

**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 CURO CANADA CORP. AND
LENDIRECT CORP.

APPLICATION OF CURO GROUP HOLDINGS CORP. UNDER
SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT
ACT*, R.S.C. 1985, c. C-36, AS AMENDED

**FACTUM OF THE APPLICANT
(Application for Recognition of Foreign Main Proceeding)**

March 25, 2024

CASSELS BROCK & BLACKWELL LLP
Suite 3200, Bay Adelaide Centre - North
Tower
40 Temperance Street
Toronto, ON M5H 0B4

Ryan Jacobs LSO#: 59510J
Tel: 416.860.6465
riacobs@cassels.com

Jane Dietrich LSO #: 49302U
Tel: 416.860.5223
jdietrich@cassels.com

Natalie Levine LSO #: 64908K
Tel: 416.860.6568
nlevine@cassels.com

Alec Hoy LSO#: 85489K
Tel: 416.860.2976
ahoy@cassels.com

Lawyers for the Proposed Foreign
Representative

TO: SERVICE LIST

TABLE OF CONTENTS

PART I – NATURE OF THE APPLICATION	1
PART II – FACTS	3
A. The Chapter 11 Cases	3
B. The Company’s Business	3
C. Events Precipitating the Chapter 11 Cases	5
(a) Prepetition Capital Structure	5
(b) Financial Difficulties	6
(c) The Forbearance Agreements and Waivers	7
(d) Restructuring Support Agreement	7
D. The Canadian Debtors	8
E. Integration of Canadian Operations with U.S.	9
PART III – THE ISSUES	11
PART IV – THE LAW.....	12
A. The Interim Stay Order Should Be Granted.....	12
B. The Chapter 11 Cases are Foreign Main Proceedings.....	14
(a) The CCAA Provisions Regarding Recognition Have Been Satisfied.....	14
(b) The Canadian Debtors’ Chapter 11 Cases are Foreign Main Proceedings.	15
C. The Initial Recognition Order and Supplemental Order Should be Granted.....	17
(a) Stay of Proceedings in the Initial Recognition Order is Required and Appropriate	18
(b) The Supplemental Order is Appropriate in the Circumstances	18
PART V – RELIEF REQUESTED	25
 <u>SCHEDULES</u>	
SCHEDULE A LIST OF AUTHORITIES	26
SCHEDULE B TEXT OF STATUTES, REGULATIONS & BY-LAWS.....	28

PART I – NATURE OF THE APPLICATION

1. This factum is filed in support of an application under Part IV of the *Companies' Creditors Arrangement Act* (the "**CCAA**") and section 106 of the *Courts of Justice Act*, R.S.O. 1990, c C.43, by CURO Group Holdings Corp. ("**CURO Parent**") as the proposed foreign representative (in such capacity, the "**Proposed Foreign Rep**") of itself, CURO Canada Corp. ("**CURO Canada**") and LendDirect Corp. ("**LendDirect**" and together with CURO Canada, the "**Canadian Debtors**"). On March 25, 2024, CURO Parent, the Canadian Debtors, and certain other affiliates (the "**Debtors**") filed voluntary petitions for relief pursuant to chapter 11 of title 11 of the United States Code (the "**U.S. Bankruptcy Code**") with the United States Bankruptcy Court for the Southern District of Texas (the "**U.S. Bankruptcy Court**") to commence insolvency proceedings (the "**Chapter 11 Cases**").¹

2. The Debtors are part of a group of companies (together with their non-Debtor affiliates, the "**Company**") that offer a broad range of direct-to-consumer finance products to customers in the United States (the "**U.S.**") and Canada.² In Canada, the consumer loan services, ancillary insurance and other financial products are offered through the "CashMoney" brand at retail stores and online and the "LendDirect" brand online.³

3. The application by the Proposed Foreign Rep seeks Orders pursuant to sections 46 to 49 of the CCAA for, among other things:

- (a) an interim order (the "**Interim Stay Order**") staying proceedings against the Canadian Debtors, pending the determination of the relief set out below;
- (b) an order (the "**Initial Recognition Order**"): (i) recognizing CURO Parent as the foreign representative in respect of the Chapter 11 Cases; (ii) finding that the

¹ Affidavit of Douglas D. Clark sworn March 25, 2024 at para 2 [*Clark Affidavit*].

² Clark Affidavit at paras 8 & 19.

³ Clark Affidavit at paras 19 & 24.

centre of main interests for the Canadian Debtors is the U.S.; and (iii) recognizing the Canadian Debtors' Chapter 11 Cases as foreign main proceedings; and

- (c) an order (the "**Supplemental Order**"): (i) recognizing certain orders of the U.S. Bankruptcy Court, if granted (the "**First Day Orders**"); (ii) granting a stay of proceedings in respect of the Canadian Debtors and their directors and officers; (iii) appointing FTI Consulting Canada Inc. ("**FTI**") as information officer (the "**Information Officer**"); and (iv) granting the Administration Charge, the D&O Charge and the Securitization Charges (each as defined below).

