A6863:A21](#)].

22 Sixth Doheny Affidavit at para 15 [CL p [A6863:A21](#)]; Order to Compel at para 3 [CL p [A6879:A37](#)].

23 Sixth Doheny Affidavit at paras 16 and 21 [CL p [A6863:A21](#) and [A6864:A22](#)].

24 Sixth Doheny Affidavit at para 19 [CL p [A6864:A22](#)].

25 Sixth Doheny Affidavit at para 37 [CL p [A6869:A27](#)].

26 Sixth Doheny Affidavit at para 37 [CL p [A6869:A27](#)];

28. The Debtors and their advisors spent significant time determining which unexpired leases will bring value to their estates through assumption, and subsequent assignment, of such unexpired leases. As a result of this analysis, the Debtors determined to assume approximately 75 unexpired Leases (including 11 Leases in respect of Canadian properties).²⁷

29. The current deadline under Section 365(d)(4) of the U.S. Bankruptcy Code for the Debtors to assume or reject the Leased Properties is March 4, 2024. In advance of the hearing before the U.S. Bankruptcy Court on February 26, 2024, the Debtors entered into consensual extensions pursuant to Section 365(d)(4) of the U.S. Bankruptcy Code with applicable landlords regarding several unexpired leases, and ultimately reduced the number of unexpired leases subject to the Lease Assumption Order to 29 (including 10 Leases in respect of Canadian properties).²⁸

30. The Debtors filed the *Notice of Filing of Revised Exhibit to Debtors' Omnibus Motion for Entry of an Order (I) Authorizing the Debtors to Assume Certain Unexpired Leases and (II) Granting Related Relief* (the “**Notice of Revision**”) on February 23, 2024, which included a revised list of Leases to be assumed pursuant to the Lease Assumption Order, reflecting the removal of approximately 42 Leases from the list of Leases initially included in the form of Lease Assumption Order filed with the U.S. Bankruptcy Court.²⁹

31. The Notice of Revision reflected, among other things, the following changes with regards to Leased Properties of the Canadian Debtors:

- (a) the removal of the Lease relating to the Leased Property at 4055 Walker Road, Windsor, ON M8W 3T6 (the “**Windsor Lease**”); and

²⁷ Sixth Doheny Affidavit at para 39 [CL p [A6870:A28](#)].

²⁸ Fifth Report at para 5.11; Lease Assumption Order, Schedule 1, Exhibit E to the Caldwell Affidavit.

²⁹ Caldwell Affidavit at para 5; Notice of Revision, Exhibit B to the Caldwell Affidavit.

- (b) the removal of the Lease relating to Leased Property at 6130 Netherhart Road, Mississauga, ON, Canada L5T 1B7, between Acheron Land Holdings, ULC (“**Acheron**”) and YRC Freight Canada Company (the “**Mississauga Lease**”).³⁰

32. With regards to the Windsor Lease, it had been inadvertently included in the proposed form of Lease Assumption Order initially filed with the U.S. Bankruptcy Court and it had been previously rejected by the Debtors.³¹

33. With regards to the Mississauga Lease, Acheron, together with Crown Enterprises, LLC (collectively “**Crown Enterprises**”), had filed an objection to the Lease Assumption Motion with the U.S. Bankruptcy Court. On February 23, 2024, the Debtors and Crown Enterprises entered into a Joint Stipulation (as defined in the Caldwell Affidavit) pursuant to which, among other things, they agreed to extend the deadline under Section 365(d)(4) of the U.S. Bankruptcy Code for the Debtors to assume or reject the Mississauga Lease to March 31, 2024.³² The Joint Stipulation was filed on certification of counsel on February 23, 2024 and was approved pursuant to an order granted by the U.S. Bankruptcy Court on February 26, 2024.³³

34. On February 25, 2024, the Debtors filed a revised form of Lease Assumption Order on certification of counsel, which reflected the removal of an additional four Leases from the list of Leases included in the Notice of Revision (none of which related to Leased Properties of the Canadian Debtors).

30 Caldwell Affidavit at para 5.

31 Caldwell Affidavit at para 7.

32 Caldwell Affidavit at para 8.

33 Caldwell Affidavit at para 9.

35. On February 26, 2024, prior to the hearing, the U.S. Bankruptcy Court granted the Lease Assumption Order.³⁴

36. Following assumption of the Leases, the Debtors will continue to strategically market the Leases, some of which are already subject to pending bids, in order to maximize the value of the Leases for the benefit of all stakeholders.³⁵

PART III - ISSUES AND THE LAW

37. The issue on this motion is whether the Court should grant the Fifth Supplemental Order recognizing the U.S. Orders in Canada pursuant to section 49 of the CCAA.

