

**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 3329003 CANADA INC., MEGABUS CANADA INC.,
3376249 CANADA INC., 4216849 CANADA INC., TRENTWAY-WAGAR
(PROPERTIES) INC., TRENTWAY-WAGAR INC. AND DOUGLAS BRAUND
INVESTMENTS LIMITED**

**APPLICATION OF COACH USA, INC. UNDER SECTION 46 OF THE *COMPANIES
CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36 AMENDED**

Applicant

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June 13, 2024

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PART I: OVERVIEW

1. This factum is filed in support of an application under Part IV of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") and section 106 of the *Courts of Justice Act* by Coach USA, Inc. ("**Coach USA**") as the proposed foreign representative of 3329003 Canada Inc. ("**332 Canada**"), Megabus Canada Inc. ("**Megabus**"), 3376249 Canada Inc. ("**337 Canada**"), 4216849 Canada Inc. ("**421 Canada**"), Trentway-Wagar (Properties) Inc. ("**Trentway Properties**"), Trentway-Wagar Inc. ("**Trentway-Wagar**") and Douglas Braund Investments Limited ("**Douglas Braund**") (collectively, the "**Canadian Debtors**").

2. The Canadian Debtors along with certain other affiliates of Coach USA (together with the Canadian Debtors, the "**Chapter 11 Debtors**" or the "**Company**"), filed voluntary relief petitions for relief in the United States Bankruptcy Court for the District of Delaware (the "**U.S. Bankruptcy Court**") pursuant to chapter 11 or title 11 of the United States Bankruptcy Code (the "**U.S. Bankruptcy Code**", the cases commenced therein, the "**Chapter 11 Cases**").

3. The Chapter 11 Cases were initiated by the Chapter 11 Debtors in order to provide the Company with much needed breathing room to continue a sale process that began prepetition (the "**Sale Process**"), with the ultimate goal of consummating value-maximizing transactions for the benefit of the Company's stakeholders.

4. At this time, Coach USA is requesting the following relief from this Court:

(a) an order (the "**Initial Recognition Order**"), among other things:

(i) recognizing Coach USA as the foreign representative (in such capacity, the "**Foreign Representative**") in respect of the Chapter 11 Cases; and

- (ii) recognizing the Chapter 11 Cases as a “foreign main proceeding” in respect of the Canadian Debtors;
- (b) an order (the “**Supplemental Order**”), among other things:
- (i) recognizing certain interim and final orders issued by the U.S. Bankruptcy Court in the Chapter 11 Cases (collectively, the “**First Day Orders**”);
 - (ii) granting a stay of proceedings in respect of the Canadian Debtors its respective directors and officers, in Canada;
 - (iii) appointing Alvarez & Marsal Canada Inc. (“**A&M**”) as the information officer in respect of these proceedings (in such capacity, the “**Information Officer**”);
 - (iv) granting the following priority charges(collectively the “**Charges**”) over the current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof of the Canadian Debtors in Canada (the “**Property**”), :
 - 1. the Administration Charge (to the maximum amount of \$500,000, as defined below);
 - 2. the Directors’ Charge (to the maximum amount of \$3,900,000, as defined below);
 - 3. DIP Charge (as defined below);
 - (v) such further and other relief as this Court deems just.

PART II: FACTS

5. The facts underlying this Application are more fully set out in the Affidavit of Spencer Ware dated June 13, 2024 (the “**Ware Affidavit**”).¹ All capitalized terms used but not defined herein have the meanings ascribed to them in the Ware Affidavit. Unless otherwise indicated, dollar amounts herein are references to United States Dollars.

A. The Business and Operations

6. The Company is a leading provider of ground passenger transportation and mobility solutions in North America.² With 2,768 employees and 2,071 buses, the Company carries over 38 million passengers throughout the United States and Canada each year.³

7. In addition to the household name “Coach USA”, the Company operates under several other brands, including: Megabus and Coach Canada (in Canada) Coach USA Airport Express, Dillon’s Bus Company, and Go Van Galder (in the United States).⁴ Through its affiliates and subsidiaries, the Company has been offering passenger transportation solutions for over 100 years.⁵

8. The Company’s business can be broken down into the following categories:

Contract Services	Fixed route and commuter bus services for transit agencies and services for private corporations such as employee shuttles.
Commuter and Scheduled Services	Reliable and convenient scheduled bus services for intra and intercity, commuter, and leisure travels, as well as local transit bus services.

¹ Affidavit of Spencer Ware sworn on June 13, 2024 [*Ware Affidavit*]; Application Record dated June 13, 2024 at Tab 2[*Application Record*]

² Ware Affidavit at para 13, Application Record at Tab 2.

³ *Ibid* at para 13, Application Record at Tab 2.

⁴ *Ibid*, at para 14, Application Record at Tab 2.

⁵ *Ibid*, at para 14, Application Record at Tab 2.

Intercity and Retail	High-quality, affordable intercity bus carrier and asset-light retail platform offering state of the art services.
Airport Services	Scheduled services to and from several major airport hubs.
Charter Services	Charter services for large, national sporting events and concerts as well as school field trips, special events and hop-on/hop-off tours.

9. The Company's transportation services span the continental United States and two provinces in Canada.⁶ These operations are organized in 25 distinct business segments (the "**Business Segments**") in various geographic locations across North America.⁷

10. The Company's Business Segments in Canada are comprised of: (i) the "Montreal" Business Segment, operating out of Montreal, Quebec that, among other things, offers local sightseeing and tour services on hop on/hop off routes, offers charter services and operates as Megabus Canada's easternmost embarkation point; and (ii) the "Trentway" or "Ontario" Business Segment which acts as the headquarters for the Company's Canadian operations, as a transport hub for Megabus Canada, and offers scheduled services, airport transportation and charter tour options throughout Eastern Canada.⁸

11. The Company is operated on an integrated basis, with the Canadian Debtors comprising a fraction of the Company's overall size and contributing approximately 9.7% of the Company's overall revenue per the Company's December 2023, unaudited financial statements.⁹

⁶ *Ibid.*, at para 19, Application Record at Tab 2.

⁷ *Ibid.*, at para 21, Application Record at Tab 2.

