ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: **CV-24-00722168-00CL** **DATE:** **June 19, 2024**

NO. ON LIST: **3**

TITLE OF PROCEEDING: **In the Matter of a Plan of Compromise or Arrangement of 3329003 Canada Inc., Megabus Canada Inc. *et al***

BEFORE: **Justice Osborne**

PARTICIPANT INFORMATION

For Applicant(s):

Name of Person Appearing	Name of Party	Contact Info
Richard Swan	Applicants	swanr@bennettjones.com
Milan Singh-Cheema		singhcheemam@bennettjones.com

For Other(s):

Name of Person Appearing	Name of Party	Contact Info
Jennifer Stam	DIP Lenders	Jennifer.Stam@nortonrosefulbright.com
David Amato		David.Amato@nortonrosefulbright.com
Sven Dedic	Representatives of the Proposed Information Officer	sdedic@alvarezandmarsal.com
Al Hutchens		ahutchens@alvarezandmarsal.com
Marc Wasserman	Proposed Information Officer	mwasserman@osler.com
Martino Calvaruso		mcalvaruso@osler.com
Ben Muller		bmuller@osler.com
Nathalie Nouvet	Renco Group Inc.	nnouvet@stikeman.com

ENDORSEMENT OF JUSTICE OSBORNE:

[1] The Applicant, Coach USA, Inc., brings this proceeding as the proposed foreign representative of 3329003 Canada Inc., Megabus Canada Inc., 3376249 Canada Inc., 4216849 Canada Inc., Trentway-Wagar (Properties) Inc., Trentway-Wagar Inc. and Douglas Braund Investments (collectively, the "Canadian Debtors") for relief pursuant to Part IV of the *Companies' Creditors Arrangement Act* and the *Courts of Justice Act*, and in particular for:

a. an Initial Recognition Order:

i. recognizing Coach USA, as the Foreign Representative in respect of the Chapter 11 Cases commenced by Coach USA, and certain affiliates (the "Chapter 11 Debtors"), including the Canadian Debtors, in the United States Bankruptcy Court for the District of Delaware pursuant to Chapter 11 of the United States Bankruptcy Code;

ii. recognizing the Chapter 11 Cases as "foreign main proceedings" in respect of the Canadian Debtors;

b. a Supplemental Order:

i. recognizing certain interim and final First Day Orders issued by the US Bankruptcy Court in the Chapter 11 Cases;

ii. granting a stay of proceedings in respect of the Canadian Debtors and their directors and officers, in Canada;

iii. appointing Alvarez & Marsal Canada Inc. as the Information Officer in respect of these proceedings; and

iv. granting priority charges in the form of the Administration Charge, the D&O Charge and the DIP Charge.

[2] Defined terms in this Endorsement have the meaning given to them in the Application materials and/or the Report of the Proposed Information Officer dated June 14, 2024, unless otherwise stated.

[3] The relief sought by the Applicants is unopposed.

[4] At the conclusion of the hearing, I granted the Initial Recognition Order and the Supplemental Order, with reasons to follow. These are those reasons.

[5] The Chapter 11 Debtors filed voluntary petitions under the US Bankruptcy Code on June 11, 2024, and obtained certain First Day Orders from the US Bankruptcy Court on June 13, 2024, including an order authorizing Coach USA to act as the Foreign Representative in respect of the Chapter 11 Cases.

[6] No foreign proceeding (as defined in subsection 45(1) of the CCAA other than the Chapter 11 Cases has been commenced in respect of the Canadian Debtors.

[7] In this Application, the Applicant relies upon the Affidavit of Spencer Ware, the Chief Restructuring Officer of Coach USA, sworn June 13, 2024, together with Exhibits thereto, and the First Report of the Proposed Information Officer.

[8] The Company has a history of almost a century. It provides ground passenger transportation across North America with operations in 25 business segments throughout the United States and Canada, employing over 2700 employees and utilizing a fleet of over 2000 buses.

[9] The Canadian Debtors are part of the broader integrated Coach USA Group and they represent approximately 9.7% of the overall revenue of the Company and employ approximate 13.2% of the Company's total workforce. Trentway-Wagar is the Company's main operating entity in Canada, providing intercity busing service between several Metropolitan areas in Ontario and Québec as well as charter busing and sightseeing tour operations. Trentway-Wagar holds various assets on behalf of the Company, including part ownership of the bus fleet located in Canada, among other things.

[10] With the exception of Trentway-Wagar (Properties) Inc. that is the part owner of a portion of the Canadian bus fleet, and 4216849 Canada Inc. that has certain revenue and expenses flowed through it, none of the other Canadian Debtors have active business operations.

