

**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 AS AMENDED**

Applicant

**FACTUM OF THE APPLICANT
(Returnable August 23, 2024)**

August 21, 2024

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TO: THE SERVICE LIST

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PART I: OVERVIEW

1. This factum is filed in support of a motion by Coach USA, Inc. (“**Coach USA**”) in its capacity as the foreign representative (in such capacity the “**Foreign Representative**”) of itself and certain of its affiliates (the “**Chapter 11 Debtors**”), including 3329003 Canada Inc., Megabus Canada Inc., 3376249 Canada Inc., 4216849 Canada Inc., Trentway-Wagar (Properties) Inc., Trentway-Wagar Inc. and Douglas Braund Investments Limited (collectively, the “**Canadian Debtors**”), in respect of proceedings commenced under chapter 11 of the United States Bankruptcy Code (the “**Chapter 11 Cases**”). The Ontario Superior Court of Justice (Commercial List) (the “**Court**”) has previously recognized the Chapter 11 Cases as “Foreign Main Proceedings” within the meaning of Part IV of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “**CCAA**” and the Canadian Debtors’ proceedings thereunder, the “**CCAA Proceedings**”).

2. On this motion, the Foreign Representative seeks an order (the “**Sale Recognition and Vesting Order**”), *inter alia*:

- (a) recognizing and giving full force and effect in Canada to the Sale Order (as defined below), pursuant to which the United States Bankruptcy Court of the District of Delaware (the “**U.S. Court**”), among other things, approved the sale of the Purchased Assets (as defined in the Amended Purchase Agreement) to the Purchaser (as defined below), free and clear of all Liabilities and Encumbrances (other than Assumed Liabilities and Permitted Encumbrances) (each as defined in the Amended Purchase Agreement);
- (b) approving the sale transactions (collectively, the “**Sale Transaction**”) contemplated by the First Amended Asset Purchase Agreement, dated August 13,

2024 (the “**Amended Purchase Agreement**”), by and among certain of the Chapter 11 Debtors (such Chapter 11 Debtors, as identified on Schedule A to the Amended Purchase Agreement, collectively the “**Debtor Sellers**”, which includes the Canadian Debtors), and Bus Company Holdings US, LLC and Newcan Coach Company ULC (“**Newco Canada**”) (including their respective permitted affiliates, subsidiaries, designees, successors and assignees under the Amended Purchase Agreement, collectively, the “**Purchaser**”), and Supplemental Assumed Claims Company, LLC (“**Supplemental Claims Company**”), including the sale by the Debtor Sellers of the Purchased Assets used in connection with the Business (as defined in the Amended Purchase Agreement) carried out in Canada (the “**Canadian Acquired Assets**”) to Newco Canada, and Newco Canada’s assumption of the Assumed Liabilities (other than the Supplemental Assumed Claims which shall be assumed exclusively on a non-recourse basis by the Supplemental Claims Company) (each as defined in the Amended Purchase Agreement) (the “**Canadian Assumed Liabilities**”);

- (c) vesting the Canadian Acquired Assets and Canadian Assumed Liabilities in and to Newco Canada, free and clear of all Liabilities and Encumbrances (other than Permitted Encumbrances (as defined in the Amended Purchase Agreement));
- (d) authorizing the Chapter 11 Debtors to take such steps and execute such additional documents as may be necessary or desirable for the completion of the Sale Transaction; and such further and other relief as counsel may request and this Honourable Court may grant.

PART II: FACTS

3. The facts underlying this motion are more fully set out in the Affidavit of Spencer Ware dated August 19, 2024 (the “**Fourth Ware Affidavit**”), the Affidavit of Spencer Ware dated June 13, 2024 (the “**First Ware Affidavit**”), the Affidavit of Spencer Ware dated July 11, 2024 (the “**Second Ware Affidavit**”) and the Affidavit of Spencer Ware dated July 25, 2024 (the “**Third Ware Affidavit**”, together with the First Ware Affidavit, the Second Ware Affidavit and the Fourth Ware Affidavit, the “**Ware Affidavits**”).¹ All capitalized terms used but not defined herein have the meanings ascribed to them in the Fourth Ware Affidavit or the Amended Purchase Agreement. Unless otherwise indicated, dollar amounts herein are references to United States Dollars.