⁸ *Ibid.*, at para 21, Application Record at Tab 2.

⁹ *Ibid.*, at para 43, Application Record at Tab 2.

12. The Company's workforce across North America is comprised of 2,768 employees, the majority of which are drivers.¹⁰ The Company has 366 employees in Canada, comprising 13.2% of the Company's overall workforce.¹¹ Of these Canadian employees, approximately 273 are located in Ontario and 93 are located in Quebec, with all Quebec-based employees located in Montreal.¹²

B. The Canadian Debtors

13. Trentway-Wagar, Megabus, Douglas Braund and Trentway Properties are all entities incorporated under the *Business Corporations Act (Ontario)*, R.S.O. 1990, c. B.16, as amended with the same registered office at 66 Wellington Street West, 4100, Toronto, Ontario, Canada, M5K 1B7.¹³

14. 421 Canada and 332 Canada are both incorporated under the *Canada Business Corporations Act*, R.S.C., 1985, c. C-44, as amended (the "CBCA") and have the same registered office at 5550 Monk Blvd. Montreal, QC H4C 3R8.¹⁴

15. 337 Canada is incorporated under the CBCA and has a registered office address of 66 Wellington Street West, 4100, Toronto, Ontario, Canada, M5K 1B7.¹⁵

16. The Canadian Business is primarily operated through Trentway-Wagar, with Trentway-Wagar, among other things: (i) holding various assets on behalf of the Company, including part ownership of the bus fleet located in Canada and ownership of a small portion of the intellectual

¹⁰ *Ibid*, at para 14, Application Record at Tab 2.

¹¹ *Ibid*, at para 24, Application Record at Tab 2.

¹² *Ibid*, at para 24, Application Record at Tab 2.

¹³ *Ibid*, at paras 28,33,36-37, Application Record at Tab 2.

¹⁴ *Ibid*, at paras 39,42, Application Record at Tab 2.

¹⁵ *Ibid*, at para 41, Application Record at Tab 2.

property utilized by the Canadian Debtors (the “**Canadian IP**”); (ii) employing all Canadian employees; and (iii) serving as the signatory on multiple Canadian leases.¹⁶

17. Trentway-Wagar is notable for its inter-city bussing service, providing an affordable means of transit between several of the metropolitan areas in Southern Quebec and Ontario.¹⁷ Trentway-Wagar’s operations also include charter bussing services and sightseeing tour services through hop on/hop off routes,¹⁸

18. With the exception of Trentway Properties (which is the part owner of a portion of the Canadian bus fleet) and 421 Canada (which has certain revenue and expenses flowing through it) none of the other Canadian Debtors have any active business operations or assets.¹⁹

C. Integration with U.S. Operations

19. The Canadian Debtors are fully integrated with, and reliant on, the Company’s U.S. operations and the Chapter 11 Debtors domiciled in the U.S. (the “**U.S. Chapter 11 Debtors**”). In particular, among other things:

- (a) Canadian revenue comprises approximately only 9.7% of the Company’s overall annual revenue;
- (b) the Canadian Debtors are entirely reliant on Coach USA’s corporate headquarters in Paramus, New Jersey (“**U.S. Management**”) for the majority of their back-office operations;

¹⁶ *Ibid*, at para 32, Application Record at Tab 2.

¹⁷ *Ibid*, at para 30, Application Record at Tab 2.

¹⁸ *Ibid*, at para 31, Application Record at Tab 2.

¹⁹ *Ibid*, at paras 32,35,36,38,41 and 42, Application Record at Tab 2.

- (c) Coach USA reports on the Canadian Debtors' financials on a consolidated basis; and
- (d) the Canadian Debtors are all borrowers under the Prepetition ABL Agreement (as defined below) along with certain of the U.S. Chapter 11 Debtors.²⁰

1. Shared Services

20. The Canadian Debtors are wholly dependent on the following shared services which are provided by the U.S. Chapter 11 Debtors:

- (a) *Information Technology Systems* - Information technology systems are managed on a consolidated basis. The Canadian Debtors rely on U.S. Management for, among other things, GPS tracking, wifi and bus carrier systems, which are all a necessity for the Canadian operations' regular functioning.²¹
- (b) *Business Development Related Decision-Making* – the Canadian Debtors are entirely reliant on U.S. Management for business development related decision making.²²
- (c) *Legal Function* – The Canadian Debtors lack an internal legal function and require U.S. Management to enter into legally binding contracts or agreements.²³

²⁰ *Ibid*, at para 43, Application Record at Tab 2.

²¹ *Ibid*, at para 44, Application Record at Tab 2.

²² *Ibid*, at para 45, Application Record at Tab 2.

²³ *Ibid*, at para 46, Application Record at Tab 2.

- (d) *Material Financial Arrangements* – the Canadian Debtors require U.S. Management’s authorization for all financial decisions above CAD \$100,000 in value.²⁴

Cash Management System

21. The Company operates an integrated, centralized cash management system (the “**Cash Management System**”) to collect, transfer and disburse funds generated by their operations.²⁵ The Cash Management System serves numerous necessary functions, reflecting the Company’s daily operating needs.²⁶

Intellectual Property

22. The majority of the Canadian IP is owned by Coach USA or other U.S. Chapter 11 Debtors, with 12 of the 16 trademarks which comprise the Canadian IP owned by the U.S. Chapter 11 Debtors.²⁷ Such U.S.-owned Canadian IP includes trademarks that are vital to the Canadian Debtors’ operations and brand recognition, including, among other things, the Megabus and Coach Canada logos.²⁸

D. Secured Obligations

1. Prepetition ABL Facility

23. On April 26, 2019, certain of the Chapter 11 Debtors (the “**Prepetition ABL Borrowers**” and each a “**Prepetition ABL Borrower**”), Wells Fargo Bank National Association (“**Wells Fargo**”), as administrative agent, joint lead arranger and joint lead book runner, MUFG National

²⁴ *Ibid*, at para 47, Application Record at Tab 2.

²⁵ *Ibid*, at para 48, Application Record at Tab 2.

²⁶ *Ibid*, at para 53, Application Record at Tab 2.

²⁷ *Ibid*, at para 53, Application Record at Tab 2.