[11] The Canadian Debtors are entirely reliant on US Management for back-office operations, located at Coach USA's corporate headquarters in Paramus, New Jersey. The financial reporting of the Canadian Debtors is conducted by Coach USA on a consolidated basis, and the Canadian Debtors are all borrowers or guarantors under the Company's primary pre-petition loan facility, and rely on those parties for their information technology systems essential to the regular functioning of the business of the Canadian Debtors. The Chapter 11 Debtors, including for greater certainty the Canadian Debtors, operate an integrated, centralized cash management system.

[12] The basis and rationale for the filing of the Chapter 11 Cases are fully set out in the Application materials and in the Report of the Proposed Information Officer.

[13] The Company suffered as a result of the Covid 19 pandemic. During 2020, it was forced to cease operations completely for extended periods of time due to lockdowns and regulatory requirements, with the result that the very material decline in ridership it suffered in 2020 returned in 2023 but only to 45% of pre-pandemic levels. This slower-than-expected recovery, together with a shift towards hybrid work environments, put further pressure on the Company's liquidity position.

[14] Following an evaluation of all available options to preserve the Company as a going concern, including potential refinancing, recapitalization and sale transactions, the Company's lagging revenues still triggered events of default under the Prepetition ABL Agreement with the result that that Company engaged with the Prepetition ABL Lenders regarding various strategic alternatives.

[15] Two consecutive forbearance agreements were entered into, following which sales and marketing efforts have been attempted, all with the result that today, the Company has three proposed sale transactions supported by stalking horse agreements, each for different business segments of the Company. One of those contemplates the purchase of the business of the Canadian Debtors and substantially all of their assets.

[16] The Chapter 11 Debtors anticipate a Bidding Procedures and Sale Motion for the conduct of an auction for all of their assets with the Stalking Horse APAs as a baseline for their respective assets. If that motion is successful, the proposed Foreign Representative intends to bring a motion before this Court seeking recognition of such order thereafter.

[17] Part IV of the *CCAA* facilitates the administration of cross-border insolvencies and creates a system pursuant to which foreign insolvency proceedings can be recognized to achieve various objectives,

including the promotion of cooperation and coordination with foreign courts: *Hollander Sleep Products, LLC et al., Re*, 2019 ONSC 3238 ("*Hollander*") at para. 24.

[18] Pursuant to the purpose of the cross-border regime set out in s. 44 of the *CCAA*, s. 46 provides that a person who is a foreign representative may apply to the Court for recognition of a foreign proceeding in respect of which that person is a foreign representative. Pursuant to s. 47, the Court shall make an order recognizing a foreign insolvency proceeding if the Court is satisfied that the application relates to a foreign proceeding within the meaning of the *CCAA* and that the applicant is a foreign representative in respect of that foreign proceeding.

[19] I am satisfied here that the Chapter 11 Cases are foreign proceedings as defined in s. 45(1) of the *CCAA*. Accordingly, I recognize them as such pursuant to subsection 47(1).

[20] I am also satisfied that the Applicant is a foreign representative within the meaning of s.45(1). The US Bankruptcy Court has already issued an order appointing the Applicant as foreign representative within the meaning of that subsection.

[21] Next, I am satisfied that the foreign proceeding (i.e., the Chapter 11 Cases here) are "foreign main proceedings" and that, in accordance with s. 45(1) of the *CCAA*, the centre of main interests, or "COMI", is the United States.

[22] Sub-section 45(2) of the CCAA provides that "in the absence of proof to the contrary, a debtor company's registered office is deemed to be the centre of its main interests." Here, the Canadian Debtors each have their registered office in Canada, with the result that the issue is whether there is sufficient evidence to rebut the presumption created by s.45(2).

[23] This Court has identified three primary criteria to assess the debtor company's COMI:

a. the location of the debtor's headquarters or head office functions or nerve centre (also described as the debtor's principal assets or operations);

b. the location of the debtor's management (i.e., where the management of the debtor takes place); and

c. the location that significant creditors recognize as being the centre of the company's operations.

See: *Massachusetts Elephant & Castle Group Inc.,* 2011 ONSC 4201 ("*Massachusetts*") at paras. 26 and 30 (including cases cited therein).

[24] These factors will often point to the same jurisdiction but where there are conflicts, the Court may need to give greater or lesser weight to a particular factor, depending on the circumstances of the case. Where a Canadian entity operates in a larger corporate group, courts have considered how COMI should be determined since that is not expressly set out in Part IV of the *CCAA*: see *Angiotech Pharmaceuticals Inc. (Re),* 2011 BCSC 115 and *Lightsquared LP (Re),* 2012 ONSC 2994.