38. For the reasons set out below, the Yellow Parent submits that the relief sought on this motion is necessary and appropriate in order to maximize the value of the Canadian Debtors, and their assets and property, while the Company pursues its wind-down and sale efforts pursuant to the Chapter 11 Cases.

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

39. This Court recognized the Chapter 11 Cases as a “foreign main proceeding” under section 47 of the CCAA pursuant to the Initial Recognition Order.³⁶ 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

34 Caldwell Affidavit at para 10.

35 Sixth Doheny Affidavit at para 39 [CL p [A6870:A28](#)].

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

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.³⁷

40. 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.”³⁸ This statement corresponds with the stated purposes of Part IV of the CCAA set out in section 44 of the CCAA, which include the promotion of: (a) cooperation between the courts and other competent authorities in Canada with those of foreign jurisdictions; and (b) the fair and efficient administration of cross-border insolvencies that protects the interests of creditors and other interested persons, and those of debtor companies.³⁹

41. The principle of comity is central to achieving these objectives. Comity requires that Canadian courts recognize and enforce the judicial acts of other jurisdictions, provided that those other jurisdictions have assumed jurisdiction on a basis consistent with principles of order, predictability and fairness.⁴⁰ Section 52 of the CCAA provides that if a proceeding is recognized by a Canadian court under the CCAA as a foreign proceeding, “the court shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.”⁴¹

³⁷ [CCAA, s 49\(1\)](#).

³⁸ [Zochem Inc. \(Re\)](#), 2016 ONSC 958 at para 15.

³⁹ [CCAA, s 44](#).

⁴⁰ [In the Matter of Voyager Digital Ltd](#), 2022 ONSC 4553 at para 9.

⁴¹ [CCAA, s 52](#).

42. 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.

43. 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.”⁴² Canadian courts have held that this exception to recognition should be interpreted narrowly.⁴³

B. The U.S. Orders Ought to be Recognized in Canada

44. 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.⁴⁴ A consideration of these factors supports this Court’s recognition of the U.S. Orders pursuant to the Fifth Supplemental Order.

⁴² [CCAA, s 61\(2\)](#).

⁴³ [Hartford Computer Hardware, Inc, Re, 2012 ONSC 964 at paras 17-18](#).

⁴⁴ [Xerium Technologies Inc, Re, 2010 ONSC 3974 at paras 26-27](#).

(i) **Recognition of the Documents Order**

45. On February 15, 2024, the U.S. Bankruptcy Court granted the Documents Order, among other things, authorizing the Debtors to abandon or destroy the Documents and Records.⁴⁵

46. The Initial Recognition Order granted in these proceedings provides that “except with leave of this Court, each of the Canadian Debtors is prohibited from selling or otherwise disposing of: (a) outside the ordinary course of its business, any of its property in Canada that relates to the business; and (b) any of its other property in Canada.”⁴⁶ Accordingly, the Foreign Representative is seeking recognition of the Documents Order by this Court pursuant to the Fifth Supplemental Order to authorize the Canadian Debtors to abandon or destroy the Documents and Records located in Canada.

47. This Court has granted similar relief to that set forth in the Documents Order in plenary CCAA proceedings. In *Nortel*, this Court granted an order that, among other things, authorized the applicants to dispose of certain records pursuant to those CCAA proceedings.⁴⁷

48. The Foreign Representative submits that the Documents Order should be recognized in Canada because, among other things:

- (a) the vast majority of the Documents and Records are believed to be original copies or physical duplicates of documents held electronically by the Debtors;
- (b) with respect to Documents and Records in Canada, the Canadian Debtors have and will continue to maintain at least seven years’ worth of Canadian income tax and

45 Sixth Doheny Affidavit at para 32 [CL p [A6868:A26](#)].

46 [Initial Recognition Order](#) at para 5.