²⁸ *Ibid*, at para 53, Application Record at Tab 2.

Bank, N.A. as joint lead arranger, joint book runner and syndication agent and the Lenders (as defined therein and with Wells Fargo and MUFG, the “**Prepetition ABL Lenders**”) entered into a Credit Agreement (as amended, restated, supplemented, or otherwise modified from time to time, the “**Prepetition ABL Agreement**” and the facility thereunder the “**Prepetition ABL Facility**”).²⁹ The Canadian Debtors are all Prepetition ABL Borrowers and also provided certain Collateral, including a Guaranty and Security Agreement to secure the obligations entered into by the Company thereunder.³⁰

24. As of June 11, 2024 there is approximately \$144.3 million of secured debt outstanding under the Prepetition ABL Facility and \$35.6 million outstanding which was extended pursuant to letters of credit thereunder.³¹

2. SCUSI Note

25. Chapter 11 Debtor, Project Kenwood Intermediate Holdings I, Inc. (“**Holdings I**”) has outstanding secured debt in the aggregate principal amount of \$87.6 million under a certain secured term promissory note with SCUSI Limited as payee, dated as of April 16, 2019 (as heretofore amended, supplemented or otherwise modified, the “**SCUSI Note**”).³² Pursuant to the SCUSI Note, Holdings I pledged all of its equity interests in Chapter 11 Debtor Project Kenwood Intermediate Holdings II, LLC which is the ultimate parent company of the Canadian Debtors.³³

26. There is currently \$87.6 million of secured debt outstanding under the SCUSI Note.³⁴

²⁹ *Ibid*, at para 64, Application Record at Tab 2.

³⁰ *Ibid*, at para 64, Application Record at Tab 2.

³¹ *Ibid*, at para 61, Application Record at Tab 2.

³² *Ibid*, at para 63, Application Record at Tab 2.

³³ *Ibid*, at para 74, Application Record at Tab 2.

³⁴ *Ibid*, at para 73, Application Record at Tab 2.

3. Main Street Loan and Other Unsecured Obligations

27. In addition to the Prepetition ABL Facility, prior to the Petition Date, the Company entered into a Credit Agreement dated December 11, 2020, (the “**Main Street Loan Agreement**”) among certain of the Chapter 11 Debtors (the “**Main Street Borrowers**”) and Wells Fargo Bank, National Association as lender (the “**Main Street Lender**”).³⁵ Megabus, Trentway-Wagar and Trentway Properties are all borrowers under the Main Street Loan Agreement.³⁶

28. Pursuant to the Main Street Loan Agreement, the Main Street Lender agreed to extend a term loan in the aggregate principal amount of \$35 million (the “**Main Street Loan**”) to the Main Street Borrowers.³⁷ The Main Street Loan is unsecured and there is currently \$37.7 million of debt thereunder.³⁸

29. The Chapter 11 Debtors’ other unsecured debt obligations (including trade and other claims) as of the June 11, 2024 total at least \$171.7 million.³⁹

E. Recent Events and Proposed Restructuring

1. COVID-19 Pandemic and Impact on Company

30. The Company suffered substantially as a result of the COVID-19 pandemic.⁴⁰ Ridership declined precipitously while revenues and ridership were slow to rebound, even after the pandemic subsided.⁴¹ The Company’s post-pandemic recovery was also hampered by numerous external factors including, among other things, shifts towards hybrid work environments that caused fewer

³⁵ *Ibid*, at para 70, Application Record at Tab 2.

³⁶ *Ibid*, at para 69, Application Record at Tab 2.

³⁷ *Ibid*, at para 70, Application Record at Tab 2.

³⁸ *Ibid*, at para 61, Application Record at Tab 2.

³⁹ *Ibid*, at para 62, Application Record at Tab 2.

⁴⁰ *Ibid*, at para 75, Application Record at Tab 2.

⁴¹ *Ibid*, at para 77, Application Record at Tab 2.

commuters and difficulties in the labor market and in hiring enough drivers to service areas of growth.⁴²

31. These difficulties put pressure on the Company's liquidity position, causing the Company's management to explore strategic alternatives to enhance value, including a potential sale of its business.⁴³

2. Restructuring and Sale Efforts

32. In November of 2023, the Company engaged Houlihan Lokey Capital Inc. ("**Houlihan**") to assist it with evaluating all potential options to preserve the Company as a going concern.⁴⁴ Together with Houlihan, the Company engaged with Prepetition ABL Lenders regarding various strategic alternatives, including the commencement of the Sale Process.⁴⁵

33. On December 1, 2023, the Prepetition ABL Borrowers and the Prepetition ABL Lenders entered into a certain sixth amendment to the Prepetition ABL Credit Agreement and Forbearance Agreement (the "**First Forbearance Agreement**"), pursuant to which the Prepetition ABL Lenders agreed to forbear from exercising remedies in connection with existing events of default for a certain period while the Company continued to explore potential strategic and restructuring alternatives.⁴⁶

34. Since entering into the First Forbearance Agreement, the Company has worked with its advisors and made substantial progress in the Sale Process.⁴⁷ As a result of the pre-petition marketing and sale process conducted by Houlihan and the Company there have been: (i) two

⁴² *Ibid*, at para 78, Application Record at Tab 2.

⁴³ *Ibid*, at para 79, Application Record at Tab 2.

⁴⁴ *Ibid*, at para 79, Application Record at Tab 2.

⁴⁵ *Ibid*, at para 79, Application Record at Tab 2.

⁴⁶ *Ibid*, at para 80, Application Record at Tab 2.

