

TAB 1

CV-19-625200-00CL

Court File No.

**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 JACK COOPER VENTURES, INC., JACK COOPER DIVERSIFIED, LLC, JACK COOPER ENTERPRISES, INC., JACK COOPER HOLDINGS CORP., JACK COOPER TRANSPORT COMPANY, INC., AUTO HANDLING CORPORATION, CTEMS, LLC, JACK COOPER LOGISTICS, LLC, AUTO & BOAT RELOCATION SERVICES, LLC, AXIS LOGISTIC SERVICES, INC., JACK COOPER CT SERVICES, INC., JACK COOPER RAIL AND SHUTTLE, INC., JACK COOPER INVESTMENTS, INC., NORTH AMERICAN AUTO TRANSPORTATION CORP., JACK COOPER TRANSPORT CANADA INC., JACK COOPER CANADA GP 1 INC., JACK COOPER CANADA GP 2 INC., JACK COOPER CANADA 1 LIMITED PARTNERSHIP, JACK COOPER CANADA 2 LIMITED PARTNERSHIP

APPLICATION OF JACK COOPER VENTURES, INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

APPLICANT

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing before a Judge presiding over the Commercial List on August 9, 2019 at 10:00 a.m. in Courtroom 5-5 at the Court House, 330 University Avenue, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the Applicants' lawyer or, where the Applicant does not

have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicants' lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2 p.m. on the day before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: August 8, 2019



~~C. Irwin~~ Registrar
Registrar

Address of court office:

330 University Avenue, ^{9th floor}
Toronto, Ontario M5G 1R7

TO: SERVICE LIST

APPLICATION

1. Jack Cooper Ventures, Inc. (“**Applicant**”), in its capacity as a foreign representative of itself as well as Jack Cooper Diversified, LLC, Jack Cooper Enterprises, Inc., Jack Cooper Holdings Corp., Jack Cooper Transport Company, Inc., Auto Handling Corporation, CTEMS, LLC, Jack Cooper Logistics, LLC, Auto & Boat Relocation Services, LLC, Axis Logistic Services, Inc., Jack Cooper CT Services, Inc., Jack Cooper Rail And Shuttle, Inc., Jack Cooper Investments, Inc., North American Auto Transportation Corp., Jack Cooper Transport Canada Inc. (“**JC Canada**”), Jack Cooper Canada GP 1 Inc. (“**GP1**”), Jack Cooper Canada GP 2 Inc. (“**GP2**”), Jack Cooper Canada 1 Limited Partnership (“**LP1**”), and Jack Cooper Canada 2 Limited Partnership (“**LP2**”, and collectively, the “**Chapter 11 Debtors**”), makes this Application seeking orders substantially in the form of draft orders that will be included in the Application Record granting, among other things, the following relief:

(a) **Initial Recognition Order (Foreign Main Proceeding):**

- (i) Appointing the Applicant as the foreign representative (the “**Foreign Representative**”) of the Chapter 11 Debtors as defined in section 45 of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “**CCAA**”);
- (ii) Declaring that the centre of main interest for each of the Chapter 11 Debtors is the United States of America and recognizing the Chapter 11 cases (the “**Chapter 11 Cases**”) commenced in respect of the Chapter 11 Debtors in the United States Bankruptcy Court for the Northern District of Georgia (the

“U.S. Court”) as a “foreign main proceeding” as defined in section 45 of the CCAA;

- (iii) Granting a stay of proceedings in respect of the Chapter 11 Debtors until otherwise ordered by this Court; and
- (iv) Requiring the Information Officer to publish notice of this proceeding as required by section 53(b) of the CCAA.