4. CURO Parent will be seeking the above relief in stages. Although the Canadian Debtors have filed petitions with the U.S. Bankruptcy Court commencing their Chapter 11 Cases, and thereby obtained an automatic stay in the U.S., certain of the First Day Orders (including the order appointing the foreign representative (the "**Foreign Rep Order**")) are not scheduled to be heard by the U.S. Bankruptcy Court until the "first day" hearing (anticipated to be late in the day on March 25, 2024).⁴ To protect the assets and business of the Canadian Debtors in Canada during this intervening period, the Proposed Foreign Rep seeks the Interim Stay Order.⁵ If the First Day Orders are formally issued by the U.S. Bankruptcy Court, the Proposed Foreign Rep intends to return to the Court to seek the Initial Recognition Order and the Supplemental Order.⁶

5. In the Chapter 11 Cases, the Debtors are seeking the approval and implementation of a prepackaged plan (the "**Plan**"), filed contemporaneously with the petitions, to effect a balance sheet restructuring at the Company's parent level. The Debtors commenced soliciting support for the Plan prior to filing the petitions and expect to obtain the votes necessary for confirmation of the Plan.⁷ These Canadian recognition proceedings (the "**Canadian Recognition Proceedings**")

⁴ Clark Affidavit at para 4.

⁵ Clark Affidavit at paras 5-7 & 70-71.

⁶ Clark Affidavit at paras 7 & 70.

⁷ Clark Affidavit at paras 3, 12 & 65.

and together with the Chapter 11 Cases, the “**Restructuring Proceedings**”) are necessary to implement a stay of proceedings in Canada during the Chapter 11 Cases, enable the Canadian Debtors to operate in the ordinary course, and protect against the enforcement of cross-default provisions in the Company’s contracts during the restructuring.⁸ The Plan does not propose to impair any of the general unsecured creditors of the Canadian Debtors.⁹

PART II – FACTS

A. The Chapter 11 Cases

6. On March 25, 2024 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief pursuant to the U.S. Bankruptcy Code with the U.S. Bankruptcy Court.¹⁰ At the same time, the Debtors filed pleadings in the Chapter 11 Cases to seek, among other things, relief necessary to operate their businesses in the ordinary course and the Foreign Rep Order.¹¹ There are no foreign insolvency proceedings involving the Canadian Debtors other than the Chapter 11 Cases.¹²

7. The Proposed Foreign Rep believes that the recognition in Canada of the Chapter 11 Cases of the Canadian Debtors and the additional relief sought from this Court is necessary to protect the Canadian Debtors’ assets and business and will support the Chapter 11 Cases.¹³

B. The Company’s Business

8. For approximately 25 years, the Company has provided customers in the U.S. and Canada with a broad range of direct-to-consumer finance products focusing on installment loans, revolving line-of-credit loans, single-pay loans and insurance products, and other financial

⁸ Clark Affidavit at paras 4, 23, 67 & 71.

⁹ Clark Affidavit at paras 12 & 73.

¹⁰ Clark Affidavit at para 2.

¹¹ Clark Affidavit at paras 4 & 87.

¹² Clark Affidavit at para 15.

¹³ Clark Affidavit at paras 13, 71 & 89.

products such as optional credit protection, cheque cashing, money transfer services, car club, and other related memberships (the “**Consumer Lending Services**”).¹⁴

9. The provision of the Consumer Lending Services is subject to licensing requirements and regulations under certain federal and state legislation in the U.S. and federal, provincial and municipal regulations in Canada. The Canadian Debtors collectively hold over 300 licenses to provide the Consumer Lending Services in the applicable Canadian jurisdictions.¹⁵

10. In the U.S., the Company operates under several principal brands, including “Heights Finance,” “Southern Finance,” “Covington Credit,” “Quick Credit,” and “First Heritage Credit.” In Canada, it operates under the “CashMoney” and “LendDirect”.¹⁶

11. The Canadian Debtors’ operations account for approximately 150 of the Company’s 550 store locations and approximately 1,075 of the Company’s 2,856 employees.¹⁷ In Canada, the Consumer Lending Services are provided by CURO Canada through the CashMoney branch locations and online, and under the LendDirect brand through a series of online platforms maintained by LendDirect.¹⁸

12. The Debtors are headquartered in the United States, with offices in Chicago, IL, Greenville, SC and Wichita, KS.¹⁹ The Canadian Debtors do not have a Canadian corporate office; they rely on the Company’s U.S. operations for substantially all of their administrative, back office and strategic functions.²⁰ Executive and strategic-level decision making occurs in the U.S. and the Canadian Debtors’ operations are integrated with the larger scale Company operations.²¹

¹⁴ Clark Affidavit at paras 18-19.

¹⁵ Clark Affidavit at para 20.

¹⁶ Clark Affidavit at para 24.

¹⁷ Clark Affidavit at paras 29 & 31.

¹⁸ Clark Affidavit at para 25.

¹⁹ Clark Affidavit at para 30.

²⁰ Clark Affidavit at para 30.

²¹ Clark Affidavit at paras 9, & 57.

C. Events Precipitating the Chapter 11 Cases

(a) Prepetition Capital Structure

13. As set out in the Affidavit of Douglas D. Clark sworn March 25, 2024 (the “**Clark Affidavit**”) and the Declaration dated March 25, 2024 filed in the Chapter 11 Cases (the “**First Day Declaration**”), as of the Petition Date, the Company’s capital structure includes approximately US\$2.1 billion of funded debt obligations, as summarized below:²²

<i>(\$ in millions)</i> ²³	Capacity	Interest Rate	Maturity	Balance (in USD)
<u>Debtors’ Corporate Debt:</u>				
1L Secured Term Loan	N/A	18.0% Fixed	Aug 2027	\$ 178
1.5L Secured Notes	N/A	7.5% Fixed	Aug 2028	\$ 682
2L Secured Notes	N/A	7.5% Fixed	Aug 2028	\$ 318
			Subtotal:	\$ 1,178
<u>Non-Debtor SPV Funding Debt:</u>				
Heights SPV	\$375	1-Mo SOFR + 5.70%	July 2025	\$301
Heights SPV II	\$140	1-Mo SOFR + 8.50%	Nov 2026	\$136
First Heritage SPV	\$200	1-Mo SOFR + 4.40%	July 2025	\$155
Canada SPV	C\$400	3-Mo CDOR + 6%	Aug 2026	\$252
Canada SPV II	C\$150	3-Mo CDOR + 8%	Nov 2025	\$80
			Subtotal:	\$924
			Total:	\$2,102

14. The “Corporate Debt” consists of amounts that certain of the Debtors have borrowed in connection with funding and operational expenses (the “**Corporate Debt**”).²⁴ The Canadian Debtors are not obligors under the Corporate Debt, but there are cross-default provisions between the Securitization Facilities (as defined below) and the Corporate Debt.²⁵

²² Clark Affidavit at para 37.

