

**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 September 29, 2023)**

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

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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 “**Second Supplemental Order**”), among other things, recognizing and enforcing pursuant to section 49 of the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”) certain U.S. Orders (as defined below) granted by the U.S. Bankruptcy Court in the Chapter 11 Cases.¹

2. As described below, the U.S. Orders that the Foreign Representative seeks to have recognized in Canada pursuant to the Second Supplemental Order fall into two categories: (a) final versions of the various interim orders that had been granted by the U.S. Bankruptcy Court and recognized by this Court pursuant to the First Supplemental Order, and (b) certain additional orders granted by the U.S. Bankruptcy Court, being (i) the Bar Date Order, (ii) the Omnibus Rejection Order, (iii) the Rejection Procedures Order, (iv) the De Minimis Assets Order, (v) the Bidding Procedures Order, and (vi) the Real Estate Stalking Horse Order.

3. These U.S. Orders are essential for the administration of the Debtors’ estates, including those of the Canadian Debtors, and the Yellow Parent respectfully requests that this Court recognize and give full effect to such U.S. Orders in Canada.

¹ Capitalized terms not otherwise defined in this Factum have the meanings set out in the Affidavit of Matthew A. Doheny dated September 22, 2023 (the “**Third Doheny Affidavit**”).

PART II – SUMMARY OF THE FACTS

A. BACKGROUND OF THE PROCEEDINGS TO DATE

4. 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 Business represents approximately 2% of the Company’s overall business.²

5. 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

6. 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

7. Following a hearing on August 9, 2023 in respect of the first day motions filed by the Debtors in the U.S. Bankruptcy Court (the “**First Day Hearing**”), the U.S. Bankruptcy Court granted certain First Day Orders, including the Foreign Representative Order appointing the Yellow Parent as the Foreign Representative.⁵

² Initial Affidavit at para 6, Third Doheny Affidavit at Exhibit C [[CL p A1531:A82](#)].

³ Third Doheny Affidavit at para 2 [[CL p A1464:A15](#)].

⁴ Third Doheny Affidavit at para 3 [[CL p A1464:A15](#)].

⁵ Third Doheny Affidavit at para 4 [[CL p A1464:A15](#)].

8. On August, 18, 2023, the U.S. Bankruptcy Court granted the Interim DIP Order, among other things, approving the DIP Term Sheet and the DIP Financing contemplated thereby on an interim basis.⁶

9. 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.⁷

10. 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 First Day Orders and second interim orders issued by the U.S. Bankruptcy Court, (iv) and granting the Administration Charge, the D&O Charge and the DIP Charge.⁸

11. On September 6, 2023, the Yellow Parent and the Debtors that are guarantors pursuant to the DIP Financing (including the Canadian Debtors) entered into the Junior DIP Credit Agreement and the Postpetition B-2 Credit Agreement, consistent with the DIP Term Sheet approved pursuant to the Interim DIP Order.⁹ To date, approximately \$142.5 million of DIP

⁶ Third Doheny Affidavit at para 5 [[CL p A1465:A16](#)].

⁷ Third Doheny Affidavit at para 6 [[CL p A1465:A16](#)].

⁸ Third Doheny Affidavit at para 7 [[CL p A1465:A16](#)].

⁹ Third Doheny Affidavit at para 11 [[CL p A1467:A18](#)].

Financing has been advanced or will soon be advanced to the Debtors pursuant to the DIP Agreements.¹⁰

12. With respect to their sale process efforts, the Debtors have finalized the Bidding Procedures and entered into the Real Estate Stalking Horse APA with respect to their Owned Real Property, each of which have been approved by the U.S. Bankruptcy Court, as further discussed herein.¹¹

13. The Debtors have also obtained from the U.S. Bankruptcy Court (i) final versions of the various interim orders that had been granted by the U.S. Bankruptcy Court at or following the First Day Hearing (the “**Final First Day Orders**”), and (ii) certain additional orders (the “**Additional Orders**”, and collectively, the “**U.S. Orders**”), as discussed further herein and in the Third Doheny Affidavit.¹² The Foreign Representative now seeks the Second Supplemental Order recognizing and enforcing certain of such U.S. Orders in Canada.

B. THE U.S. ORDERS

14. The Foreign Representative seeks recognition of the following Final First Day Orders: (a) the Final DIP Order; (b) the Final UST Cash Collateral Order; (c) the Final Cash Management Order; (d) the Final Wages Order; (e) the Final Critical Vendors Order; (f) the Final Utilities Order; (g) the Final Insurance and Surety Bond Order; (h) the Final Taxes Order; (i) the Final Customer Collections Order; (j) the Final Creditor Matrix Order; and (k) the Final Equity Trading Procedures Order.

¹⁰ Third Doheny Affidavit at paras 12 and 32 [[CL p A1467;A18](#) and [A1475;A26](#)].

¹¹ Third Doheny Affidavit at para 13-14 [[CL p 1468;A19](#)].

¹² Third Doheny Affidavit at para 16 [[CL p A1469;A20](#)].

15. The Foreign Representative also seeks recognition of the following Additional Orders: (a) the Bar Date Order; (b) the Omnibus Rejection Order; (c) the Rejection Procedures Order; (d) the De Minimis Assets Order; (e) the Bidding Procedures Order; and (f) the Real Estate Stalking Horse Order.