A. Background and Proceedings

4. The Chapter 11 Debtors, including the Canadian Debtors (collectively referred to as the “**Company**”), are leading providers of ground passenger transportation and mobility solutions in North America. While the Company operates on an integrated basis, the Canadian Debtors comprise a fraction of the Company’s overall size, contributing approximately 9.7% of the Company’s overall revenue as of December 2023 and accounting for 13.2% of the Company’s overall workforce.²

5. On June 11, 2024, the Chapter 11 Debtors commenced the Chapter 11 Cases by filing voluntary petitions for relief under the United States Bankruptcy Code.³

¹ Affidavit of Spencer Ware sworn on June 13, 2024 [*First Ware Affidavit*], Applicant’s Motion Record dated August 19, 2024 at Tab 2A [*Motion Record*]; Affidavit of Spencer Ware sworn on July 11, 2024 [*Second Ware Affidavit*], Motion Record at Tab 2B; Affidavit of Spencer Ware sworn on July 25, 2024 [*Third Ware Affidavit*], Motion Record at Tab 2C; Affidavit of Spencer Ware sworn August 19, 2024 [*Fourth Ware Affidavit*], Motion Record at Tab 2.

² *First Ware Affidavit*, at paras 24 and 43, Motion Record at Tab 2A.

³ *Third Ware Affidavit*, *supra* note 1 at para 7, Motion Record at Tab 2C.

6. Following a hearing on June 13, 2024, in respect of the first day motions filed by the Chapter 11 Debtors, the U.S. Court granted certain First Day Orders, including the Foreign Representative Order, appointing Coach USA as the Foreign Representative.⁴

7. On June 14, 2024 (the “**Initial Hearing Date**”), this Court granted an order (the “**Initial Recognition Order**”), which *inter alia*:

- (a) recognized the Chapter 11 Cases as “foreign main proceedings”;
- (b) recognized Coach USA as the Foreign Representative; and
- (c) granted related stays of proceedings in favour of the Canadian Debtors.⁵

8. On the Initial Hearing Date, this Court also granted an order (the “**First Supplemental Order**”), *inter alia*:

- (a) appointing Alvarez & Marsal Canada Inc., as the information officer (in such capacity, the “**Information Officer**”) in respect of the CCAA Proceedings;
- (b) granting the following charges over the Canadian Property (as defined therein):
 - (i) First – a charge in favour of the Information Officer along with its counsel, and the Chapter 11 Debtors’ Canadian counsel with respect to their fees and disbursements in the maximum amount of \$500,000;

⁴ *Ibid.*, at para 8-9, Motion Record at Tab 2C.

⁵ *Ibid.*, at para 9, Motion Record at Tab 2C.

- (ii) Second – a charge in favour of the Canadian Directors and Officers not to exceed the maximum amount of \$3,900,000 (subject to further reduction in accordance with the terms of the First Supplemental Order); and
- (iii) Third – a charge in favour of the DIP Secured Parties (as defined therein) consistent with those liens, charges and priorities created by or set forth by the Interim DIP Order.⁶

9. On July 9, 2024, the Chapter 11 Debtors attended another hearing of the U.S. Court, pursuant to which the Chapter 11 Debtors sought and were granted certain final first day orders (the “**Final First Day Orders**”) and certain further orders (the “**Second Day Orders**”).⁷

10. In addition to the aforementioned relief, on July 9, 2024, the Chapter 11 Debtors originally intended to seek approval for the Final DIP Order and a single order containing the relief sought in the Bidding Procedures Order, as well as additional relief related to the Sale Transaction (the “**NewCo Bidding Procedures Order**”, and together with the Bidding Procedures Order, the “**Original Bidding Procedures Order**”).⁸ However, as a result of certain Objections (as defined and described in more detail below) the Original Bidding Procedures Order was bifurcated into two orders: (i) the Bidding Procedures Order; and (ii) the NewCo Bidding Procedures Order. Approval was only sought for the more general relief contained in the Bidding Procedures Order, with relief specific to the Amended Purchase Agreement to be sought at a later date in the NewCo Bidding Procedures Order.