²³ Capitalized terms used herein but not otherwise defined have the meaning ascribed to them in the First Day Declaration.

²⁴ Clark Affidavit at paras 38-39.

²⁵ Clark Affidavit at para 38.

15. The “SPV Funding Debt” is made up of five credit facilities pursuant to which loans receivable originated by the Debtors are sold to special purpose vehicles to collateralize debt incurred under such facilities (the “**Securitization Facilities**”).²⁶ The borrowers under the Securitization Facilities are non-Debtor bankruptcy remote special purpose vehicles (the “**SPVs**”).²⁷ The cash generated from the Securitization Facilities provide liquidity for the Company’s day-to-day operations.²⁸ Two of the Securitization Facilities are used in the Canadian Debtors’ operations (the “**Canada SPV Facility**” and the “**Canada SPV II Facility**”, and together, the “**Canadian Securitization Facilities**”).²⁹ CURO Parent has granted a limited guarantee of both Canadian Securitization Facilities; the Canadian Debtors have also delivered a limited guarantee in connection with the Canada SPV II Facility.³⁰

(b) Financial Difficulties

16. In the two years leading up to the Petition Date, the Company took significant steps aimed at (i) shifting its business model in the U.S. to focus on longer term, higher balance and lower interest rate credit products, (ii) optimizing its business operations, and (iii) strengthening the Company’s liquidity.³¹ The Company attempted to strengthen its liquidity through two debt transactions and extend its operating liquidity by refinancing the Securitization Facilities.³²

17. While some of the Company’s efforts were successful, it became apparent in January 2024 that, as a result of the Company’s leverage, it needed to undergo a comprehensive restructuring to facilitate the refinancing of the Securitization Facilities.³³ Following the Company’s decision not to make certain interest payments on the Corporate Debt, the Company focused its

²⁶ Clark Affidavit at para 40.

²⁷ Clark Affidavit at paras 40.

²⁸ Clark Affidavit at para 41.

²⁹ Clark Affidavit at para 42.

³⁰ Clark Affidavit at para 42.

³¹ Clark Affidavit at paras 10 & 60.

³² Clark Affidavit at paras 11 & 60.

³³ Clark Affidavit at para 61.

efforts on engaging with its stakeholders toward a comprehensive financial restructuring.³⁴ The Company determined that an in-court balance sheet restructuring was necessary.³⁵

(c) The Forbearance Agreements and Waivers

18. Given that, as of February 1, 2024, the Company was operating within the grace period under the various debt facilities, the discussions with the lenders proceeded swiftly. Throughout February, the Debtors' engaged in negotiations with various stakeholders, including certain holders of the Corporate Debt, and lenders under the Securitization Facilities to negotiate terms of waivers of certain cross-defaults and amendments to the Securitization Facilities necessary to maintain going concern value. The Debtors and their lenders entered into a series of waivers of default and forbearance agreements. The agreements were extended through March 25, 2024 to give the parties additional time to finalize the restructuring negotiations.³⁶

(d) Restructuring Support Agreement

19. As a result of these good-faith negotiations, on March 22, 2024, the Debtors entered into the Restructuring Support Agreement (the "**RSA**") with (a) holders of in excess of 82% of the Prepetition 1L Term Loans, (b) holders of in excess of 84% of the Prepetition 1.5L Notes and (c) holders of in excess of 74% of the Prepetition 2L Notes (each as defined in the Clark Affidavit). The RSA contemplates a balance sheet restructuring effected with the reinstatement of certain obligations and an equitization transaction through confirmation of the Plan.³⁷

20. The RSA is subject to the following milestones in the Chapter 11 Cases.³⁸

³⁴ Clark Affidavit at paras 11 & 61.

³⁵ Clark Affidavit at para 62.

³⁶ Clark Affidavit at para 64.

³⁷ Clark Affidavit at para 65.

³⁸ Clark Affidavit at para 66.

Milestone	Deadline
Debtors to cause solicitation of votes on the Plan	March 25, 2024
Petition Date	March 25, 2024
Filing of the Plan and Disclosure Statement	Petition Date +1 business day
U.S. Bankruptcy Court's entry of (i) Interim DIP Order and (ii) interim order approving the Securitization Facilities	Petition Date +3 business days
U.S. Bankruptcy Court's entry of (i) Final DIP Order and (ii) U.S. Bankruptcy Court's entry of final order approving the Securitization Facilities	Petition Date +45 calendar days
U.S. Bankruptcy Court's entry of order confirming the Plan and approving the Disclosure Statement	Petition Date +50 calendar days
Occurrence of the Effective Date under the Plan	Petition Date +120 calendar days

21. The lenders to the Canadian SPVs (the "**Canadian SPV Lenders**") are supportive of the Plan and have agreed to work with the Company. At this time, the Canadian Recognition Proceedings are intended to facilitate a stay and prevent harm to the ongoing business while the Debtors effectuate a balance sheet restructuring through the Chapter 11 Cases.³⁹

D. The Canadian Debtors

22. CURO Canada is a corporation amalgamated under the OBCA. Its registered office is in Brampton, Ontario. CURO Canada is extra-provincially registered in British Columbia, Manitoba, Saskatchewan, Alberta, Nova Scotia, New Brunswick and Newfoundland and Labrador. CURO Canada is a wholly-owned indirect subsidiary of CURO Parent.⁴⁰

23. LendDirect is an Alberta corporation formed by incorporation on September 5, 2015. Its registered office is a law firm in Edmonton, Alberta. LendDirect is also extra-provincially registered in Ontario, British Columbia, Saskatchewan, Manitoba, Nova Scotia, New Brunswick,

³⁹ Clark Affidavit at para 67.