(i) **Recognition of the Final First Day Orders**

(a) *Final DIP Order*

16. The Debtors continue to require the DIP Financing to 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 this period.¹³

17. Since the U.S. Bankruptcy Court granted the Interim DIP Order, the Debtors have, among other things, worked to finalize the definitive documentation contemplated by the DIP Term Sheet. As noted above, on September 6, 2023, the Yellow Parent and the Debtors that are guarantors pursuant to the DIP Financing entered into the DIP Agreements. Consistent with the Company's prepetition secured funded debt, the Canadian Debtors are each guarantors under the DIP Agreements.¹⁴

18. Pursuant to the Final DIP Order granted on September 15, 2023, the U.S. Bankruptcy Court, among other things, approved the DIP Financing on a final basis.

19. Each of the Junior DIP Credit Agreement and the Postpetition B-2 Credit Agreement require the Foreign Representative to obtain recognition of the Final DIP Order by this Court within 15 days of such order being entered by the U.S. Bankruptcy Court.

¹³ Third Doheny Affidavit at para 29 [[CL p A1474;A25](#)].

¹⁴ Third Doheny Affidavit at para 11 [[CL p A1467;A18](#)].

20. Recognition of the Final DIP Order in Canada will enable the Debtors to finance the Chapter 11 Cases and these recognition proceedings, and the Debtors' overall efforts to wind-down their business operations and pursue the sale process contemplated by the Bidding Procedures. On the other hand, failure to obtain recognition in Canada of the Final DIP Order would constitute an event of default under the DIP Agreements that would negatively impact the Debtors' ability to advance wind-down and sale efforts, thereby harming the value of the Debtors' estates to the detriment of all stakeholders.¹⁵

(b) Final Wages Order

21. The Final Wages Order includes the same material terms as the Second Interim Wages Order, except that: (a) the limit of the Interim Wages Amount of \$24,510,000 no longer applies to the authorization for the Debtors to pay and honour prepetition amounts outstanding under or related to the Compensation and Benefit Programs in the ordinary course, and (b) consistent with the Final DIP Order, the Final Wages Order provides that the Debtors are not authorized thereunder to make any cash-out payments to Former Employees or named executive officers on account of paid time off, vacation pay, sick time, or personal time (collectively "**PTO**"), provided that upon the payment in full of the Debtors' secured debt obligations, nothing in the Final Wages Order shall prejudice the Debtors' ability to seek approval for authority to make any cash-out payments to Former Employees and/or named executive officers on account of earned but unused PTO by separate motion at a later time.¹⁶

¹⁵ Third Doheny Affidavit at paras 34-35 [[CL p A1475:A26-A1476:A27](#)].

¹⁶ Third Doheny Affidavit at para 38 [[CL p A1477:A28](#)].

(c) *Other Final First Day Orders*

22. Each of the Final UST Cash Collateral Order, Final Cash Management Order, Final Critical Vendors Order, Final Utilities Order, Final Insurance and Surety Bond Order, Final Taxes Order, Final Customer Collections Order, Final Creditor Matrix Order, and Final Equity Trading Procedures Order were entered by the U.S. Bankruptcy Court over the course of September 13-15, 2023. Such Final First Day Orders are substantially similar to the corresponding interim orders recognized by this Court pursuant to the First Supplemental Order (except as otherwise discussed in the Third Doheny Affidavit).¹⁷

(ii) **Recognition of Additional Orders**

(a) *Bar Date Order*

23. The Bar Date Order, among other things, (a) establishes the deadlines for filing proofs of claim, (b) approves the proposed proof of claim form, (c) approves the proposed form and manner of the Bar Date Notice, (d) approves the form and manner of the Publication Notice, and (e) identifies certain entities that are required to file proofs of claim on or before the applicable Bar Date and those who are exempted from the Bar Dates and need not file proofs of claim.¹⁸

24. The Bar Date Order directs the Debtors to (a) mail notice of the General Bar Date (or the Governmental Bar Date, as applicable) to their known creditors at the last known mailing address for each such creditor, (b) cause the Bar Date Package to be mailed via first class mail to certain specific creditors and stakeholders, and (c) cause the Publication Notice to be published on one occasion in *USA Today* and *Transport Topics* on or before twenty-one days before the

¹⁷ Third Doheny Affidavit at para 40 [CL p A1478:A29].

¹⁸ Third Doheny Affidavit at para 43 [CL p A1479:A30].