⁶ *Second Ware Affidavit*, *supra* note 1 at para 12, Motion Record at Tab 2B.

⁷ *Third Ware Affidavit*, *supra* note 1 at para 11, Motion Record at Tab 2C.

⁸ *Ibid*, at para 12, Motion Record at Tab 2C.

11. On July 16, 2024, the Chapter 11 Debtors attended a hearing (the “**The Final DIP and NewCo Bidding Procedures Hearing**”) with the U.S. Court at which the Chapter 11 Debtors sought approval of the Final DIP Order and the NewCo Bidding Procedures Order. The Final DIP and NewCo Bidding Procedures Hearing was adjourned first to July 17, 2024, and then to July 19, 2024, owing to certain objections (the “**Objections**”) tendered by the Official Committee of Unsecured Creditors.⁹

12. The Objections were ultimately resolved at the July 19, 2024, hearing and the NewCo Bidding Procedures Order and Final DIP Order were entered by the U.S. Court.¹⁰

13. By order dated July 18, 2024, certain of the Final First Day Orders and Second Day Orders were recognized in Canada.¹¹

14. On July 29, 2024, by order, this Court recognized the Bidding Procedures Order, the NewCo Bidding Procedures Order and the Final DIP Order.

15. On August 14, 2024, the U.S. Court approved the Sale Transaction and Amended Purchase Agreement pursuant to the Order *(A) Approving the Sale of Certain of the Debtors’ Assets Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto, and (C) Granting Related Relief* (the “**Sale Order**”).¹²

⁹ *Ibid*, at para 14, Motion Record at Tab 2C.

¹⁰ *Ibid*, at para 15, Motion Record at Tab 2C.

¹¹ *Ibid*, at para 13, Motion Record at Tab 2C.

¹² *Fourth Ware Affidavit*, *supra* note 1 at para 28, Motion Record at Tab 2.

16. It is a requirement under the Amended Purchase Agreement that the Foreign Representative obtain an order of the Canadian Court, among other things, recognizing the Sale Order.¹³

PART III: ISSUES

17. The sole issue on this motion is whether this Court should grant the Sale Recognition and Vesting Order.

18. The Foreign Representative submits that such relief is necessary and appropriate in the circumstances and furthers the goals of the Chapter 11 Cases and CCAA Proceedings, for the reasons set out below.

PART IV: LAW AND ANALYSIS

A. The Court Has Jurisdiction to Grant the Fourth Supplemental Order

19. This Court has already recognized the Chapter 11 Cases as a “foreign main proceeding” pursuant to section 47 of the CCAA and the Initial Recognition Order.¹⁴ Section 49 of the CCAA provides that if an order recognizing a foreign proceeding is made, a court may, on application by the foreign representative “make any order that it considers appropriate.”¹⁵ Furthermore, section 52(1) of the CCAA provides that a Court must “cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.”¹⁶

¹³ *Ibid*, at para 30, Motion Record at Tab 2.

¹⁴ [Companies' Creditors Arrangement Act](#), RSC 1985, c. C-36, at s.47 [CCAA].

¹⁵ [CCAA](#) at s 49(1).

¹⁶ [CCAA](#) at s 52(1).

20. The central guiding principle of Part IV of the CCAA is comity, with Canadian courts emphasizing the importance of comity and cooperation in cross-border insolvency proceedings.¹⁷

Comity mandates that Canadian courts should recognize and enforce the judicial acts of other jurisdictions, provided that those other jurisdictions have assumed jurisdiction on a basis consistent with the principles of order, predictability and fairness.¹⁸

21. Typically, a Canadian court will only refuse to recognize an order granted in the primary jurisdiction of a cross-border insolvency proceeding where such order is contrary to Canadian public policy.¹⁹ Courts have previously held that this exception to recognition should be interpreted narrowly.²⁰

22. Here, the narrow public policy exception is not engaged, as recognizing the Sale Order aligns with Canadian legal principles and public interests. The order should be approved, as it supports the spirit of comity and cooperation which are integral to Part IV of the CCAA.