⁴⁰ Clark Affidavit at para 22.

Newfoundland and Labrador, Prince Edward Island and the Northwest Territories. LendDirect is a wholly-owned indirect subsidiary of CURO Parent.⁴¹

E. Integration of Canadian Operations with U.S.

24. The Canadian Debtors are administratively reliant on the U.S. Debtors. The Canadian Debtors have a limited number of back-office employees, all of whom are subject to the oversight of the management team and directing minds located in the U.S.⁴² The Canadian Debtors depend upon the Company's management team in the U.S. to fulfil all key management functions for the Canadian operations including administrative, tax, accounting, cash management, finance, treasury, legal, human resources and other executive-level functions. These services are provided by other Debtors pursuant to intercompany agreements and practices.⁴³

25. The Canadian Debtors have a director of compliance who serves as the resident director and officer in Canada for each of the Canadian Debtors. The other director and officer is located in the U.S.⁴⁴

26. Other factors demonstrating the integration of the Canadian Debtors in the Debtors' operations include:

- (a) the Company's senior leadership in the U.S. exercises primary strategic management and control of the Company, including the Canadian Debtors;⁴⁵
- (b) the Canadian Debtors rely on the proprietary software owned by Curo Management LLC, a U.S.-based Debtor, to conduct their business;⁴⁶

⁴¹ Clark Affidavit at para 23.

⁴² Clark Affidavit at paras 30 & 57.

⁴³ Clark Affidavit at paras 45-46 & 57.

⁴⁴ Clark Affidavit at para 57.

⁴⁵ Clark Affidavit at paras 30 & 57.

⁴⁶ Clark Affidavit at paras 46 & 57.

- (c) the Canadian Debtors' overall financial position is managed on a consolidated basis by the Company's management team located in the U.S. and, for financial reporting purposes and in satisfying CURO Parent's reporting obligations with the Securities and Exchange Commission, the Company reports the financial results of the entire corporate group, including the Canadian Debtors, on a consolidated basis;⁴⁷
- (d) payroll processing for the employees of the Canadian Debtors is processed in Canada but is directed exclusively by a management team located in the U.S.;⁴⁸
- (e) utilities for substantially all of the Canadian Debtors' store locations are managed pursuant to a contract with Curo Management LLC and a third party located in the U.S.;⁴⁹
- (f) the Canadian Debtors are each direct, wholly-owned subsidiaries of Curo Intermediate Holdings Corp., a Delaware corporation, and indirect, wholly-owned subsidiaries of CURO Parent, a publicly traded Delaware corporation;⁵⁰
- (g) CURO Parent has repeatedly made statements in its public filings that the Company's operations, including those of the Canadian Debtors, are integrated across the Company's brands and geographies and headquartered in the U.S.;⁵¹
- (h) the Canadian Debtors' only secured creditors, other than with respect to the leased computer equipment, are the two Canadian SPVs in respect of accounts holding proceeds of loans sold to the Canadian SPVs and the agent under the Canada

⁴⁷ Clark Affidavit at paras 27 & 57.

⁴⁸ Clark Affidavit at paras 34 & 57.

⁴⁹ Clark Affidavit at para 57.

⁵⁰ Clark Affidavit at paras 22-23, 54 & 57.

⁵¹ Clark Affidavit at para 57.

SPV II Facility in respect of equity interests of the applicable Canadian SPV and its general partner. The parties with an economic interest in the Canadian SPVs, being the Canadian SPV Lenders, are located in New York,⁵² and

- (i) CURO Parent delivered separate guarantees in connection with the Canadian Securitization Facilities which include: (i) a guaranty in connection with the Canada SPV Facility of (x) the covenants, agreements and certain obligations of the Canadian Debtors under the transaction documents, and (y) damages, losses, claims and costs in certain limited circumstances; and (ii) a limited guaranty in connection with the Canada SPV II Facility of (x) certain indemnified obligations, which include obligations of the Canadian Debtors, and (y) certain costs and expenses incurred by the agent under such Canada SPV II Facility in certain circumstances.⁵³

27. As such, the Canadian Debtors are substantially intertwined with the Company and wholly dependent upon the other Debtors for all of their key functions (without which they cannot operate independently).⁵⁴

PART III – THE ISSUES

28. The issues to be determined on this application are:

- (a) should the Interim Stay Order be granted in favour of the Canadian Debtors pending the hearing with respect to the Initial Recognition Order and the Supplemental Order?

⁵² Clark Affidavit at paras 56-57.

⁵³ Clark Affidavit at paras 42 & 57.

⁵⁴ Clark Affidavit at para 58.