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

sales tax (GST / PST) returns and supporting data, as well as employee records from the past 7 years;

- (c) either none or almost none of the Documents and Records are necessary for the Debtors to complete the sales and wind-down that the Debtors are currently pursuing through the Chapter 11 Cases;
- (d) the Debtors have no reason to believe that the Documents and Records are germane to any pending litigation and/or to any of the proofs of claim that have been filed with the U.S. Bankruptcy Court;
- (e) the Debtors are increasingly without manpower and storage space to continue storing the Documents and Records;
- (f) the costs of maintaining these records exceed their value; and
- (g) the limited comments and objections received by the Debtors in respect of the Documents Order were consensually addressed and resolved prior to the hearing in respect of the Documents Order and the Documents Order ultimately proceeded on certification of counsel.⁴⁸

49. The Information Officer believes that the Documents Order is fair and reasonable in the circumstances and recommends that this Court recognize the Documents Order.⁴⁹

50. The Foreign Representative respectfully submits that it is appropriate for this Court to recognize the Documents Order pursuant to subsection 49(1) of the CCAA.

⁴⁸ Sixth Doheny Affidavit at paras 27-32 [CL p [A6866:A24](#) – [A6868:A26](#)].

⁴⁹ Fifth Report at para 5.6.

(ii) **Recognition of the Order to Compel**

51. The U.S. Bankruptcy Court approved the terms and conditions governing the Allstar Transaction pursuant to the Sale Order, which was recognized by this Court pursuant to the Sale Recognition and Vesting Order.⁵⁰

52. As noted above, the Allstar Purchaser had refused and failed to honour its obligations to close the Allstar Transaction concerning the Quebec Property. Accordingly, the Debtors sought and obtained the Order to Compel from the U.S. Bankruptcy Court on February 14, 2024, in order to seek to have the Allstar Transaction completed as soon as practicable and by no later than March 7, 2024.⁵¹

53. There is no back-up bidder for the Quebec Property and failure to close the Allstar Transaction with the Allstar Purchaser will require the Debtors to re-market the Quebec Property. Failure to close the Allstar Transaction will be destructive to creditor recoveries.⁵²

54. The Debtors are continuing their efforts to advance all necessary matters to complete the Allstar Transaction as soon as practicable and by no later than the extended “Outside Date” of March 7, 2024, as per the Order to Compel.⁵³

55. The Information Officer believes that the Order to Compel is fair and reasonable in the circumstances and recommends that this Court recognize the Order to Compel.⁵⁴

56. The Foreign Representative respectfully submits that it is appropriate for this Court to recognize the Order to Compel pursuant to subsection 49(1) of the CCAA.

50 Sixth Doheny Affidavit at para 10 [CL p [A6861:A19](#)].and [YRC Freight Canada Company, 2023 ONSC 7169](#) at para and 23.

51 Sixth Doheny Affidavit at para 34 [CL p [A6868:A26](#)].

52 Sixth Doheny Affidavit at para 35 [CL p [A6868:A26](#)].

53 Sixth Doheny Affidavit at para 15 [CL p [A6863:A21](#)].

54 Fifth Report at para 5.9.

(iii) **Recognition of the Lease Assumption Order**

57. On February 25, 2024, the Debtors filed a revised proposed form of Lease Assumption Order on certification of counsel. On February 26, 2024, prior to the hearing, the U.S. Bankruptcy Court granted the Lease Assumption Order.⁵⁵

58. Assumption of the Leases pursuant to the Lease Assumption Order is critical in the Debtors' ongoing efforts to maximize value to their estates through the sales of substantially all of the Debtors' assets.

59. This Court has recognized similar orders in previous CCAA Part IV recognition proceedings. In the Part IV recognition proceedings of *GNC Holdings Inc.*, this Court recognized numerous orders similar to the Lease Assumption Order,⁵⁶ recognizing that such orders were obtained by the debtors to facilitate their restructuring efforts and, among other things, minimize the adverse effects of the Chapter 11 cases on their business.⁵⁷

60. The Foreign Representative submits that the following factors support the recognition of the Lease Assumption Order in the circumstances:

- (a) following assumption of the Leases, the Debtors will continue to strategically market the Leases, some of which are already subject to pending bids, in order to maximize the value of the Leases for the benefit of all stakeholders;

⁵⁵ Caldwell Affidavit at para 10.

⁵⁶ [*GNC Holdings Inc. et al* \(30 September 2020\) Toronto, Ont Sup Ct J \[Commercial List\] CV-20-00642970-00CL \(Recognition Order \(Recognition of U.S. Assumption Orders in Foreign Main Proceeding\)\)](#) at para 3; [*GNC Holdings Inc. et al* \(16 October 2020\) Toronto, Ont Sup Ct J \[Commercial List\] CV-20-00642970-00CL \(Recognition Order \(Recognition of Confirmation Order and Additional U.S. Orders and Granting Related Relief in Foreign Main Proceeding\)\)](#) at para 11.