B. The Recognition and Vesting Order Meets the Standard for Sale Approval

23. The Recognition and Vesting Order gives effect to the Sale Order granted by the U.S. Court and approves the Amended Purchase Agreement, including vesting the Canadian Acquired Assets and the Canadian Assumed Liabilities in and to Newco Canada, free and clear of all Claims and Encumbrances (other than Permitted Encumbrances).

¹⁷ *Hollander Sleep Products, LLC et al., Re*, 2019 ONSC 3238 at para 41; *In The Matter of CURO Canada Corp. and LendDirect Corp.*, 2024 ONSC 1989 at para 15; *In The Matter of Voyager Digital Ltd.*, 2022 ONSC 4553 at para 9 [*Voyager Digital Ltd.*].

¹⁸ *Voyager Digital Ltd.*, *ibid* at para 9.

¹⁹ CCAA, *supra* note 14 at s 61(2).

²⁰ *YRC Freight Canada Company (Re)*, 2023 ONSC 5513 at para 12; *Hartford Computer Hardware, Inc. (Re)*, 2012 ONSC 964 at paras 17-18.

24. As mentioned previously, it is a condition of the Amended Purchase Agreement that the Chapter 11 Debtors obtain an order recognizing the Sale Order in Canada, and thus the Sale Recognition and Vesting Order is necessary to give full effect to the Sale Transaction.

25. When considering whether to recognize a sale approval order granted by a foreign court in a Part IV proceeding, the Court must determine whether the order meets the requirements of section 49(1), and in doing so, may consider the factors set out in subsection 36(3) of the CCAA, as well as the factors established in *Royal Bank v. Soundair Corp.*, (collectively, the “***Soundair* factors**”).

26. Section 49(1) of the CCAA empowers this Court to make any order it considers appropriate in a Part IV proceeding, if the order is “necessary for the protection of the debtor company’s property or the interests of a creditor or creditors.”²¹ The subsection 36(3) factors are as follow:

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the monitor approved the process leading to the proposed sale or disposition;
- (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which the creditors were consulted;

²¹ [CCAA](#) at s 49(1).

- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.²²

27. These factors overlap to a certain degree with the *Soundair* factors that governed sale transactions under pre-amendment CCAA case law. The *Soundair* factors were considered in *Re Digital Domain Media Group Inc*, a Part IV case that recognized a sale order granted in a U.S. foreign main proceeding.²³ The *Soundair* test considers: (a) whether sufficient efforts were made to obtain the best price and that the debtor had not acted improvidently; (b) whether the interests of all parties were considered; (c) the integrity and efficacy of the process; and (d) whether there was any unfairness in working out the process.

28. The Foreign Representative respectfully submits that, taking into account the *Soundair* test, the relevant factors in subsection 36(3) of the CCAA, and the requirement to protect the interests of creditors pursuant to section 49(1) of the CCAA, the Sale Transaction satisfies the standard for a sale approval in a foreign main proceeding under Part IV of the CCAA. Specifically:

- (a) The Sale Process was reasonable and efficient: assessing the reasonableness of a sale process does not require the court to examine in minute detail all of the circumstances leading up to the acceptance of a particular offer. The court must be satisfied overall that the debtor has not acted improvidently.²⁴ The U.S. Court found, the Chapter 11 Debtors and Houlihan Lokey undertook extensive marketing

²² CCAA at s 36(3).

²³ *Digital Domain Media Group Inc., Re*, 2012 BCSC 1567 at para 15 [*Digital Domain Media Group Inc*].