[25] Courts have indicated that the three primary factors identified above are also to be interpreted with reference to the following in determining the COMI:

a. the location where corporate decisions are made;

b. the location of employee administrations, including human resource functions;

c. the location of the debtor's marketing and communication functions;

d. whether the enterprise is managed on a consolidated basis;

e. the extent of integration of an enterprise's international operations;

f. the centre of an enterprise's corporate, banking, strategic and management functions;

g. the existence of shared management within entities and in an organization;

h. the location where cash management and accounting functions are overseen;

i. the location where pricing decisions and business development initiatives are created; and

j. the seat of an enterprise's treasury management functions, including management of accounts receivable and accounts payable.

See: *Massachusetts*, at para. 26; *Hollander*, at para. 32; *Diebold Nixdorf, Incorporated,* 2023 ONSC 4230 at para. 29; and *YRC Freight Canada Company (Re),* 2023 ONSC 4834 at para. 24.

[26] I am satisfied that the presumption of a COMI in Canada is rebutted here in favour of the United States, for the reasons set out above. The operations are conducted on a highly integrated basis. All corporate decisions are carried out in the United States.

[27] I am further satisfied that pursuant to s.48(1) of the *CCAA*, and as I have recognized the Chapter 11 Cases as foreign main proceedings, that a stay of proceedings here is appropriate. The scope and terms of the stay sought here are consistent with the Model Order recognized by the Commercial List. While there is no statutory limit on the stay set out in the *CCAA*, I am satisfied that it is appropriate here that the stay should be in effect subject to further order of this Court.

[28] I am also satisfied that recognition of the First Day Orders is appropriate. Section 49 of the *CCAA* allows the Court to grant certain discretionary relief (on any terms and conditions the Court considers appropriate) 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.

[29] In addition, s.52(1) provides that if an order recognizing a foreign proceeding is made, the Court should cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding. Recognition of the First Day Orders is appropriate here, for the reasons set out above.

[30] Alvaraz & Marsal Canada Inc. is appointed as Information Officer. It has become common practice in this Court to appoint an information officer in proceedings under Part IV of the *CCAA*, pursuant to the discretion that flows from s. 49. In this case in particular, the appointment of an information officer is appropriate and will keep this Court and Canadian stakeholders advised of relevant milestones and steps in the Chapter 11 Cases.

[31] Alvaraz & Marsal Canada Inc. has previously filled this role in this Court, is a licensed insolvency trustee and its principals involved in this matter are highly experienced. I am satisfied that A&M is an appropriate Information Officer here and it has consented to act in this capacity.

[32] The Administration Charge, the D&O Charge and the DIP Charge are all appropriate here and are approved, the first in the maximum amount of $500,000 and the second in the maximum amount of $3.9 million.

[33] The non-exhaustive list of factors to be considered in approving an administration charge, including the size and complexity of the businesses being restructured; the proposed role of the beneficiaries of the charge; whether there is an unwarranted duplication of roles; whether the quantum of the proposed charge appears to be fair and reasonable; the position of the secured creditors likely to be affected by the charge; and the position of the Monitor, all support approval of the charge here: see *CanWest Publishing Inc*., 2010 ONSC 222 at para. 54.

[34] The D&O Charge may be reduced to $450,000 in the event of a completion of a sale transaction in respect of the Canadian Debtors which provides for the sale of all or substantially all of the Property in Canada and further provides for the employment of substantially all employees of the Canadian Debtors, with a corresponding reduction in exposure for directors and officers.

[35] The DIP Facility secured by the DIP Charge is structured as a "creeping roll up", as that term has come to be colloquially used, meaning that all post-petition receipts will be applied to repay pre-petition obligations owing to Prepetition ABL Lenders.

[36] I am satisfied that such relief is appropriate here, and has been previously granted by this Court: see *BZAM Ltd. Plan of Arrangement*, 2024 ONSC 1645 at para. 56.

[37] In reaching this conclusion, I recognize that a "full roll up" provision cannot be granted in *CCAA* proceedings, given section 11.2(1), but Courts have consistently recognized orders of US courts authorizing such DIP facilities under the principles of comity in Part IV of the *CCAA* "if the Court is satisfied that it is necessary to protect the debtor's property or is in the interests of its creditors": see *Xinergy Ltd., 2015 ONSC 2692* at paras. 19-20; *Hartford Computer Hardware Inc.,* 2012 ONSC 964*;* and *Instant Brands Acquisition Holdings Inc. et al*., 2023 ONSC 4252 at para. 21.

[38] For all of these reasons, the Initial Recognition Order and the Supplemental Order are appropriate and are granted. Orders to go in the form signed by me which have immediate effect without the necessity of issuing and entering.

Osborne J.