General Bar Date. The Debtors are also authorized to publish the Bar Date Notice at such times and in such local publications of general circulation in certain areas where the Debtors have conducted operations, as the Debtors determine in their sole discretion.¹⁹

25. Information regarding the Bar Date Order and links to the Bar Date Order, the Bar Date Notice and the proof of claim form have been posted to the Information Officer's case website.²⁰

(b) Omnibus Rejection Order

26. The Debtors have determined in their business judgment that (a) certain contracts, which primarily consist of, among others, IT license agreements, supply agreements, staffing services agreements, and other operational-related agreements (the "**Rejected Contracts**"), and (b) certain unexpired leases (the "**Rejected Leases**"), which consist of terminal leases, office space leases, and parking lot leases, are no longer needed in connection with the Debtors' postpetition wind-down and sale objectives.²¹

27. Accordingly, the Debtors sought and obtained authorization pursuant to the Omnibus Rejection Order to (a) reject the Rejected Contracts effective as of a specific rejection date, (b) reject the Rejected Leases effective as of the earlier of (i) August 31, 2023 or (ii) the date the Debtors have surrendered the applicable Premises to the landlord, and (c) abandon certain Personal Property that may be located at the Premises.²²

28. The Rejected Leases include three Canadian leases in respect of which YRC Freight Canada is the tenant, and one Canadian lease in respect of which one of the U.S. Debtors, YRC

¹⁹ Third Doheny Affidavit at para 46 [[CL p A1482:A33](#)].

²⁰ Third Doheny Affidavit at para 19 [[CL p A1469:A20](#)].

²¹ Third Doheny Affidavit at para 51 [[CL p A1483:A34](#)].

²² Third Doheny Affidavit at para 50 [[CL p A1483:A34](#)].

Inc., is a tenant. These four Canadian leases have been surrendered. In addition to the Debtors causing service of their motion for the Omnibus Rejection Order on the applicable parties, the Debtors also separately contacted each applicable landlord of the foregoing leases to advise of the proposed rejection pursuant to the Omnibus Rejection Order.²³

(c) *Rejection Procedures Order*

29. The Debtors are party to a substantial number of contracts. Although the Debtors are in the process of evaluating their contracts to determine whether such contracts provide benefits on a go-forward basis, the Debtors anticipate that they will reject a large number of executory contracts during the Chapter 11 Cases given their objective of winding-down their businesses and effectuating asset sales for their real property and rolling stock portfolios. Accordingly, to avoid the need to file additional separate motions to reject contracts, the Debtors sought and obtained the Rejection Procedures Order, among other things, authorizing and approving procedures for rejecting executory contracts and unexpired leases, and the removal or abandonment of related personal property. This authorization avoids additional costs and administrative burdens that would otherwise arise. The procedures approved by the Rejection Procedure Order are described in further detail in the Third Doheny Affidavit.²⁴

(d) *De Minimis Assets Order*

30. The De Minimis Assets Order authorizes the Debtors to, among other things, (a) use, sell, or transfer certain assets, collections of assets, or business lines, including any rights or interests therein (collectively, the “**De Minimis Assets**”) outside of the ordinary course of business to a buyer (or buyers) with an aggregate sale price equal to or less than \$5 million, free and clear of

²³ Third Doheny Affidavit at para 52 [[CL p A1484;A35](#)].

²⁴ Third Doheny Affidavit at paras 55-57 [[CL p A1485;A36](#)].

all Liens, without the need for further Court approval and with Liens attaching to the proceeds of such use, sale or transfer with the same validity, extent, and priority as had attached to the De Minimis Assets immediately prior to the use, sale or transfer, and (b) abandon a De Minimis Asset with a value of \$250,000 or less to the extent the cost of continuing to maintain, relocate, and/or store such De Minimis Asset outweighs any potential recovery from a future sale.²⁵

31. The De Minimis Assets Order specifies that De Minimis Assets shall not include, without the prior approval of the UCC, the Junior DIP Lender, the B-2 Lenders, the Prepetition ABL Agent, and the U.S. Treasury, any owned or leased real estate or any owned or leased Rolling Stock, subject to certain exceptions, such as damaged or obsolete Rolling Stock that is to be sold as scrap.²⁶

32. The proposed Second Supplemental Order recognizes the De Minimis Assets Order and authorizes the Canadian Debtors to deal with their property in accordance with the De Minimis Assets Order notwithstanding paragraph 5 of the Initial Recognition Order (discussed below), provided that a Canadian Debtor shall provide written notice to the Information Officer at least seven days' prior to taking any action with respect to its property pursuant to the De Minimis Assets Order.²⁷

(e) *Bidding Procedures Order*

33. The Bidding Procedures Order, among other things: (a) authorizes and approves the Bidding Procedures; (b) authorizes the Debtors to select one or more Stalking Horse Bidders and enter into Stalking Horse Agreements with such Stalking Horse Bidders; (c) in connection with

²⁵ Third Doheny Affidavit at para 59 [CL p A1487:A38].

²⁶ Third Doheny Affidavit at para 60 [CL p A1487:A38].

²⁷ Third Doheny Affidavit at para 61 [CL p A1488:A39].

any such Stalking Horse Agreement, authorizes the Debtors to agree to the Bid Protections, provided that, among other things, the aggregate of the Breakup Fee and the total Expense Reimbursements shall in no event exceed 3% of the applicable cash Purchase Price; (d) approves the Auction Notice and orders that the Debtors shall, among other things, place a publication version of the Auction Notice for one day in *The New York Times* (national edition) and *The Globe and Mail*, and post it on the Debtors' restructuring webpage; and (e) authorizes the Assumption/Assignment Procedures by which the Debtors will notify any counterparties to certain Contracts of proposed cure amounts in the event the Debtors determine to assume and assign such Contracts in connection with any Sale Transaction.²⁸