²⁴ *Royal Bank v Soundair Corp.*, 1991 CanLII 2727 (ONCA) at paras 48-49; *Terrace Bay Pulp, Re*, 2012 ONSC 4247 at paras 45 and 51-52.

efforts and explored every avenue to maximize the value of the Chapter 11 Debtors' estate (the "**Sale Process**"), pursuant to a robust and extensive sale process approved by the U.S. Court and this Court.²⁵ The U.S. Court also concluded that the Chapter 11 Debtors have acted in good faith in exercising their business judgment to maximize the value of the Purchased Assets through the Sale Process and have not acted improvidently.²⁶

- (b) The interests of all parties were considered: the Sale Transaction, including the vesting of the Canadian Acquired Assets in and to Newco Canada, is in the best interest of the Chapter 11 Debtors, their estates, creditors, and other stakeholders. The Sale Transaction will preserve approximately 1,800 union and non-union jobs associated with the Debtor Sellers, including substantially all of the employees of the Canadian Debtors.²⁷ The Sale Transaction is the only opportunity to: (a) preserve the operations of the Canadian Debtors and their employees; and (b) maximize the value of the Canadian Acquired Assets. The Sale Transaction is the only opportunity available to the Company to preserve its Canadian operations, avoiding the social and economic costs of a liquidation and providing continued income to employees and suppliers.
- (c) The Consideration is fair and reasonable: the U.S. Court concluded that the Sale Process conducted by the Chapter 11 Debtors pursuant to the Bidding Procedures Order and the Bidding Procedures resulted in the highest and otherwise best offer for the Purchased Assets for the Debtor Sellers and their estates, was in the best

²⁵ *Fourth Ware Affidavit*, *supra* note 1 at paras 20-26, Motion Record at Tab 2.

²⁶ *Ibid*, at para 29, Motion Record at Tab 2.

²⁷ *Ibid*, at para 32, Motion Record at Tab 2.

interests of the Debtor Sellers, their creditors, and all parties in interest, and any other transaction would not have yielded as favorable a result.²⁸ The Debtor Sellers' determination that the Amended Purchase Agreement constitutes the highest and otherwise best offer for the Purchased Assets and maximizes value for the benefit of their estates, constitute a valid and sound exercise of their business judgment and are in accordance with and in compliance with the Bidding Procedures and the Bidding Procedures Order. The Amended Purchase Agreement represents fair and reasonable terms for the purchase of the Purchased Assets.²⁹

- (d) No other person or entity offered to purchase the Purchased Assets for greater overall value than the Purchaser. Approval of the Sale Transaction and the consummation of the transactions contemplated are in the best interests of the Debtor Sellers, their estates, their creditors, and all other parties in interest.³⁰

29. Thus, the Sale Transaction “benefits all of the Chapter 11 Debtors’ stakeholders” and its implementation will maximize the value of the Chapter 11 Debtors’ estates for the benefit of all parties in interest.³¹ Moreover, CCAA courts in Part IV proceedings have held that these factors justify recognition of a transaction or plan previously approved by a U.S. Court order.³²

30. The Sale Transaction, and in particular the sale of the Canadian Acquired Assets, meets the standard for sale approval under Part IV of the CCAA. Canadian courts have recognized sale

²⁸ *Ibid*, at para 29(e), Motion Record at Tab 2.

²⁹ *Ibid*, at para 29(f), Motion Record at Tab 2.

³⁰ *Ibid*, at para 29(G), Motion Record at Tab 2.

³¹ [*Re Xerium Technologies Inc.*, 2010 ONSC 3974](#) at para 20.

³² *Ibid* at para 23.

orders granted within Chapter 11 proceedings, particularly where those proceedings have been found to be foreign main proceedings.³³

31. The Information Officer is supportive of the relief requested in respect of the Sale Order.³⁴

PART V: RELIEF REQUESTED

32. For the foregoing reasons the Foreign Representative requests that this Honorable Court grant the Sale Recognition and Vesting Order in the form attached to the motion record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 21st DAY OF AUGUST, 2024

Bennett Jones LLP

BENNETT JONES LLP

³³ *Digital Domain Media Group Inc.* *supra* note 23 at para 15; *In the Matter of Hartford Computer Hardware Inc.*, (March 9, 2012), Ont. S.C.J. [Commercial List], Court File No. CV-11-9514-00CL (Approval and Vesting Order of Morawetz J.); *In the Matter of Massachusetts Elephant & Castle Group, Inc.*, (January 30, 2012), Ont. S.C.J. [Commercial List], Court File No. CV-11-9279-00CL (Confirmation, Approval and Vesting Order of Morawetz J.).