- (b) are the Chapter 11 Cases foreign main proceedings pursuant to Part IV of the CCAA?
- (c) if the Chapter 11 Cases are foreign main proceedings, are the Canadian Debtors entitled to the relief sought, including:
 - (i) the stay of proceedings in respect of the Canadian Debtors;
 - (ii) recognition of certain of the First Day Orders;
 - (iii) the appointment of FTI as Information Officer; and
 - (iv) the granting of the Administration Charge, the D&O Charge and the Securitization Charges.

29. The Proposed Foreign Rep submits that each of the questions above should be answered affirmatively and that it is appropriate to grant the requested relief for the reasons set forth herein.

PART IV – THE LAW

A. The Interim Stay Order Should Be Granted

30. Pursuant to subsection 46(2) of the CCAA, when a foreign representative seeks recognition of a foreign proceeding, its application must include, among other things, certified copies of the instruments commencing the foreign proceeding and authorizing the foreign representative to act in that capacity.⁵⁵ The relief required to be evidenced under subsection 46(2) of the CCAA will not be granted until an attendance before the U.S. Bankruptcy Court, which is expected to conclude late in the day on March 25, 2024. Interim relief will provide a short stay of proceedings pending the filing and certification of the evidence required by subsection 46(2) of

⁵⁵ CCAA, s. [46\(2\)](#). Under subsection [46\(4\)](#), this Court may accept other evidence if certified copies are not available. In light of the time required to obtain original copies from the U.S. Bankruptcy Court, the Proposed Foreign Rep may seek to rely on a copy of the signed order, when available.

the CCAA. Without interim relief, the Canadian Debtors will not have the protection of a stay in Canada in the time between the commencement of the Chapter 11 Cases and the hearing in Canada for the Initial Recognition Order and the Supplemental Order.⁵⁶

31. This Court has granted interim stay orders providing for a temporary stay of proceedings in Canada following the initiation of Chapter 11 Cases where a delay in obtaining a formal order in the U.S. “*could prejudice the Canadian applicants in respect of whom no stay would otherwise arise*”.⁵⁷ This Court has the jurisdiction to grant an interim stay in the context of a pending recognition application pursuant to section 106 of the CJA, section 11.02 of the CCAA, and its inherent jurisdiction.⁵⁸ This Court has granted similar interim stays in similar prior cases.⁵⁹ In *Paladin Labs Inc.*, Chief Justice Morawetz concluded that granting the interim stay and other relief as proposed in the interim order was “in accordance with the principles of cooperation and comity” and within the Court’s jurisdiction. The relief was both necessary and appropriate.⁶⁰

32. The Proposed Foreign Rep respectfully submits that the proposed Interim Stay Order is in accordance with the principles of cooperation and comity, within the Court’s jurisdiction,

⁵⁶ Clark Affidavit at paras 71 & 73.

⁵⁷ [Endorsement of Koehnen J dated June 24, 2020](#), *GNC Holdings Inc., et al.*, Court File No. CV-20-00642970-00CL at paras 3 & 4; [Interim Order \(Foreign Main Proceeding\)](#), *GNC Holdings Inc., et al.*, Court File No. CV-20-00642970-00CL; see also, [Lightsquared LP \(Re\)](#), 2012 ONSC 2994 at paras 1-3 and the [Interim Initial Order dated October 19, 2010](#) granted by Morawetz J. in *TerreStar Networks Inc.*, Court File No. CV-10-8944-00CL.

⁵⁸ [Endorsement of Cavanagh, J. dated March 9, 2021](#), *Knotel, Inc. and Knotel Canada, Inc.*, Court File No. CV-21-00658434-00CL.

⁵⁹ *Paladin Labs Canadian Holdings Inc.*, [2022 ONSC 4748](#) [*Paladin Interim Stay Endorsement*]; [Interim Order \(Foreign Proceeding\) dated August 17, 2022](#), *Paladin Labs Canadian Holdings and Paladin Labs Inc.*, Court File No. CV-22-00685631-00CL at para 2; [Interim Stay Order \(Foreign Proceeding\) dated August 8, 2023](#), *YRC Freight Canada Company et al.*, Court File No. CV-23-00704038-00CL at para 2; [Endorsement of Morawetz CJ dated August 8, 2023](#), *YRC Freight Canada Company et al.*, Court File No. CV-23-00704038-00CL at paras 11 & 16; [Interim Stay Order \(Foreign Proceeding\) dated November 7, 2023](#), *WeWork Canada GP ULC et al.*, Court File No. CV-23-00709258-00CL at para 3; [Endorsement of Steele J dated November 7, 2023](#), *WeWork Canada GP ULC et al.*, Court File No. CV-23-00709258-00CL at paras 17-20.

⁶⁰ *Paladin Interim Stay Endorsement* at paras [18-20](#).

consistent with this Court's practice in recent Part IV proceedings, and important for the Company's broader restructuring efforts.

B. The Chapter 11 Cases are Foreign Main Proceedings

33. Part IV of the CCAA establishes the process for addressing the administration of cross-border insolvencies to promote cooperation and coordination with foreign courts.⁶¹ Justice Hainey summarized the principles underlying such proceedings in *Hollander Sleep Products, LLC et al.*:⁶²

[41] The central principle governing Part IV of the CCAA is comity, which 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 principles of order, predictability and fairness.

[42] Canadian courts have emphasized the importance of comity and cooperation in cross-border insolvency proceedings to avoid multiple proceedings, inconsistent judgments and general uncertainty. Coordination of international insolvency proceedings is particularly critical in ensuring the equal and fair treatment of creditors regardless of their location.

34. The Proposed Foreign Rep submits that it is appropriate for this Court to recognize the Canadian Debtors' Chapter 11 Cases as foreign main proceedings for the reasons set out below.