⁴⁷ *Ibid*, at para 81, Application Record at Tab 2.

going concern stalking horse bids for substantially all of the assets of 16 of the Company's Business Segments, including all of the Canadian operations; and (ii) a stalking horse bid for the liquidation of the Chapter 11 Debtors' double deck buses (collectively, the "**Stalking Horse APAs**").⁴⁸

35. The forbearance period under the First Forbearance Agreement was set to expire in the midst of the Chapter 11 Debtors' Sale Process.⁴⁹ To continue the Sale Process, the Prepetition ABL Lenders and the Prepetition ABL Borrowers entered into that certain seventh amendment to the Prepetition ABL Credit Agreement and First Amendment to Forbearance Agreement (the "**Second Forbearance Agreement**") which extended the forbearance period to February 4, 2024.⁵⁰

36. The Second Forbearance Agreement was terminated on or around January 25, 2024.⁵¹ Nevertheless, the Company continued to work with the Prepetition ABL Lenders to reach a consensus, eventually formulating a plan to preserve value for all stakeholders.⁵² The Company has commenced the Chapter 11 Cases and the CCAA proceedings in order to continue the process towards achieving value maximizing transactions, including the conduct of an auction for all of their assets with the Stalking Horse APAs as a baseline for their respective assets.⁵³

F. Proposed DIP Financing

37. Pursuant to a credit agreement entered into between Prepetition Lenders, in their capacity as postpetition lenders (in such capacity, the "**DIP Lenders**") and certain of the Chapter 11 Debtors

⁴⁸ *Ibid*, at para 89, Application Record at Tab 2.

⁴⁹ *Ibid*, at para 82, Application Record at Tab 2.

⁵⁰ *Ibid*, at para 82, Application Record at Tab 2.

⁵¹ *Ibid*, at para 83, Application Record at Tab 2.

⁵² *Ibid*, at para 83, Application Record at Tab 2.

⁵³ *Ibid*, at para 92, Application Record at Tab 2.

(the “**DIP Credit Agreement**”), the DIP Lenders have agreed to provide the Company with a debtor-in-possession facility (“**DIP Facility**”) comprised of \$20 million of new money financing.⁵⁴ The DIP Facility is being extended to enable the Company to fund operations, meet various obligations as they become due, and effectively administer the Chapter 11 Cases and CCAA proceedings.⁵⁵ Megabus, Trentway-Wagar and Trentway Properties are borrowers under the DIP Credit Agreement, while all Canadian Debtors are guarantors therein.⁵⁶

38. The DIP Facility is proposed to be secured by, among other things, a Court-ordered charge (the “**DIP Charge**”) on the present and future assets, property and undertakings of the Canadian Debtors (the “**Canadian Property**”).⁵⁷ The DIP Charge is to rank in priority of all unsecured claims and are subject to the relative priority of liens as set forth in the Interim DIP Order (including, with respect to the Carveout and the Prepetition ABL Priority Obligations (each as defined in the Ware Affidavit)), on the Canadian Property, but subordinate to the proposed Administration Charge the Directors’ Charge, Carveout and Prepetition ABL Obligations.⁵⁸

39. The DIP Facility is structured as a “creeping roll-up”, pursuant to which all postpetition receipts will be applied to repay prepetition obligations owing to Prepetition ABL Lenders.⁵⁹

PART III: ISSUES

41. The issues to be determined on this motion are:

⁵⁴ *Ibid*, at para 99, Application Record at Tab 2.

⁵⁵ *Ibid*, at para 98, Application Record at Tab 2.

⁵⁶ *Ibid*, at para 69, Application Record at Tab 2.

⁵⁷ *Ibid*, at para 103, Application Record at Tab 2.

⁵⁸ *Ibid*, at para 103, Application Record at Tab 2.

⁵⁹ *Ibid*, at para 99, Application Record at Tab 2.

- (a) Are the Chapter 11 Cases a “foreign main proceeding” pursuant to Part IV of the CCAA?
- (b) If so, are the Chapter 11 Debtors entitled to the relief sought in the Initial Recognition Order and Supplemental Order, including:
 - (i) granting the Stay of Proceedings;
 - (ii) recognizing the First Day Orders;
 - (iii) appointing A&M as the Information Officer;
 - (iv) granting the DIP Charge;
 - (v) granting the Directors’ Charge; and
 - (vi) granting the Administration Charge.

PART IV: LAW AND ANALYSIS

A. The Chapter 11 Cases are Foreign Proceedings

42. Part IV of the CCAA facilitates the administration of cross-border insolvencies and creates a system whereby foreign insolvency proceedings can be recognized to, among other things, promote cooperation and coordination with foreign courts.⁶⁰

⁶⁰ [*Hollander Sleep Products, LLC et al., Re*, 2019 ONSC 3238](#) at para 24, [*Hollander*].

43. Subsection 46(1) of the CCAA 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.⁶¹ Pursuant to section 47, the following two requirements must be met:

- (a) the application for recognition of a foreign proceeding relates to a “foreign proceeding” as defined in the CCAA; and
- (b) the applicant is a “foreign representative”, as defined in the CCAA, in respect of that foreign proceeding.⁶²

1. A Foreign Proceeding

44. A “foreign proceeding” is defined in subsection 45(1) as “a judicial or an administrative proceeding, including an interim proceeding, in a jurisdiction outside Canada dealing with creditors’ collective interests generally under any law relating to bankruptcy or insolvency in which a debtor company’s business and financial affairs are subject to control or supervision by a foreign court for the purpose of reorganization.”⁶³

45. “Canadian courts have consistently recognized proceedings under Chapter 11 of the *U.S. Bankruptcy Code* to be foreign proceedings for the purposes of the *CCAA*.”⁶⁴

⁶¹ *Companies’ Creditors Arrangement Act*, RSC 1985, c. C-36, at s 46.; See also: *Hollander* at para 25.

⁶² *CCAA*, at s. 47.

⁶³ *CCAA*, at s. 45(1).

⁶⁴ *Diebold Nixdorf, Incorporated*, 2023 ONSC 4230 at para 24 [*Diebold*]; *Massachusetts Elephant & Castle Group Inc.*, 2011 ONSC 4201 at para 13 (including cases cited therein) [*Massachusetts*]. See also *Lightsquared LP*, 2012 ONSC 2994 at para 18 [*Lightsquared*]; *YRC Freight Canada Company (Re)*, 2023 ONSC 4834 at para 24 [*YRC*].