34. The Bidding Procedures set forth the process by which the Debtors are authorized to conduct a marketing and sale process for the sale or sales of all or substantially all of their assets, through one or more transactions. The Bidding Procedures are designed to permit a fair, efficient, competitive and value-maximizing auction process for the Debtors' assets, and contemplate the sale or sales of the following assets of the Debtors: (a) any Rolling Stock (*e.g.*, any owned or leased vehicles, tractors, trucks, trailers, tank trailer and other trailers, or similar vehicles); (b) the Debtors' Real Property Assets; (c) the Debtors' Intellectual Property; and (d) any inventory, spare parts, supplies, accounts receivable, or other assets not constituting Rolling Stock, Real Property Assets, or Intellectual Property.²⁹

35. The Bidding Procedures provide for separate timelines for the sale of Rolling Stock and Non-Rolling Stock Assets as set out in further detail in the Third Doheny Affidavit.³⁰

²⁸ Third Doheny Affidavit at para [\[CL p A1489;A40\]](#).

²⁹ Third Doheny Affidavit at para 66(a) [\[CL p A1489;A40\]](#).

³⁰ Third Doheny Affidavit at paras 72-73 [\[CL p A1493;A44\]](#).

36. In the event that the Debtors select a Stalking Horse Bidder (or Stalking Horse Bidders), the Debtors must file a supplement to the Bidding Procedures Motion seeking approval of same, except that, as contemplated by the Bidding Procedures Order, the Debtors obtained U.S. Bankruptcy Court approval of Estes as the Real Estate Stalking Horse Bidder pursuant to a separate motion and order, which order was granted on September 21, 2023 (as further discussed below).³¹

37. The Bidding Procedures provide that the U.S. Bankruptcy Court will hold one or more hearings to consider approval of the Winning Bid(s) (and Back-Up Bid(s), as applicable) and the Sale Transaction(s) contemplated thereby (each, a “**Sale Hearing**”). The Sale Hearing for the Rolling Stock is to be held on October 31, 2023, and the Sale Hearing for all other Assets (including the Real Property Assets) is to be held on December 12, 2023. If the Winning Bid(s) (and Back-Up Bid(s), as applicable) and the Sale Transaction(s) contemplated thereby contemplate the Sale(s) of Canadian Assets, the Foreign Representative shall apply to the Canadian Court for a Canadian Sale Recognition Order as soon as practicable following the applicable Sale Hearing and entry of the applicable Sale Order. Such Canadian Sale Recognition Order shall be a condition to closing any Sale(s) of Canadian Assets.³²

(f) Real Estate Stalking Horse Order

38. The Debtors have entered into the Real Estate Stalking Horse APA with the Real Estate Stalking Horse Bidder (*i.e.*, Estes) pursuant to which the Real Estate Stalking Horse Bidder has committed to purchase all of the Debtors’ Owned Real Properties and certain related assets for cash consideration of \$1.525 billion, subject to certain adjustments.

³¹ Third Doheny Affidavit at paras 67 and 78 [[CL p A1491:A42](#) and [A1495:A46](#)].

³² Third Doheny Affidavit at para 70 [[CL p A1492:A43](#)].

39. In summary, the Real Estate Stalking Horse Bidder has agreed, subject to the terms and conditions of the Real Estate Stalking Horse APA, to:

- (a) acquire the Acquired Assets, consisting of all of the Debtors' Owned Real Properties and certain other Assets related to the Owned Real Properties, for cash consideration of \$1.525 billion, subject to certain adjustments as set forth in the Real Estate Stalking Horse APA (the "**Estes Purchase Price**");
- (b) assume the Assumed Liabilities, which include, subject to the terms and conditions of the Real Estate Stalking Horse APA, among other things:
 - (i) all Liabilities and obligations of any Seller under the Assigned Contracts that become due from and after the Closing;
 - (ii) all cure costs required to be paid pursuant to the U.S. Bankruptcy Code in connection with the assumption and assignment of the Assigned Contracts; and
 - (iii) all Transfer Taxes.³³

40. With respect to the Canadian Debtors, YRC Freight Canada is a "Seller" for the purposes of the Real Estate Stalking Horse APA and the Acquired Assets include YRC Freight Canada's owned real property.³⁴

41. The consummation of the transactions contemplated by the Real Estate Stalking Horse APA are conditional on, among other things, (a) the U.S. Bankruptcy Court having entered the

³³ Third Doheny Affidavit at para 79 [CL p A1496:A47].

³⁴ Third Doheny Affidavit at para 80 [CL p A1497:A48].

Sale Order (defined in the Real Estate Stalking Horse APA as “an Order of the Bankruptcy Court approving the Transactions, in form and substance reasonably acceptable to each of the Parties”), and (b) this Court having entered the Canadian Sale Recognition Order (defined in the Real Estate Stalking Horse APA as “an Order of the Canadian Court pursuant to the CCAA, among other things, recognizing and giving effect in Canada to the Sale Order”), and each such order becoming final and non-appealable and not having been stayed, reversed, or modified in a manner not acceptable to the parties.³⁵

42. The Real Estate Stalking Horse APA provides for certain bid protections in favour of the Real Estate Stalking Horse Bidder. In particular, the Real Estate Stalking Horse APA includes a \$7.5 million breakup fee (“**Estes Break-up Fee**”) and reimbursement of up to \$1.6 million in reasonable and documented costs and out-of-pocket expenses incurred by the Real Estate Stalking Horse Bidder (the “**Estes Expense Reimbursement**”), payable upon certain termination events set forth in the Real Estate Stalking Horse APA. Together, the Estes Break-up Fee and the maximum Estes Expense Reimbursement equal approximately 0.6% of the Estes Purchase Price.³⁶

PART III – ISSUES AND THE LAW

43. The issue on this motion is whether the Court should grant the Second Supplemental Order recognizing the U.S. Orders described above in Canada pursuant to section 49 of the CCAA, and providing for certain other related relief.