(b) **Supplemental Order (Foreign Main Proceeding):**

- (i) Recognizing and enforcing the terms of the interim and/or final orders made by the U.S. Court (the “**First Day Orders**”) in the following motions filed by the Chapter 11 Debtors:
 - (A) Foreign Representative Motion;
 - (B) Joint Administration Motion;
 - (C) Cash Management Motion;
 - (D) Critical Vendor Motion;
 - (E) DIP Motion;
 - (F) Insurance Motion;
 - (G) Wages Motion;
 - (H) Surety Bond Motion;
 - (I) Taxes and Fees Motion;

- (J) Utilities Motion;
 - (K) Customer Programs Motions;
 - (L) Equity Transfer Motion; and
 - (M) Prime Clerk Motion;
- (ii) Granting a stay of proceedings (the “**Requested Stay**”), as further described below, in respect of the Chapter 11 Debtors and the directors and officers of the Chapter 11 Debtors;
 - (iii) Appointing Alvarez & Marsal Canada Inc. (“**A&M**”) as information officer (in such capacity, the “**Information Officer**”) in respect of these proceedings;
 - (iv) Granting the DIP Charges (defined below) and affording them the priority set out in the proposed Supplemental Order;
 - (v) Granting the Administration Charge (defined below) and affording it the priority set out in the proposed Supplemental Order;
 - (vi) Ordering JC Canada to deposit CDN \$500,000 with the Information Officer to be held in trust for the benefit of the Load Broker Parties (as defined in the draft Supplemental Order) as security for the payment of amounts due and accruing to them in the ordinary course of business following the Petition Date (defined below), subject to further order of the Court; and
 - (vii) Such further and other relief as this Honourable Court deems just.

2. **THE GROUNDS FOR THE APPLICATION ARE:**

- (a) The Chapter 11 Debtors and their non-debtor affiliates (collectively, the “**JC Group**”) are a leading provider of finished vehicle logistics in North America for both new and used vehicles, as well as a provider of logistical services in select non-automotive markets.
- (b) The JC Group’s business consists of two segments: (i) a transport segment that delivers finished vehicles from manufacturing plants, vehicle distribution centers, seaports and railheads to new vehicle dealerships, and (ii) a diversified asset-light logistics segment that provides a wide range of asset-light services to the previously owned vehicle market.
- (c) The JC Group is headquartered in Kansas, Missouri. It operates a fleet of approximately 1,600 active rigs and a network of 40 terminals across the United States and Canada, and employs approximately 2,884 employees.
- (d) All of the Chapter 11 Debtors operate on an integrated basis and are incorporated or established under the laws of the United States, with the exception of the “**JC Canada Group**”, which is comprised of the following entities:
 - (i) JC Canada, which is incorporated under the *Canada Business Corporations Act*;
 - (ii) GP1 and GP2, which are incorporated under Ontario’s *Business Corporations Act*;

- (iii) LP1, which is a partnership formed under Ontario's *Limited Partnerships Act* (the "LPA") between JC Canada as limited partner and GP1 Inc. as general partner; and
- (iv) LP2, which is a partnership formed under the LPA between JC Canada as limited partner and GP2 as general partner.
- (e) The JC Canada Group provides transport segment services to customers of the JC Group throughout Canada. It maintains 128 active rigs and 11 terminals in Canada, and employs approximately 181 employees.
- (f) Substantially all of the management of the Chapter 11 Debtors (including two of three directors of JC Canada) are located in the United States.
- (g) The JC Canada Group requires the U.S. Chapter 11 Debtors to survive as a going concern because, among other reasons:
 - (i) the JC Canada Group is almost wholly reliant on the U.S. Chapter 11 Debtors for all overhead services including accounting, finance, purchasing, logistics, marketing, human resources, IT, and other functions;
 - (ii) the JC Canada Group is not profitable on a standalone basis, and remains cash flow positive only because the U.S. Chapter 11 Debtors provide all back office and overhead services to the JC Canada Group and pay certain third-party expenses on the JC Canada Group's behalf;

- (iii) all customer relations, including the negotiation, execution and management of all customer contracts for the JC Group, are managed in the United States;
 - (iv) the JC Canada Group is entirely dependent on the U.S. Chapter 11 Debtors for most intellectual property licenses used;
 - (v) all patents, trademarks and copyrights used by the JC Group are patented or trademarked under U.S. law and owned by one or more U.S. JC Group entities; and
 - (vi) the JC Group operates an integrated, centralized cash management system that is managed wholly by the JC Group's finance department and accounting department in the United States.
- (h) The JC Group is insolvent.
- (i) The JC Group's need to restructure is driven primarily by declining revenues over the past several years as a result of the JC Group's cost structure and overall industry dynamics, unsustainable obligations related to legacy liabilities from certain multiemployer pension plans and collective bargaining agreements in the United States that various of the U.S. Chapter 11 Debtors are party to, and a capital structure that can no longer be sustained in the face of these challenges.
- (j) The Chapter 11 Debtors commenced the Chapter 11 Cases to implement a reorganization supported by their largest creditor constituents. Through the Chapter 11 Cases, the JC Group will, among other things, access liquidity under debtor-in-possession financing facilities and implement a restructuring through a sale