³⁴ *Fourth Ware Affidavit*, *supra* note 1 at para 29, Motion Record at Tab 2.

SCHEDULE "A"
LIST OF AUTHORITIES

Cases Cited

1. [*Digital Domain Media Group Inc., Re*, 2012 BCSC 1567.](#)
2. [*Hartford Computer Hardware, Inc. \(Re\)*, 2012 ONSC 964.](#)
3. [*Hollander Sleep Products, LLC et al., Re*, 2019 ONSC 3238.](#)
4. [*In The Matter of CURO Canada Corp. and LendDirect Corp.*, 2024 ONSC 1989.](#)
5. [*In The Matter of Voyager Digital Ltd.*, 2022 ONSC 4553.](#)
6. [*Re Xerium Technologies Inc.*, 2010 ONSC 3974.](#)
7. [*Royal Bank v Soundair Corp*, 1991 CanLII 2727 \(ONCA\).](#)
8. [*Terrace Bay Pulp, Re*, 2012 ONSC 4247.](#)
9. [*YRC Freight Canada Company \(Re\)*, 2023 ONSC 5513.](#)

Orders

10. [*In the Matter of Hartford Computer Hardware Inc.*, \(March 9, 2012\), Ont. S.C.J. \[Commercial List\], Court File No. CV-11-9514-00CL \(Approval and Vesting Order of Morawetz J\).](#)
11. [*In the Matter of Massachusetts Elephant & Castle Group, Inc.*, \(January 30, 2012\), Ont. S.C.J. \[Commercial List\], Court File No. CV-11-9279-00CL \(Confirmation, Approval and Vesting Order of Morawetz J\).](#)

SCHEDULE "B"
STATUTES RELIED ON

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

Section 36

Restriction on disposition of business assets

(1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to creditors

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

- (3) In deciding whether to grant the authorization, the court is to consider, among other things,
- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
 - (b) whether the monitor approved the process leading to the proposed sale or disposition;
 - (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
 - (d) the extent to which the creditors were consulted;
 - (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
 - (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Additional factors — related persons

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

- (a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and

- (b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

Related persons

- (5) For the purpose of subsection (4), a person who is related to the company includes
 - (a) a director or officer of the company;
 - (b) a person who has or has had, directly or indirectly, control in fact of the company; and
 - (c) a person who is related to a person described in paragraph (a) or (b).

Assets may be disposed of free and clear

- (6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

Restriction — employers

- (7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(5)(a) and (6)(a) if the court had sanctioned the compromise or arrangement.

Restriction — intellectual property

- (8) If, on the day on which an order is made under this Act in respect of the company, the company is a party to an agreement that grants to another party a right to use intellectual property that is included in a sale or disposition authorized under subsection (6), that sale or disposition does not affect that other party's right to use the intellectual property — including the other party's right to enforce an exclusive use — during the term of the agreement, including any period for which the other party extends the agreement as of right, as long as the other party continues to perform its obligations under the agreement in relation to the use of the intellectual property.

2005, c. 47, s. 1312007, c. 36, s. 782017, c. 26, s. 142018, c. 27, s. 269

Section 47

Order recognizing foreign proceeding

- (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

Section 49

Other orders

(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.

Restriction

(2) If any proceedings under this Act have been commenced in respect of the debtor company at the time an order recognizing the foreign proceeding is made, an order made under subsection (1) must be consistent with any order that may be made in any proceedings under this Act.

Application of this and other Acts

(3) The making of an order under paragraph (1)(a) does not preclude the commencement or the continuation of 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

(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. 1312007, c. 36, s. 80

Section 61

Court not prevented from applying certain rules

(1) Nothing in this Part prevents the court, on the application of a foreign representative or any other interested person, from applying any legal or equitable rules governing the recognition of foreign insolvency orders and assistance to foreign representatives that are not inconsistent with the provisions of this Act.

Public policy exception

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

2005, c. 47, s. 1312007, c. 36, s. 81

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 AS AMENDED

Court File No.: CV-24-00722168-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceedings commenced in Toronto

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