³⁵ Third Doheny Affidavit at para 81 [[CL p A1497:A48](#)]; Real Estate Stalking Horse APA at paras 7.1(c) and (d), Exhibit A of Real Estate Stalking Horse Order, Exhibit Z of Third Doheny Affidavit [[CL p A3411:A1962](#)].

³⁶ Third Doheny Affidavit at para 82 [[CL p A1497:A48](#)].

44. For the reasons set out below, the Yellow Parent submits that it is necessary and appropriate for this Court to grant the relief sought on this motion to preserve the value of the Canadian Debtors and the Canadian Business while the Company pursues its wind-down and sale efforts pursuant to the Chapter 11 Cases.

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

45. This Court recognized the Chapter 11 Cases as a “foreign main proceeding” under section 47 of the CCAA pursuant to the Initial Recognition Order.³⁷ When a foreign main proceeding has been recognized under Part IV of the CCAA, subsection 49(1) provides the Court with broad jurisdiction to grant “any order that it considers appropriate” with respect to such foreign proceedings if the Court is satisfied that it is necessary for the protection of the debtor company’s property or the interests of a creditor or creditors.³⁸

46. 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.”³⁹ 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.⁴⁰

³⁷ [Yellow Corporation et al \(29 August 2023\) Toronto, Ont Sup Ct J \[Commercial List\] CV-23-00704038-00CL \(Initial Recognition Order \(Foreign Main Proceeding\)\) at para 3 \[Initial Recognition Order\]](#).

³⁸ [CCAA, s 49\(1\)](#).

³⁹ [Zochem Inc. \(Re\), 2016 ONSC 958 at para 15](#).

⁴⁰ [CCAA, s 44](#).

47. 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.⁴¹ 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.”⁴²

48. 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.

49. 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.”⁴³ Canadian courts have held that this exception to recognition should be interpreted narrowly.⁴⁴

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

50. 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

⁴¹ [In the Matter of Voyager Digital Ltd, 2022 ONSC 4553 at para 9.](#)

⁴² [CCAA, s 52.](#)

⁴³ [CCAA, s 61\(2\).](#)

⁴⁴ [Hartford Computer Hardware, Inc. Re, 2012 ONSC 964 at paras 17-18.](#)

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.⁴⁵ A consideration of these factors supports this Court's recognition of the U.S. Orders pursuant to the Second Supplemental Order.

(i) **Recognition of the Final DIP Order**

51. This Court granted the Interim DIP Order on the basis that the DIP Financing is 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.⁴⁶

52. This Court's recognition of the Final DIP Order is required to facilitate the Debtors' wind-down and sale efforts. Failure to obtain recognition in Canada of the Final DIP Order would constitute an event of default under each of the Junior DIP Credit Agreement and the Postpetition B-2 Credit Agreement, which would negatively impact the Debtors' ability to advance wind-down and sale efforts, thereby harming the value of the Debtors' estates to the detriment of all stakeholders.⁴⁷

53. The Canadian Debtors are each guarantors under the Junior DIP Facility and the Postpetition B-2 Facility, consistent with the Canadian Debtors also being guarantors of, and granting security in respect of, the Company's prepetition funded debt obligations.⁴⁸

⁴⁵ [Xerium Technologies Inc. Re, 2010 ONSC 3974 at paras 26-27.](#)

⁴⁶ [YRC Freight Canada Company \(Re\), 2023 ONSC 4834 at para 34.](#)

⁴⁷ Third Doheny Affidavit at para 35 [[CL p A1476:A27](#)].

⁴⁸ Supplemental Affidavit at para 54, Exhibit D of Third Doheny Affidavit [[CL p A1578:A129](#)].

54. As set out in the [factum filed by the Yellow Parent in support of recognition of the Interim DIP Order](#) pursuant to the First Supplemental Order (the “**Initial Recognition Factum**”), many of the factors established by the Court when considering a Canadian guarantee of a cross-border DIP are present in these circumstances.⁴⁹ Among other things, the Canadian Debtors benefit from the Yellow Parent, as borrower, being able to access the financing in order to, among other things, fund the Company’s overall sale process efforts and pay the ABL Agent, on behalf of the Canadian Debtors, amounts equal to 80% of the Canadian Debtors’ accounts receivable collections as required pursuant to the Final DIP Order.⁵⁰ Furthermore, creditors of the Canadian Debtors are not prejudiced given, among other things, (a) 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, (b) the Canadian Debtors are also debtors under the Chapter 11 Cases and subject to the global wind-down and sale efforts of the Company pursuant to such Chapter 11 Cases, (c) distribution matters for all unsecured creditors will be subject to future court orders, and (d) the unsecured creditors of the Canadian Debtors are represented together with all other unsecured creditors of the Company by the UCC in the Chapter 11 Cases.⁵¹

55. The Yellow Parent also relies on its submissions at paragraphs 51 to 54 of the Initial Recognition Factum and submits that recognition of the Final DIP Order by this Court is

⁴⁹ [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; [Revlon, Inc, Re](#) (20 June 2023), Toronto, Ont Sup Ct J [Commercial List] CV-00682880-00CL (Endorsement of Conway J).