(a) The CCAA Provisions Regarding Recognition Have Been Satisfied

35. Pursuant to subsection 46(1) of the CCAA, a foreign representative may apply to the Court for recognition of a foreign proceeding, in respect of which that person is a foreign representative.⁶³

36. Subsection 47(1) of the CCAA provides that the Court shall make an order recognizing a foreign insolvency proceeding if it is satisfied the following two requirements are met:

⁶¹ CCAA, s. [44](#).

⁶² *Hollander Sleep Products, LLC (Re)*, [2019 ONSC 3238](#) at para [41](#) [*Hollander*].

⁶³ CCAA, s. [46\(1\)](#).

- (a) the application for recognition of a foreign proceeding relates to a “foreign proceeding” within the meaning of the CCAA; and
- (b) the applicant is a “foreign representative” within the meaning of the CCAA in respect of that foreign proceeding.⁶⁴

37. Proceedings under the U.S. Bankruptcy Code are consistently recognized by Canadian courts to satisfy the definition of “foreign proceeding” under subsection 45(1) of the CCAA.⁶⁵

38. A “foreign representative” is a person who is authorized 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.⁶⁶ The Proposed Foreign Rep is seeking an order from the U.S. Bankruptcy Court declaring CURO Parent as the foreign representative for purposes of the Chapter 11 Cases.⁶⁷ Once issued, the requirements for recognition of the Canadian Debtors’ Chapter 11 Cases as a “foreign proceeding” pursuant to section 47 of the CCAA will be satisfied and the Chapter 11 Cases should be recognized as foreign proceedings.

(b) *The Canadian Debtors’ Chapter 11 Cases are Foreign Main Proceedings*

39. The Canadian Debtors’ Chapter 11 Cases are foreign main proceedings, as the Canadian Debtors’ centre of main interest (“**COMI**”) is in the U.S.

40. Pursuant to subsection 47(2) of the CCAA, if the Court grants an order under subsection 47(1) it is required to specify whether the foreign proceeding is a “foreign main proceeding” or a “foreign non-main proceeding.”⁶⁸ If the Court recognizes a foreign proceeding as a “foreign main

⁶⁴ CCAA, s. [47](#).

⁶⁵ CCAA, s. [45\(1\)](#); *Hollander* at para [27](#); *Payless Holdings LLC, (Re)*, [2017 ONSC 2242](#) at para [22](#); *Zochem Inc. (Re)*, [2016 ONSC 958](#) at para [20](#) [*Zochem*].

⁶⁶ CCAA, s. [45\(1\)](#).

⁶⁷ Clark Affidavit at paras 4 & 70.

⁶⁸ CCAA, s. [47\(2\)](#).

proceeding”, subsection 48(1) of the CCAA provides for an automatic stay against the debtor in Canada.⁶⁹

41. Subsection 45(1) of the CCAA provides that a “foreign main proceeding” is a foreign proceeding in a jurisdiction where the debtor company has its COMI.⁷⁰ Subsection 45(2) provides that, absent evidence to the contrary, a debtor’s COMI is deemed to be the location of its registered office. However, this is a rebuttable presumption and the determination of COMI is substantive, rather than technical.⁷¹

42. Where it is necessary to go beyond the presumption under subsection 45(2), as it is here, Courts have found COMI to be where (i) the location is readily ascertainable by creditors, (ii) the location of the debtor’s principal assets or operations and (iii) the location where the management of the debtor takes place.⁷²

43. In addition to those primary considerations, Canadian courts have also considered:

- (a) the location where corporate decisions are made;
- (b) the location of employee administrations, including human resource functions;
- (c) the location of the company’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 new business development initiatives are created; and

⁶⁹ CCAA, s. [48\(1\)](#).

⁷⁰ CCAA, s. 45(1).

⁷¹ *CHC Group Ltd. (Re)*, [2016 BCSC 2623](#) at para [9](#).

⁷² *Zochem* at para [22](#).

- (j) the location of an enterprise's treasury management functions, including management of accounts receivable and accounts payable.⁷³

44. Notwithstanding that CURO Canada and LendDirect's registered offices are a single store location in Ontario and a law firm in Alberta, respectively, the COMI for each entity is in the U.S.⁷⁴ All executive and management level decision making for the company is made by management and leadership in the U.S.⁷⁵ The Canadian Debtors have no Canadian head office and rely on back-office service support provided in the U.S.⁷⁶ The Canadian Debtors are unable to operate independently of that support. Oversight of cash management and accounting functions, the seat of the treasury management, supervision of human resources, legal and corporate development all take place in the U.S.⁷⁷

45. The granting of an order recognizing the Chapter 11 Cases as a foreign main proceeding under subsection 47(2) of the CCAA is appropriate in the circumstances as (i) the Canadian SPV Lenders, being the principal creditors of the Canadian Debtors, are U.S.-based entities whose address for services is located in the U.S., (ii) the Canadian Debtors' operations are deeply interconnected with the operations of the U.S.-based Debtors, (iii) the Canadian Debtors are governed from a strategic and management perspective out of the U.S., and (iv) coordination of the insolvency proceedings in the U.S. and Canada supports the equal and fair treatment of stakeholders.⁷⁸

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

⁷³ *In The Matter of Voyager Digital Ltd.*, [2022 ONSC 4553](#) at para [19](#); *Massachusetts Elephant & Castle Group, Inc. (Re)*, [2011 ONSC 4201](#) at paras [26-31](#).

⁷⁴ Clark Affidavit at paras 21-22 & 57.

⁷⁵ Clark Affidavit at paras 30 & 57.

⁷⁶ Clark Affidavit at paras 30 & 57.

⁷⁷ Clark Affidavit at para 57.