2. A Foreign Representative

46. A “foreign representative” is defined in subsection 45(1) as a person who is authorized in a foreign proceeding to “(a) monitor the debtor company’s business and financial affairs for the purpose of reorganization; or (b) act as a representative in respect of the foreign proceeding.”⁶⁵

47. In this case, Coach USA has been appointed as foreign representative in respect of the Chapter 11 Cases and is thus a proper foreign representative.⁶⁶

3. A Foreign Main Proceeding

48. Pursuant to subsection 47(2) of the CCAA, the Court must specify in its order whether the foreign proceeding is a “foreign main proceeding” or a “foreign non main proceeding”.⁶⁷ Pursuant to subsection 45(1), a “foreign main proceeding” is “a foreign proceeding in a jurisdiction where the debtor company has the centre of its main interests” (“COMI”).⁶⁸ Subsection 45(2) of the CCAA stipulates 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.”⁶⁹

49. Here, the Canadian Debtors each have their registered offices in Canada. Therefore, the question is whether there is sufficient evidence to rebut the subsection 45(2) presumption.⁷⁰ This Court has identified three primary criteria to assess a 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);

⁶⁵ CCAA, *supra* note 62 at s. 45(1).

⁶⁶ *Ware Affidavit*, *supra* note 1 at para 4, Application Record at Tab 2.

⁶⁷ CCAA, *supra* note 62 at s. 47.

⁶⁸ *Ibid*, at s.45(1).

⁶⁹ *Ibid* at s. 45(2); *Diebold*, *supra* note 64 at para 27.

⁷⁰ *Massachusetts*, *supra* note 65 at para 13.

- (b) the location of the debtor's management (i.e. where the management of the debtor takes place); and
- (c) the location which significant creditors recognize as being the centre of the company's operations.⁷¹

50. 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.⁷² Courts have indicated that these three primary factors 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;

⁷¹ *Ibid* at para 30; [Lightsquared](#), *supra* note 64 at para 25; [Xinergy Ltd.](#), 2015 ONSC 2692 at para 15 [*Xinergy*]; [Hollander](#), *supra* note 60 at para 33; [Diebold](#), *supra* note 64 at para 28.

⁷² [Lightsquared](#), *supra* note 64 at para 26; [Paladin Labs Canadian Holding Inc.](#), 2022 ONSC 4748 at para 21 [*Paladin*].

- (i) the location where pricing decisions and new business development initiatives are created; and
- (j) the seat of an enterprise's treasury management functions, including management of accounts receivable and accounts payable.⁷³

51. The above factors are intended to provide guidance on how the COMI is to be interpreted. While none are determinative, all could be considered depending on the specific facts of the case before the court.⁷⁴ However, in all cases, “the review is designed to determine that the location of the proceeding, in fact, corresponds to where the debtor’s true seat or principal place of business actually is, consistent with the expectations of those who dealt with the enterprise prior to commencement of the proceedings.”⁷⁵

52. While the Canadian Debtors each have a registered office in Canada, the presumption in subsection 45(2) is rebutted in favour of the U.S. when applying the above factors and considerations to this case:

- (a) the Canadian Debtors only account for 9.7% of the Company’s overall revenue;⁷⁶
- (b) the Canadian Debtors comprise only 2 of the Company’s 25 distinct Business Segments;⁷⁷

⁷³ *Massachusetts*, supra note 64 at para 26; *Hollander*, supra note 60 at para 32; *Diebold*, supra note 64 at para 29; See also: *YRC*, supra note 64 at para 24; *Paladin*, supra note 73 at para 23.

⁷⁴ *CCAA* supra note 62 at s. 45(1);

⁷⁵ *Massachusetts*, supra note 65 at paras 27-28.

⁷⁶ *Lightsquared* supra note 64 at para 26; *Payless Holdings Inc. LLC*, 2017 ONSC 2242 at para 28; *Diebold*, supra note 64 at para 30.

⁷⁷ *Ware Affidavit*, supra note 1 at para 17, Application Record at Tab 2.

⁷⁷ *Ware Affidavit*, supra note 1 at para 21, Application Record at Tab 2.

- (c) only 13.2% of the Company's overall workforce is in Canada⁷⁸ and 13.4% of the Company's overall union membership;⁷⁹
- (d) the Canadian Debtors are wholly reliant on U.S. Management for the majority of their back-office operations, including information technology and business development related decision making;⁸⁰
- (e) Coach USA reports on the Canadian Debtors' financials on a consolidated basis;⁸¹
- (f) legal and material financial decisions are made by U.S. Management such that the Canadian Debtors cannot enter into agreements or material financial arrangements without the input and approval of U.S. Management;⁸²
- (g) the Company utilizes a centralized Cash Management System, and only 9 of the 98 accounts are located in Canada;⁸³
- (h) funds that are located in the Canadian Debtor's main operating account are subject to transfer in the Chapter 11 Debtors' operating accounts in the U.S. at the sole discretion of U.S. Management;⁸⁴ and
- (i) the majority of intellectual property utilized by the Canadian Debtors is owned by the U.S. Chapter 11 Debtors (12 of 16 trademarks).⁸⁵

⁷⁸ *Ware Affidavit*, *supra* note 1 at para 24, Application Record at Tab 2.

⁷⁹ *Ware Affidavit*, *supra* note 1 at para 25, Application Record at Tab 2.

⁸⁰ *Ware Affidavit*, *supra* note 1 at para 43, Application Record at Tab 2.

⁸¹ *Ware Affidavit*, *supra* note 1 at para 43, Application Record at Tab 2.

⁸² *Ware Affidavit*, *supra* note 1 at para 43, Application Record at Tab 2.

⁸³ *Ware Affidavit*, *supra* note 1 at para 49, Application Record at Tab 2.

⁸⁴ *Ware Affidavit*, *supra* note 1 at para 52, Application Record at Tab 2.

⁸⁵ *Ware Affidavit*, *supra* note 1 at para 53, Application Record at Tab 2.

53. The above factors demonstrate that the Canadian Debtors are fully integrated with the Company's U.S. operations. Applied to the three primary factors for determining COMI, it is clear that the COMI for the Canadian Debtors is in the U.S.:

- (a) the vast majority of each Canadian Debtor's principal assets and operations are in the U.S.;
- (b) the management of each of the Canadian Debtors – including back-office support, legal decision making and technical services – is located in the U.S.; and
- (c) the Company's most significant creditor, Wells Fargo in its capacity as a Prepetition ABL Lender, has actively been involved in the lead-up to the commencement of the Chapter 11 Cases, including the decision to commence foreign main proceedings in the U.S. as opposed to Canada, demonstrating its viewpoint that the U.S. is the Company's center of operations.