⁵⁰ Final DIP Order at para 13(c)(i), Exhibit E of Third Doheny Affidavit [[CL p A1665;A216](#)]; Supplemental Affidavit at para 56, Exhibit D to Third Doheny Affidavit [[CL p A1583;A134](#)].

⁵¹ Supplemental Affidavit at paras 40 and 49, Exhibit D to Third Doheny Affidavit [[CL p A1573;A124](#) and [A1576;A127](#)]; [Declaration of Cody Leung Kaldenberg dated August 7, 2023, Supplemental Application Record, Exhibit G at paras 19 and 21](#).

consistent with Part IV of the CCAA, the principles of comity, and the approval of DIP financing commonly granted in Canadian restructuring proceedings.

(ii) **Recognition of the Other Final First Day Orders**

56. The Final First Day Orders that the Yellow Parent is seeking to have recognized pursuant to the Second Supplemental Order are final versions of the interim orders that this Court recognized pursuant to the First Supplemental Order. The interim orders are summarized in the Supplemental Affidavit and each of the Final First Day Orders are substantially similar to the respective interim orders, except to the extent otherwise noted in the Third Doheny Affidavit.⁵²

57. The Final First Day Orders were obtained by the Debtors to facilitate their wind-down and sale efforts in the Chapter 11 Cases with a view to preserving and maximizing the value of the Debtors' estates for the benefit of the Company's stakeholders.

58. The Yellow Parent submits that it is appropriate for the Court to recognize and give effect to the Final First Day Orders, and that recognition of the Final First Day Orders is necessary for the protection of the Debtors' property and the interests of creditors and other stakeholders.

(iii) **Recognition of the Bar Date Order**

59. The Yellow Parent requests that this Court recognize the Bar Date Order pursuant to section 49 of the CCAA. As discussed above, the Bar Date Order, among other things, sets out the procedures for a claims process, including, establishing the Bar Dates, noticing procedures, and entities who are required to file or exempted from filing a proof of claim prior to the

⁵² Third Doheny Affidavit at para 27 [[CL p A1472;A23](#)].

applicable the Bar Date.⁵³ The Bar Date Order will enable the Debtors, including the Canadian Debtors, to ascertain the nature, validity and amount of claims asserted against them.

60. The Bar Date Order is similar to claims procedure orders which are commonly granted in Canadian insolvency proceedings. Canadian courts overseeing Part IV proceedings have granted recognition of bar date orders granted in Chapter 11 proceedings in a number of cases.⁵⁴

61. The Yellow Parent submits that recognition of the Bar Date Order is appropriate and necessary in the circumstances.

(iv) **Recognition of the Omnibus Rejection Order and the Rejection Procedures Order**

62. As discussed above, the Debtors have identified various contracts and unexpired leases that are no longer needed given the Company's postpetition wind-down efforts, and have sought and obtained authorization pursuant to the Omnibus Rejection Order to reject such contracts and leases. In addition, as the Debtors are party to a substantial number of contracts, and in light of the Debtors' objective to wind-down their businesses, the Debtors anticipate that they will reject a large number of additional contracts during the Chapter 11 Cases. Accordingly, the Debtors have also sought and obtained the Rejection Procedures Order to avoid the need to file separate motions to reject contracts, which would result in additional costs and administrative burdens on the Debtors' estates.

⁵³ Third Doheny Affidavit at paras 43-46 [[CL p A1479:A30-A1482:A33](#)].

⁵⁴ See [Paladin Labs Canadian Holding Inc et al \(25 April 2023\), Toronto, Ont Sup Ct J \[Commercial List\] CV-22-00685631-00CL \(Fourth Supplemental Order\) at para. 3\(b\)](#); [David's Bridal, LLC et al \(29 May 2023\), Toronto, Ont Sup Ct J \[Commercial List\] CV-23-0698107-00CL \(Recognition Order\) at para 3\(k\) \[David's Bridal\]](#); [Voyager Digital Ltd \(11 August 2022\), Toronto, Ont Sup Ct J \[Commercial List\] CV-22-00683820-00CL \(Recognition Order\) at para 3\(i\) \[Voyager\]](#)

63. Courts have previously recognized similar orders in Part IV recognition proceedings.⁵⁵

64. The Yellow Parent submits that it is appropriate in the circumstances for the Court to recognize and give effect to the Omnibus Rejection Order and the Rejection Procedures Order.