⁷⁸ CCAA, s. [47\(2\)](#); Clark Affidavit at paras 30, 33, 45-46 & 57.

(a) Stay of Proceedings in the Initial Recognition Order is Required and Appropriate

46. Subsection 48(1) of the CCAA provides that on making an order recognizing a foreign proceeding specified by the court as a “foreign main proceeding”, the Court is required to grant certain mandatory relief, including a limited stay of proceedings.⁷⁹

47. The Initial Recognition Order sought by the Proposed Foreign Rep provides for all the relief required under section 48 and is consistent with the Court’s Model CCAA Initial Recognition Order (Foreign Main Proceeding).

(b) The Supplemental Order is Appropriate in the Circumstances

48. Section 49 of the CCAA provides that, if an order recognizing a foreign proceeding is made, this Court has broad discretion to make any order it considers appropriate where it is satisfied that the order is necessary for the protection of the debtor company’s property or the interests of creditors.⁸⁰ The Court may make such orders on any terms and conditions it considers appropriate in the circumstances.

49. If an order recognizing a foreign proceeding is made, subsection 52(1) of the CCAA requires that the Court “*cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.*”⁸¹

50. Considering that requirement and the circumstances facing the Canadian Debtors, the relief requested in the proposed Supplemental Order, including recognition of the First Day Orders and appointment of FTI as Information Officer, is appropriate.

⁷⁹ CCAA, s. [48\(1\)](#).

⁸⁰ CCAA, s. [49\(1\)](#).

⁸¹ CCAA, s. [52\(1\)](#).

(i) Recognition of the First Day Orders is Appropriate

51. The Proposed Foreign Rep is seeking an order recognizing and giving effect in Canada to the First Day Orders set out in the Clark Affidavit at paragraph 87. The relief includes, (a) authorizing CURO Parent in its capacity as Foreign Representative to seek recognition of the Canadian Debtors' Chapter 11 Cases in Canada; (b) authorizing the Debtors to pay pre-filing workforce obligations; (c) authorizing the Debtors to pay certain pre-filing amounts related to the Debtors' continuing business and operations; (d) authorizing the Debtors to continue certain insurance policies and satisfy pre-filing obligations in respect thereof, as well as authorization to effect new insurance coverage as needed; (e) authorizing the continued use of the Canadian Securitization Facilities; and (f) authorizing the Debtors to continue their cash management arrangements including intercompany transactions.⁸² The relief is substantially similar to relief that would be sought upon the commencement of proceedings under Part I of the CCAA.

52. As described above, the principles of comity, cooperation and accommodation with foreign courts guide the CCAA court in the exercise of its discretion in cross-border insolvency cases.⁸³ Canadian courts should recognize and enforce the judicial acts of other jurisdictions, provided those other jurisdictions operate consistent with principles of order, predictability and fairness.⁸⁴

53. Courts have 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.*"⁸⁵

⁸² Clark Affidavit at para 87.

⁸³ CCAA s. [52\(1\)](#).

⁸⁴ *Hollander* at para [41](#).

⁸⁵ *Magna Entertainment Corp. (Re)*, [2009 CanLII 9757 \(ONSC\)](#) at para [9](#); see also, [Endorsement of Hainey J dated October 16, 2020](#), *Mallinckrodt Canada ULC et al.*, Court File No. CV-20-00649441-00CL at paras 1 & 4-6.

54. It is appropriate for this Court to grant an order recognizing and giving effect to the First Day Orders for the following reasons:

- (a) comity will be furthered by this Court's recognition and support of the orders made by the U.S. Bankruptcy Court;
- (b) coordination of proceedings in Canada and the U.S. will ensure equal and fair treatment of all stakeholders regardless of their location;
- (c) given the Canadian Debtors' reliance on the management and leadership located in the U.S., it is reasonable and sensible for the U.S. Bankruptcy Court to have principal control over the Canadian Debtors' insolvency process; and
- (d) the First Day Orders are intended to minimize the adverse effects of the Chapter 11 Cases on the Debtors' businesses.

55. Recognition of the First Day Orders is important to ensure equitable treatment of Canadian stakeholders, coordination with the Chapter 11 Cases, and avoid prejudice to Canadian creditors.

(ii) FTI Should be Appointed Information Officer

56. FTI has consented to act as Information Officer and has advised that it is not conflicted from acting in such capacity.⁸⁶

57. Although not required by the CCAA, it has become common practice in proceedings under Part IV of the CCAA for the Court to appoint an information officer, pursuant to the Court's discretionary powers. The information officer's role is to help effect cooperation between the

⁸⁶ Clark Affidavit at para 75.

Canadian proceeding, the foreign representative and the foreign court, including to keep the Court apprised of the status of the foreign proceedings.⁸⁷

58. The Proposed Foreign Rep seeks to appoint FTI as the Information Officer in these proceedings. The appointment of FTI as Information Officer will keep affected creditors, stakeholders and the Court updated on developments in the Chapter 11 Cases and will be a point of contact to respond to inquiries from interested parties in Canada.

59. FTI's proposed role as Information Officer is consistent with both the terms of the Model Order dealing with the appointment of an information officer and the terms of orders granted in other recent recognition proceedings under the CCAA in Ontario.⁸⁸

(iii) The Administration Charge Should be Granted

60. The Proposed Foreign Rep is requesting that the Court grant to the proposed Information Officer, its legal counsel (Bennett Jones LLP), and the Proposed Foreign Rep and Canadian Debtors' legal counsel (Cassels Brock & Blackwell LLP), a first priority administration charge with respect to their fees and disbursements in the maximum amount of US\$1 million (the "**Administration Charge**") on the Canadian Debtors' property in Canada.