54. Since Part IV of the CCAA does not specifically take into account corporate groups, it is necessary to consider COMI on an entity-by-entity basis.⁸⁶ Coach USA submits that the above facts and factors apply equally to each Canadian Debtor, as further set out in the Affidavit.

B. The Initial Recognition Order and Supplemental Order Should be Granted

1. The Stay of Proceedings is Required and Appropriate

55. Upon a determination of a "foreign main proceeding", certain relief automatically follows as set out in subsection 48(1) of the CCAA:

⁸⁶ *Lightsquared*, *supra* note 64 at para 29.

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

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken against the debtor company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the debtor company;

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the debtor company; and

(d) prohibiting the debtor company from selling or otherwise disposing of, outside the ordinary course of its business, any of the debtor company's property in Canada that relates to the business and prohibiting the debtor company from selling or otherwise disposing of any of its other property in Canada.⁸⁷

56. The stay of proceedings sought in the Initial Recognition Order should be granted in accordance with section 48 as it is essential to protect the efforts of the Chapter 11 Debtors and ensure these insolvency proceedings are successful. In addition, the Initial Recognition Order is consistent with the Court's Model CCAA Initial Recognition Order and consistent to similar orders previously granted by this Court.⁸⁸

2. Recognition of the First Day Orders is Appropriate

57. In addition to the above mandatory relief, section 49 provides for certain discretionary relief that can be granted (on any terms and conditions the court considers appropriate in the circumstances) 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:

⁸⁷ CCAA *supra* note 61 at s 48(1).

⁸⁸ *Davids Bridal LLC et al*, Initial Recognition Order (Foreign Main Proceeding) issued April 18, 2023 [CV-23-00698107-00CL]; *Curo Holdings Corp*, Initial Recognition Order and (Foreign Main Proceeding) dated March 26, 2024 [CV-24-00717178-00CL]; *YRC Freight Canada Company*, Initial Recognition Order (Foreign Main Proceeding) issued August 28 [CV-23-00704038-00CL]

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.

58. The U.S. Court has granted a series of First Day Orders that are set out in-detail within the Ware Affidavit at paragraph 95. Such orders include, among others:

- (a) Foreign Representative Order;
- (b) Interim DIP Order;
- (c) Joint Administration Order;
- (d) Interim Insurance and Surety Order;
- (e) Interim Taxes and Fees Order;
- (f) Joint Administration Order;
- (g) Interim Cash Management Order;
- (h) Interim Critical Vendors Order;
- (i) Interim Customer Programs Order;
- (j) Interim Employee Wages Order;

- (k) Kroll Retention Order;
- (l) Creditor Redaction Matrix Order; and
- (m) Interim Notice and Hearing Procedures Order;

59. If an order recognizing a foreign proceeding is made, subsection 52(1) provides that the Court “cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.”⁸⁹ Courts have also held that “where a cross-border insolvency is most closely connected to one jurisdiction, it is appropriate for the court in that jurisdiction to exercise principal control over the insolvency process in light of the principles of comity and in order to avoid a multiplicity of proceedings.”⁹⁰

60. It is requested that this Court recognize the First Day Orders pursuant to subsection 52(1) and section 49 (set out above) of the CCAA.⁹¹ Moreover, it is appropriate for the First Day Orders to be recognized and given effect under the CCAA for the following reasons:

- (a) as the U.S. Court has properly assumed jurisdiction over the Chapter 11 Cases, comity will be furthered by this Court’s recognition;
- (b) the coordination of proceedings between Canada and the U.S. will further the interests of creditors by ensuring their equal and fair treatment regardless of location;

⁸⁹ [CCAA](#) *supra* note 61 at s 52(1).

⁹⁰ [Magna Entertainment Corp.](#), [2009] 51 CBR (5th) 82 (Ont. SCJ) at para 9; [In the matter of CURO Canada Corp. and LendDirect Corp.](#), 2024 ONSC 1989 at para 37.

⁹¹ *Ware Affidavit*, *supra* note 1 at para 10; Application Record at Tab 2.

- (c) given that the U.S. proceedings are the foreign main proceedings, it is reasonable for the U.S. Court to have principal control over the insolvency process; and
- (d) the First Day Orders are intended to protect the debtors' property in furtherance of the insolvency proceedings.

3. The DIP Charge should be granted

61. The Canadian Debtors are seeking recognition of the Interim DIP Order in Canada, which among other things: (i) authorizes the applicable Chapter 11 Debtors to enter into the DIP Agreement pursuant to the terms and conditions therein; (ii) grants various liens and priority over the Chapter 11 Debtors' property to secure the DIP Facility; (iii) authorizes the Chapter 11 Debtors to use post-petition receipts to repay certain prepetition obligations owing to the Prepetition ABL Lenders; and (iv) authorizing the Chapter 11 Debtors to use certain prepetition collateral on the terms set-out within the DIP Agreement.⁹² In Canada the DIP Facility would be guaranteed by certain of the Canadian Debtors and secured by, among other things, the DIP Charge.⁹³

62. Previous CCAA cases have found that DIP financing which uses receipts from operations post-filing to repay pre-filing amounts (often referred to as a "creeping roll-up") are permitted under the CCAA.⁹⁴

63. Moreover, while a "full rollup" provision cannot be granted in CCAA proceedings due to subsection 11.2(1) of the CCAA, courts have consistently recognized U.S. court orders authorizing

⁹² *Ware Affidavit*, *supra* note 1 at para 103-106, Application Record at Tab 2.

⁹³ *Ware Affidavit*, *supra* note 1 at para 106, Application Record at Tab 2.

⁹⁴ [*BZAM Ltd. Plan of Arrangement*, 2024 ONSC 1645](#) at para 56;

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”.⁹⁵

64. In this case, the Canadian Debtors require the liquidity provided for under the DIP Facility to preserve their ability to operate, and to provide stability during the insolvency proceedings.⁹⁶ Without the DIP Facility, they would not be able to operate in the ordinary course.⁹⁷

65. This Court has established factors relevant to approving a Canadian guarantee of cross-border DIP and the grant of a DIP Charge in *Hollander*.⁹⁸ May of those factors apply here.