pursuant to section 363 of the U.S. Bankruptcy Code (the “**Section 363 Sale**”) of all or substantially all of the Chapter 11 Debtors’ assets to a newly formed entity to carry on the Chapter 11 Debtors’ business (“**New Jack Cooper**”) in accordance with a Restructuring Support Agreement (the “**RSA**”).

- (k) The Chapter 11 Debtors believe that the Section 363 Sale, to be run in tandem with a thorough marketing process, will maximize value for the Chapter 11 Debtors’ stakeholders, maintain the Chapter 11 Debtors as a viable going concern, preserve jobs for the Chapter 11 Debtors’ employees, and put the New Jack Cooper in a position to execute on its business plan, reinvest in the business to upgrade its fleet and pursue future growth opportunities.

The Chapter 11 Cases each constitute a “Foreign Main Proceeding” in which the Applicant is the “Foreign Representative”

- (l) The Chapter 11 Debtors are all currently parties to the Chapter 11 Cases commenced pursuant to voluntary petitions for relief (the “**Petitions**”) filed in the U.S. Court under Chapter 11 of the U.S. Bankruptcy Code on August 6, 2019 (the “**Petition Date**”).
- (m) The Chapter 11 Cases constitute “foreign proceedings” under section 45(1) of the CCAA.
- (n) The Applicant has been appointed as “foreign representative” of all of the Chapter 11 Debtors in the Chapter 11 Cases and, as such, falls within the definition of “foreign representative” under section 45(1) of the CCAA.

- (o) Pursuant to section 46(1) of the CCAA, the Foreign Representative may apply to this Court for recognition of the Chapter 11 Cases.
- (p) Pursuant to subsection 47(1) of the CCAA, this Court shall make an order recognizing the Chapter 11 Cases if it is satisfied that the application relates to a “foreign proceeding” and that the Applicant is a “foreign representative”.
- (q) Each of the Chapter 11 Debtors’ centre of main interest is located in the United States and, as such, the Chapter 11 Cases are a “foreign main proceeding” under section 45(1) of the CCAA.

The Requested Stay is appropriate in the circumstances

- (r) Under section 48 of the CCAA, this Court shall, in the case of a foreign main proceeding, exercise its jurisdiction to prohibit the commencement or furtherance of any action, suit or proceeding against the Chapter 11 Debtors, subject to any terms and conditions it considers appropriate.
- (s) The proposed Supplemental Order includes the Requested Stay that, among other things, prohibits (i) the commencement or furtherance of any action, suit or proceeding against the Chapter 11 Debtors, (ii) the exercise of any rights or remedies against the Chapter 11 Debtors subject to certain exceptions, and (iii) any person from discounting, failing to honour, altering, interfering with, repudiating, terminating or ceasing to perform any right, renewal right, contract, agreement, licence or permit of the Chapter 11 Debtors.
- (t) The Requested Stay is essential to protect the efforts of the Chapter 11 Debtors to proceed with the Chapter 11 Cases and to pursue a restructuring transaction.

Recognition of the First Day Orders is appropriate

- (u) For the purposes of ensuring that all interested parties cooperate in the efforts of the Chapter 11 Debtors, the Applicant requests that the terms of the First Day Orders be recognized by this Court pursuant to section 49 of the CCAA.

Recognition of the Interim DIP Order is Appropriate

- (v) The Chapter 11 Debtors have negotiated post petition financing pursuant to (i) a senior secured super-priority asset-based revolving credit facility (the “**DIP ABL Facility**”) in an aggregate principal amount of up to \$85 million (with commitments available for borrowings by JC Canada, LP1 and LP 2 (the “**Canadian Borrowers**”) of up to \$5 million), and (ii) a junior secured super-priority multi-draw term loan credit facility (the “**DIP Term Loan Facility**” and together with the DIP ABL Facility, the “**DIP Facilities**”) in an aggregate principal amount of up to \$15 million (with commitments available solely to the Applicant).
- (w) The Interim DIP Order is one of the First Day Orders and, among other things, authorizes the Chapter 11 Debtors to enter into the DIP Facilities.
- (x) Without immediate access to the DIP Facilities, the Chapter 11 Debtors (including the JC Canada Group) would be unable to operate their business and maintain business relationships with their vendors, suppliers and customers, pay their employees or otherwise finance their operations, and their ability to preserve and maximize the value of their assets would be irreparably harmed.
- (y) The DIP Facilities are contingent on this Court recognizing the Interim DIP Order.