(v) **Recognition of the De Minimis Assets Order**

65. Paragraph 5 of the Initial Recognition Order 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.⁵⁶

66. The proposed Second Supplemental Order recognizes the De Minimis Assets Order and authorizes the Canadian Debtors to deal with their property in accordance with the De Minimis Assets Order notwithstanding paragraph 5 of the Initial Recognition Order, provided that a Canadian Debtor shall provide written notice to the Information Officer at least seven days' prior to taking any action with respect to its property pursuant to the De Minimis Assets Order. As referenced above, the De Minimis Assets Order authorizes the Debtors to, among other things, sell De Minimis Assets outside of the ordinary course of business for an aggregate sale price equal to or less than \$5 million without the need for Court approval and abandon a De Minimis Asset with a value of \$250,000 or less to the extent the cost of continuing to maintain, relocate, and/or store such De Minimis Asset outweighs any potential recovery from a future sale.⁵⁷

⁵⁵ [GNC Holdings Inc, et al \(27 July 2020\) Toronto, Ont Sup Ct J \[Commercial List\] CV-20-00642970-00CL \(Recognition Order \(Recognition of Second Day Orders in Foreign Main Proceeding\)\) at para 3\(n\); David's Bridal at para 3\(j\).](#)

⁵⁶ [Initial Recognition Order at para 5.](#)

⁵⁷ Third Dohey Affidavit at paras 59-61 [[CL p A1487;A38-A1488;A39](#)].

67. This Court has recognized orders similar to the De Minimis Assets Order, recognizing that such relief allows Canadian debtors to efficiently deal with assets having de minimis value.⁵⁸

(vi) **Recognition of the Bidding Procedures Order**

68. The Bidding Procedures outlined in the Bidding Procedures Order are designed to permit a fair, efficient, competitive, and value-maximizing auction process for the Debtors' assets.⁵⁹

69. The Bidding Procedures are intended to establish a clear and transparent process for the solicitation, receipt, and evaluation of bids on a Court-approved timeline that allows the Debtors to timely advance one or more Sale Transactions. Recognition of the Bidding Procedures Order does not constitute final approval of any successful bid(s) identified in the process. If the Winning Bid(s) (and Back-Up Bid(s), as applicable) and the Sale Transaction(s) contemplated thereby contemplate the Sale(s) of Canadian Assets, the Foreign Representative shall apply to this Court for a Canadian Sale Recognition Order as soon as practicable following the applicable Sale Hearing before the U.S. Bankruptcy Court and entry of the applicable Sale Order. Such Canadian Sale Recognition Order shall be a condition to closing any Sale(s) of Canadian Assets.⁶⁰

70. The approval of the Bidding Procedures is consistent with similar relief granted in Canadian restructuring proceedings. Canadian courts frequently recognize sales processes,

⁵⁸ [Paladin Labs Canadian Holding Inc., 2022 ONSC 6716 at para 5\(d\)](#).

⁵⁹ Third Doheny Affidavit at para 66(a) [[CL p A1489:A40](#)].

⁶⁰ Third Doheny Affidavit at para 70 [[CL p A1492:A43](#)].

including sales processes that incorporate a stalking horse bid⁶¹ or contemplate the possibility of selecting a stalking horse bid.⁶²

(vii) **Recognition of the Real Estate Stalking Horse Order**

71. The sale and marketing process governed by the Bidding Procedures, as it relates to the owned real property of the Debtors, will be conducted with the benefit of the Real Estate Stalking Horse Bid in which the Real Estate Stalking Horse Bidder has committed to purchase all of the Debtors' Owned Real Properties and certain related assets for cash consideration of \$1.525 billion (subject to certain adjustments).

72. Canadian courts frequently recognize sales processes that incorporate a stalking horse bid.⁶³ In *Danier Leather*, this Court approved a sale process that included a stalking horse agreement and found that "the use of a sale process that includes a stalking horse agreement maximizes the value of a business for the benefit of its stakeholders and enhances the fairness of the sale process."⁶⁴

73. As described above and in the Third Doheny Affidavit, the Real Estate Stalking Horse APA provides for certain bid protections in favour of the Real Estate Stalking Horse Bidder, including the Estes Break-Up Fee and Estes Expense Reimbursement (which together equal a maximum of approximately 0.6% of the Estes Purchase Price). The bid protections are a critical component of the Real Estate Stalking Horse Bidder's commitment and necessary to induce the

⁶¹ See, e.g., *Paladin Labs Canadian Holding Inc.*, 2023 ONSC 2516 at para 12.

⁶² See *Instant Brands Acquisition Holdings Inc. et al* (20 July 2023) Toronto, Ont Sup Ct J [Commercial List] CV-23-00701159-00CL at para 3(d) [*Instant Brands*].

⁶³ *Re Nortel Networks Corp.*, 2009 ONSC 4467, at para. 1; *Re Brainhunter Inc.*, 2009 ONSC 72333 at para 13; *Cannapiece Group Inc v. Carmela Marzili*, 2022 ONSC 6379 at para 8 [*Cannapiece*] and *Harte Gold Corp* (20 December 2021), Toronto, Ont Sup Ct J [Commercial List] CV-21-00673304-00CL (*Endorsement of Penny, J.*).

⁶⁴ *Re Danier Leather Inc.*, 2016 ONSC 1044 at para 20. See also *Cannapiece* at paras 4 and 8.