- (a) the DIP Facility furthers the objectives of the CCAA and is commercially reasonable because it is essential for the Chapter 11 Debtors to preserve their ability to operate and to provide stability during the insolvency proceedings;
- (b) the DIP Lenders require that the Canadian Debtors guarantee the DIP Facility;
- (c) there are no available financing alternatives;
- (d) the Canadian Debtors are entirely reliant on the U.S. Chapter 11 Debtors;
- (e) the creditors of the Canadian Debtors are not prejudiced as the Canadian Debtors assets are already encumbered under the Prepetition ABL Agreement and provided guarantees thereto;

⁹⁵ See *Xinergy*, *supra* note 71 at paras 19-20; *Hartford Computer Hardware Inc.*, 2012 ONSC 964; *Instant Brands Acquisition Holdings Inc. et al.*, 2023 ONSC 4252 at para 21.

⁹⁶ *Ware Affidavit*, *supra* note 1 at para 102, Application Record at Tab 2.

⁹⁷ *Ware Affidavit*, *supra* note 1 at para 98, Application Record at Tab 2.

⁹⁸ *Hollander*, *supra* note 60 at para 51; See also: *Instant Brands*, *supra* note 95 at para 21; *David’s Bridal, LLC*, Endorsement dated April 18, 2023 [CV-23-00698107-00CL] at para 19.

- (f) all stakeholders will benefit if the Canadian Debtors can successfully complete a post-petition sale process and obtain a going-concern sale transaction, which is only possible with the funding from the DIP Facility.⁹⁹

66. The Foreign Representative submits that for the forgoing reasons, the DIP Charge should be granted and that the relief sought in the Interim DIP Order should be approved.

4. The Directors' Charge should be granted

67. Coach USA is seeking the grant of charge in favour of the Canadian Debtors' directors in the amount of \$3,900,000 on the Canadian property (the "**Directors' Charge**").¹⁰⁰ The Directors' Charge may be reduced to \$450,000 in the event of the 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 and a corresponding reduction in exposure for liabilities for the directors and officers of the Canadian Debtors that were secured under the Directors' Charge, or by such other amount as may be agreed to by the Canadian Debtors and DIP Lenders, in consultation with the Information Officer.¹⁰¹

68. The Canadian Debtors require the continued participation of their directors and officers during these insolvency proceedings.¹⁰² While the Canadian Debtors' directors and officers are beneficiaries under the directors and officers liability insurance, such insurance may not provide

⁹⁹ *Ware Affidavit*, *supra* note 1 at para 43,66,98-100, Application Record at Tab 2.

¹⁰⁰ *Ware Affidavit*, *supra* note 1 at para 111, Application Record at Tab 2.

¹⁰¹ *Ware Affidavit*, *supra* note 1 at para 112, Application Record at Tab 2.

¹⁰² *Ware Affidavit*, *supra* note 1 at para 111, Application Record at Tab 2.

sufficient coverage against the potential liability that could be incurred during these proceedings including liabilities in respect of wages, vacation pay, and termination or severance pay.¹⁰³

69. The amount of the proposed Charge has been estimated in consultation with the proposed Information Officer and with reference to the Canadian Debtors' potential exposure. It is consistent with prior directors' charges granted in similar Part IV recognition proceedings.¹⁰⁴

5. Information Officer should be appointed

70. Although the CCAA does not require that an information officer be appointed, information officers are commonly appointed where they will help facilitate the proceedings and the dissemination of information.¹⁰⁵ Additional considerations include where the information officer will act as a resource to the foreign representative in the performance of its duties; act as an officer to the Court, reporting to the Court on the proceedings, as required by the Court and provide the stakeholders of the debtor with material information on the Chapter 11 proceeding.¹⁰⁶

71. In this case, A&M has consented to act as Information Officer,¹⁰⁷ and will assist with facilitating the proceedings and the dissemination of information, including providing stakeholders with material information.

6. The Administration Charge should be granted

72. The Applicant requests that the Court grant to the proposed Information Officer, its legal counsel and the Chapter 11 Debtors' Canadian counsel an administration charge with respect to

¹⁰³ *Ware Affidavit*, *supra* note 1 at para 110, Application Record at Tab 2.

¹⁰⁴ See: *YRC*, *supra* note 64 at paras 18-20, 39-42;

¹⁰⁵ *Lightsquared*, *supra* note 64 at para 37.

¹⁰⁶ *Xinergy*, *supra* note 71 at para 26.

their fees and disbursements in the maximum amount of \$500,000 (the “**Administration Charge**”).¹⁰⁸

73. In *Canwest Publishing*, the Court provided a non-exhaustive list of factors to be considered in approving an administration charge, including: (a) the size and complexity of the businesses being restructured; (b) the proposed role of the beneficiaries of the charge; (c) whether there is an unwarranted duplication of roles; (d) whether the quantum of the proposed charge appears to be fair and reasonable; (e) the position of the secured creditors likely to be affected by the charge; and (f) the position of the Monitor.¹⁰⁹

74. In this case, the amount of the charge is reasonable in the circumstances having regard to the size and complexity of these proceedings and the roles that will be required, for which there is no unwarranted duplication.¹¹⁰ In addition, the Chapter 11 Debtors’ primary secured creditors, the Prepetition Lenders (and DIP Lenders), have consented.

PART V: RELIEF REQUESTED

75. For the Foregoing reasons the Applicant requests that this Honorable Court grant the Initial Recognition Order and Supplemental Order in the forms attached to the Application Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 13th OF JUNE 2024

Bennett Jones LLP
BENNETT JONES LLP

¹⁰⁸ *Ware Affidavit*, *supra* note 1 at para 109, Application Record at Tab 2.

¹⁰⁹ *Canwest Publishing Inc.*, 2010 ONSC 222 at para 54.

¹¹⁰ *Ware Affidavit*, *supra* note 1 at para 109, Application Record at Tab 2.