- (z) The lenders under the DIP Facilities (the “**DIP Lenders**”) have indicated that they are unwilling to make the DIP Facilities available to the Chapter 11 Debtors unless the JC Canada Group (i) is jointly and severally liable for all of the outstanding obligations under the DIP ABL Facility, and (ii) guarantees all outstanding obligations under the DIP Term Facility.
- (aa) The Chapter 11 Debtors have negotiated protections in the DIP Facilities which are designed to mitigate against any material prejudice to creditors of the JC Canada Group.

The DIP Charges and Administration Charge are Necessary

- (bb) The proposed Supplemental Order provides for the following charges over the Chapter 11 Debtors’ property located in Canada in the following priority:
 - (i) A charge for the benefit of counsel for the Canadian Chapter 11 Debtors, the proposed Information Officer, and the Information Officer’s counsel in the amount of CDN \$500,000 (the “**Administration Charge**”);
 - (ii) A charge in favour of the lenders under the DIP ABL Facility (the “**DIP ABL Charge**”), which charge shall be consistent with the liens and charges created by the Interim DIP Order with respect to the Chapter 11 Debtors’ property in Canada; and
 - (iii) A charge in favour of the lenders under the DIP Term Loan Facility (the “**DIP Term Loan Charge**” and, with the DIP ABL Charge, the “**DIP Charges**”), which charge shall be consistent with the liens and charges

created by the Interim DIP Order with respect to the Chapter 11 Debtors' property in Canada.

- (cc) The size of the Administration Charge is reasonable in the circumstances having regard to the size and complexity of these proceedings.
- (dd) The DIP Facilities are contingent on this Court granting the DIP Charges.
- (ee) A going concern outcome is only available if the relief sought, including the DIP Charge, is granted.

The Appointment of an Information Officer is Appropriate

- (ff) A&M has consented to act as the Information Officer in the within proceeding, and will assist the Court and Canadian stakeholders of the Chapter 11 Debtors.

General

- (gg) The CCAA, including Part IV; and
- (hh) Such further and other grounds as counsel may advise and this Honourable Court may permit.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the application:

- (a) Affidavit of Greg R. May, to be filed;
- (b) Affidavit of Waleed Malik, to be filed;
- (c) Consent of A&M to act as the Information Officer, to be filed;

- (d) Pre-filing report of A&M in its capacity as proposed Information Officer, to be filed; and
- (e) Such further and other evidence as counsel may advise and this Honourable Court may permit.

August 8, 2019

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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED

CV-19-625200-000
Court File No:

AND IN THE MATTER OF JACK COOPER VENTURES, INC., JACK COOPER DIVERSIFIED, LLC, JACK COOPER ENTERPRISES, INC., JACK COOPER HOLDINGS CORP., JACK COOPER TRANSPORT COMPANY, INC., AUTO HANDLING CORPORATION, CTEMS, LLC, JACK COOPER LOGISTICS, LLC, AUTO & BOAT RELOCATION SERVICES, LLC, AXIS LOGISTIC SERVICES, INC., JACK COOPER CT SERVICES, INC., JACK COOPER RAIL AND SHUTTLE, INC., JACK COOPER INVESTMENTS, INC., NORTH AMERICAN AUTO TRANSPORTATION CORP., JACK COOPER TRANSPORT CANADA INC., JACK COOPER CANADA GP 1 INC., JACK COOPER CANADA GP 2 INC., JACK COOPER CANADA 1 LIMITED PARTNERSHIP, JACK COOPER CANADA 2 LIMITED PARTNERSHIP

APPLICATION OF JACK COOPER VENTURES, INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

Ontario
**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

NOTICE OF APPLICATION

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