Real Estate Stalking Horse Bid. They are a reasonable cost in exchange for securing a \$1.525 billion commitment from the Real Estate Stalking Horse Bidder, will maximize the value of the Acquired Assets, and are a valid and sound exercise of the Debtors' business judgment.⁶⁵

74. As described in the Kaldenberg Real Estate Stalking Horse Declaration, the Estes Bid Protections are more favorable to the Debtors than bid protections provided to stalking horse bidders in comparable transactions of this type and purpose. Ducera evaluated stalking horse arrangements with bid protections for cases that filed in 2021 through present and stalking horse bids providing for a purchase price above \$10 million, and determined that the break-up fees for these cases ranged from 2.5% to 3.0%.⁶⁶

75. Similar bid protections such as break-up fees and expense reimbursements have been granted by this Court in connection with debtor companies' sale processes in restructuring proceedings.⁶⁷

76. The Real Estate Stalking Horse APA provides assurance to the Debtors and their stakeholders regarding the minimum value of proceeds to be generated by a Sale (or Sales) of the Owned Real Properties, and establishes a competitive price floor for subsequent bidding by third-parties on the Owned Real Properties.⁶⁸

⁶⁵ Third Doheny Affidavit at paras 82-83 [[CL p A1497:A48](#)].

⁶⁶ Kaldenberg Real Estate Stalking Horse Declaration at para 16, Third Doheny Affidavit at Exhibit X [[CL p A3349:A1900](#)].

⁶⁷ *GNC Holdings Inc, et al* (25 August 2020) Toronto, Ont Sup Ct J [Commercial List] CV-20-00642970-00CL (Recognition Order) at para 3(e); *David's Bridal, LLC, et al* (26 April 2023) Toronto, Ont Sup Ct J [Commercial List] CV-23-00698107-00CL (Recognition Order) at para 3(c); *Instant Brands* at para 3(d).

⁶⁸ Kaldenberg Real Estate Stalking Horse Declaration at para 19, Third Doheny Affidavit at Exhibit X [[CL p A3350:A1901](#)].

77. The Foreign Representative submits that recognition of the Real Estate Stalking Horse Order is in the best interests of the Debtors and their stakeholders, including the Canadian Debtors, as it will assist to maximize value for the Debtors' estates.

PART IV – RELIEF REQUESTED

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

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26th day of September, 2023.

GOODMANS LLP

Goodmans LLP

SCHEDULE A
LIST OF AUTHORITIES

Tab	Description
1.	<i>Yellow Corporation et al</i> (29 August 2023) Toronto, Ont Sup Ct J [Commercial List] CV-23-00704038-00CL (Initial Recognition Order (Foreign Main Proceeding))
2.	<i>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>, 3012 ONSC 964
5.	<i>Xerium Technologies Inc., Re</i>, 2010 ONSC 3974
6.	<i>YRC Freight Canada Company (Re)</i>, 2023 ONSC 4834
7.	<i>Indalex Limited, Re</i> (8 April 2009), Toronto, Ont Sup Ct J [Commercial List] CV-09-8122-00CL (Endorsement of Morawetz J)
8.	<i>Revlon, Inc, Re</i> (20 June 2023), Toronto, Ont Sup Ct J [Commercial List] CV-00682880-00CL (Endorsement of Conway J)
9.	<i>Paladin Labs Canadian Holding Inc et al</i> (25 April 2023), Toronto, Ont Sup Ct J [Commercial List] CV-22-00685631-00CL (Fourth Supplemental Order)
10.	<i>David's Bridal, LLC et al</i> (29 May 2023), Toronto, Ont Sup Ct J [Commercial List] CV-23-0698107-00CL (Recognition Order)
11.	<i>Voyager Digital Ltd</i> (11 August 2022), Toronto, Ont Sup Ct J [Commercial List] CV-22-00683820-00CL (Recognition Order)
12.	<i>GNC Holdings Inc, et al</i> (27 July 2020) Toronto, Ont Sup Ct J [Commercial List] CV-20-00642970-00CL (Recognition Order (Recognition of Second Day Orders in Foreign Main Proceeding))
13.	<i>Paladin Labs Canadian Holding Inc</i>, 2022 ONSC 6716
14.	<i>Paladin Labs Canadian Holding Inc</i>, 2023 ONSC 2516
15.	<i>Instant Brands Acquisition Holdings Inc, et al</i> (20 July 2023) Toronto, Ont Sup Ct J [Commercial List] CV-23-00701159-00CL
16.	<i>Re Nortel Networks Corp.</i>, 2009 ONSC 4467
17.	<i>Re Brainhunter Inc</i>, 2009 ONSC 72333
18.	<i>Cannapiece Group Inc v Carmela Marzili</i>, 2022 ONSC 6379
19.	<i>Harte Gold Corp</i> (20 December 2021), Toronto, Ont Sup Ct J [Commercial List] CV-21-00673304-00CL (Endorsement of Penny, J)
20.	<i>Re Danier Leather Inc.</i>, 2016 ONSC 1044

Tab	Description
21.	<i>GNC Holdings Inc, et al</i> (25 August 2020) Toronto, Ont Sup Ct J [Commercial List] CV-20-00642970-00CL (Recognition Order)
22.	<i>David's Bridal, LLC, et al</i> (26 April 2023) Toronto, Ont Sup Ct J [Commercial List] CV-23-00698107-00CL (Recognition Order)

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 September 29, 2023)**

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