SCHEDULE "A"
LIST OF AUTHORITIES

Cases Cited

1. [BZAM Ltd. Plan of Arrangement, 2024 ONSC 1645](#)
2. [Canwest Publishing Inc., 2010 ONSC 222](#)
3. [Diebold Nixdorf, Incorporated, 2023 ONSC 4230](#)
4. [Hartford Computer Hardware Inc., 2012 ONSC 964](#)
5. [Hollander Sleep Products, LLC et al., Re, 2019 ONSC 3238](#)
6. [In the matter of CURO Canada Corp. and LendDirect Corp., 2024 ONSC 1989](#)
7. [Lightsquared LP, 2012 ONSC 2994](#)
8. [Instant Brands Acquisition Holdings Inc. et al., 2023 ONSC 4252](#)
9. [Magna Entertainment Corp., \[2009\] 51 CBR \(5th\) 82 \(Ont. SCJ\)](#)
10. [Massachusetts Elephant & Castle Group Inc., 2011 ONSC 4201](#)
11. [Paladin Labs Canadian Holding Inc., 2022 ONSC 4748](#)
12. [Payless Holdings Inc. LLC, 2017 ONSC 2242](#)
13. [Xinergy Ltd., 2015 ONSC 2692](#)
14. [YRC Freight Canada Company \(Re\), 2023 ONSC 4834](#)

Endorsements and Orders

1. [Curo Holdings Corp, Initial Recognition Order and \(Foreign Main Proceeding\) dated March 26, 2024 \[CV-24-00717178-00CL\]](#)
2. [David's Bridal, LLC, Endorsement dated April 18, 2023 \[CV-23-00698107-00CL\]](#)
3. [Davids Bridal LLC et al, Initial Recognition Order \(Foreign Main Proceeding\) issued April 18, 2023 \[CV-23-00698107-00CL\];](#)
4. [YRC Freight Canada Company, Initial Recognition Order \(Foreign Main Proceeding\) issued August 28 \[CV-23-00704038-00CL\]](#)

SCHEDULE "B"

STATUTES RELIED ON

Companies' Creditors Arrangement Act, R.S.C. 1985, c C-36

Section 11.2

Interim financing

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

Priority — secured creditors

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

Priority — other orders

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

Factors to be considered

- (4) In deciding whether to make an order, the court is to consider, among other things,
- (a) the period during which the company is expected to be subject to proceedings under this Act;
 - (b) how the company's business and financial affairs are to be managed during the proceedings;
 - (c) whether the company's management has the confidence of its major creditors;
 - (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
 - (e) the nature and value of the company's property;
 - (f) whether any creditor would be materially prejudiced as a result of the security or charge; and
 - (g) the monitor's report referred to in paragraph 23(1)(b), if any.

1997, c. 12, s. 1242005, c. 47, s. 1282007, c. 36, s. 652019, c. 29, s. 138

Section 45

45 (1) The following definitions apply in this Part.

foreign court means a judicial or other authority competent to control or supervise a foreign proceeding. (*tribunal étranger*)

foreign main proceeding means a foreign proceeding in a jurisdiction where the debtor company has the centre of its main interests. (*principale*)

foreign non-main proceeding means a foreign proceeding, other than a foreign main proceeding. (*secondaire*)

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

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

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

Centre of debtor company's main interests

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

Section 46

Application for recognition of a foreign proceeding

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

Documents that must accompany application

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

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

Documents may be considered as proof

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

Other evidence

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

Translation

(5) The court may require a translation of any document accompanying the application.

2005, c. 47, s. 131

Section 47

Order recognizing foreign proceeding

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

Nature of foreign proceeding to be specified

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

2005, c. 47, s. 131

Courts of Justice Act, RSO 1990, c C 43

Section 137

Documents public

(1) On payment of the prescribed fee, a person is entitled to see any document filed in a civil proceeding in a court, unless an Act or an order of the court provides otherwise.

Sealing documents

(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

Court lists public

(3) On payment of the prescribed fee, a person is entitled to see any list maintained by a court of civil proceedings commenced or judgments entered.

Copies

(4) On payment of the prescribed fee, a person is entitled to a copy of any document the person is entitled to see.

R.S.O. 1990, c. C.43, s. 137.

Section 48

Order relating to recognition of a foreign main proceeding

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

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken against the debtor company under the [Bankruptcy and Insolvency Act](#) or the [Winding-up and Restructuring Act](#);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the debtor company;

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the debtor company; and

(d) prohibiting the debtor company from selling or otherwise disposing of, outside the ordinary course of its business, any of the debtor company's property in Canada that relates to the business and prohibiting the debtor company from selling or otherwise disposing of any of its other property in Canada.

Scope of order

(2) The order made under subsection (1) must be consistent with any order that may be made under this Act.

When subsection (1) does not apply

(3) Subsection (1) does not apply if any proceedings under this Act have been commenced in respect of the debtor company at the time the order recognizing the foreign proceeding is made.

Application of this and other Acts

(4) Nothing in subsection (1) precludes the debtor company from commencing or continuing proceedings under this Act, the [Bankruptcy and Insolvency Act](#) or the [Winding-up and Restructuring Act](#) in respect of the debtor company.

2005, c. 47, s. 131

Section 52

Cooperation — court

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

Cooperation — other authorities in Canada

(2) If any proceedings under this Act have been commenced in respect of a debtor company and an order recognizing a foreign proceeding is made in respect of the debtor company, every

person who exercises powers or performs duties and functions under the proceedings under this Act shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.

Forms of cooperation

(3) For the purpose of this section, cooperation may be provided by any appropriate means, including

- (a)** the appointment of a person to act at the direction of the court;
- (b)** the communication of information by any means considered appropriate by the court;
- (c)** the coordination of the administration and supervision of the debtor company's assets and affairs;
- (d)** the approval or implementation by courts of agreements concerning the coordination of proceedings; and
- (e)** the coordination of concurrent proceedings regarding the same debtor company.

2005, c. 47, s. 131; 2007, c. 36, s. 80

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

APPLICATION OF COACH USA, INC. UNDER SECTION 46 OF THE *COMPANIES CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36 AMENDED

Court File No.: [●]

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
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