⁵⁷ [*GNC Holdings Inc. et al* \(30 September 2020\) Toronto, Ont Sup Ct J \[Commercial List\] CV-20-00642970-00CL \(Endorsement of Justice Conway\)](#).

- (b) assumption of the Leases, including the Remaining Canadian Leased Properties, is critical in the Debtors' ongoing efforts to maximize value to their estates through the sales of substantially all of the Debtors' assets;
- (c) assumption of the Leases preserves the Debtors' ability to market and sell valuable assets of the Debtors' estates and is likely to drive value to the Debtors' estates;
- (d) the rejection of the Leases now would result in significant value lost relative to the alternative of assuming and ultimately assigning the Leases;
- (e) the Lease Assumption Order requires the Debtors to promptly pay the Cure Amounts in respect of the assumed Leases, which are set out in the Lease Assumption Order; and
- (f) the Debtors are able to provide adequate assurance of performance of their obligations under the Leases through a combination of cash on hand and expected cash proceeds to be generated from pending or future sales of Real Property Assets, Rolling Stock Assets and other assets.⁵⁸

61. The Information Officer believes that the Lease Assumption Order is fair and reasonable and recommends that this Court recognize the Lease Assumption Order.⁵⁹

62. The Foreign Representative respectfully submits that it is appropriate for this Court to recognize the Lease Assumption Order pursuant to subsection 49(1) of the CCAA.

⁵⁸ Sixth Doheny Affidavit at paras 39, 40 and 43 [CL p [A6870:A28](#) – [A6871:A29](#)]; Supplemental Whittman Declaration at para 6, Exhibit A to the Caldwell Affidavit.
⁵⁹ Fifth Report at para 5.18.

PART IV – RELIEF REQUESTED

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

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26th day of February, 2024.

GOODMANS LLP

Goodmans LLP

SCHEDULE A
LIST OF AUTHORITIES

Tab	Description
1.	<i>Yellow Corporation et al</i> (29 August 2023) Toronto, Ont Sup Ct J [Commercial List] CV-23-00704038-00CL (Initial Recognition Order (Foreign Main Proceeding))
2.	<i>Zochem Inc. (Re)</i>, 2016 ONSC 958
3.	<i>In the Matter of Voyager Digital Ltd</i>, 2022 ONSC 4553
4.	<i>Hartford Computer Hardware, Inc, Re</i>, 2012 ONSC 964
5.	<i>Xerium Technologies Inc., Re</i>, 2010 ONSC 3974
6.	<i>Nortel Networks Corporation et al</i> (26 August 2015), Toronto, Ont Sup Ct J [Commercial List] 09-CL-7950 (Order (Disposal of Records))
7.	<i>YRC Freight Canada Company</i>, 2023 ONSC 7169
8.	<i>GNC Holdings Inc. et al</i> (30 September 2020) Toronto, Ont Sup Ct J [Commercial List] CV-20-00642970-00CL (Recognition Order (Recognition of U.S. Assumption Orders in Foreign Main Proceeding))
9.	<i>GNC Holdings Inc. et al</i> (16 October 2020) Toronto, Ont Sup Ct J [Commercial List] CV-20-00642970-00CL (Recognition Order (Recognition of Confirmation Order and Additional U.S. Orders and Granting Related Relief in Foreign Main Proceeding))
10.	<i>GNC Holdings Inc. et al</i> (30 September 2020) Toronto, Ont Sup Ct J [Commercial List] CV-20-00642970-00CL (Endorsement of Justice Conway)

SCHEDULE B
STATUTORY REFERENCES

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

s. 44

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

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

s. 49(1)

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

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

s. 52(1)

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

s. 61(2)

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

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

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

Applicant

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

**FACTUM OF THE APPLICANT
(Motion Returnable February 28, 2024)**

GOODMANS LLP

Barristers & Solicitors
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Robert J. Chadwick LSO#: 35165K
rchadwick@goodmans.ca

Caroline Descours LSO#: 58251A
cdescours@goodmans.ca

Andrew Harmes LSO#: 73221A
aharmes@goodmans.ca

Brennan Caldwell LSO#: 81627N
bcaldwell@goodmans.ca

Tel: 416.979.2211
Fax: 416.979.1234

Lawyers for the Applicant