61. While not directly applicable in the context of a Part IV recognition proceeding, it is instructive that section 11.52 of the CCAA expressly provides that the Court has the jurisdiction to grant an administration charge.

62. 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

⁸⁷ *YRC Freight Canada Company (Re)*, 2023 ONSC 4834 at para 35.

⁸⁸ [Supplemental Order \(Foreign Main Proceeding\) dated March 12, 2021](#), *Knotel, Inc. and Knotel Canada, Inc.*, Court File No. CV-21-00658434-00CL at paras 5 and on [*Knotel Supplemental Order*].

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.⁸⁹ In the context of Part IV proceedings, this Court commonly grants administration charges to secure obligations owing to the debtor's counsel and the information officer and its counsel.⁹⁰

63. The Proposed Foreign Rep submits that 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 of the professionals.⁹¹ In addition, the only registered secured creditors of the Canadian Debtors (other than a creditor with respect to a computer equipment lease), have consented to the Administration Charge.⁹² The Administration Charge is also consistent with the material agreements the Debtors have entered into in connection with the Chapter 11 Cases.

(iv) The D&O Charge should be granted

64. The proposed Supplemental Order also provides for the D&O Charge in a maximum aggregate amount of C\$11.1 million on the Canadian Debtors' property in Canada as security for the indemnity obligations of the Canadian Debtors to their directors and officers in respect of obligations and liabilities that such directors and officers may incur in such capacity during these proceedings (the "**D&O Charge**"). The proposed amount of the D&O Charge was estimated, in consultation with the Information Officer, with reference to the Canadian Debtors' payroll, vacation pay, and federal and provincial tax liability exposure.⁹³ The D&O Charge would be subordinate to the Administration Charge and the Securitization Charges.

⁸⁹ *Canwest Publishing Inc.*, [2010 ONSC 222](#) at para 54.

⁹⁰ [Supplemental Order \(Foreign Main Proceeding\) dated August 9, 2019](#), *Jack Cooper Ventures Inc. et al.*, Court File No. CV-19-625200-00CL at paras 17-18; [Knotel Supplemental Order](#) at para 19; [Supplemental Order \(Foreign Main Proceeding\) dated August 29, 2023](#), *YRC Freight Canada Company et al.*, Court File No. CV-23-00704038-00CL at paras 12 & 19 [*YRC Supplemental Order*].

⁹¹ Clark Affidavit at para 76.

⁹² Clark Affidavit at paras 56 & 76.

⁹³ Clark Affidavit at para 82.

65. Section 11.51 of the CCAA expressly provides that the Court has the jurisdiction to grant a charge in favour of directors and officers. In deciding whether to grant a director's charge, the Court must be satisfied that: (i) notice has been given to the likely affected secured creditors; (ii) the amount is appropriate; (iii) the debtor company could not obtain adequate indemnification insurance for the directors and officers at a reasonable cost; and (iv) the charge does not apply to obligations incurred by a director or officer as a result of their gross negligence or willful misconduct.⁹⁴ This Court has previously granted similar charges to protect directors and officers in recognition proceedings.⁹⁵

66. The Proposed Foreign Rep submits that the amount of the D&O Charge is reasonable in the circumstances, taking into consideration that, among other things: (a) the Canadian Debtors require the continued support of the directors and officers in connection with these proceedings; (b) the directors and officers liability insurance may not provide adequate coverage against the potential liability the directors and officers could incur during these proceedings; (c) the quantum of the D&O Charge has been estimated, in consultation with the proposed Information Officer, with reference to the Canadian Debtors' payroll, vacation pay, and other potential sources for which the directors and officers may incur personal liability; (d) the scope of the D&O Charge is reasonable; (e) the secured creditors impacted by the D&O Charge have been provided notice; and (f) the Information Officer supports the proposed D&O Charge.⁹⁶

(v) The Securitization Charges Should be Granted

67. To facilitate the operation of the business during the Restructuring Proceedings, the Debtors require continued access to liquidity under the Securitization Facilities. The Securitization Order (as defined in the Clark Affidavit), if granted, will provide the collateral agents under the

⁹⁴ CCAA, ss. [11.51\(3\)](#) & [11.51\(4\)](#).

⁹⁵ [YRC Supplemental Order](#) at para 21; [Supplemental Order \(Foreign Main Proceeding\) dated November 16, 2023](#), *WeWork Canada GP ULC et al.*, Court File No. CV-23-00709258-00CL at para 22.

⁹⁶ Clark Affidavit at paras 80 & 82-83.

Canadian Securitization Facilities, among other things, (a) liens against the equity interests in the Canadian SPVs owned by the Canadian Debtors and (b) liens on the receivables in the event that the sale of receivables is recharacterized as a security interest. In each case, such liens are solely to secure any post-petition advances. In Canada, certain of these claims are to be secured by two *pari passu* (one in favour of each agent) charges ranking subordinate to the Administration Charge (the “**Securitization Charges**”). The Securitization Charges should be considered analogous to a request for interim financing under the CCAA.⁹⁷

68. While not directly applicable in the context of a Part IV recognition proceeding, section 11.2 of the CCAA provides the Court with express jurisdiction to grant a DIP financing charge. When considering whether to grant a DIP financing charge under section 11.2 of the CCAA, the Court refers to the factors outlined in subsection 11.2(4) of the CCAA.

69. The Securitization Charges are reasonable in the circumstances taking into account:

- (a) the time sensitive nature of these proceedings;
- (b) the Canadian Debtors’ require access to liquidity to continue the operation of their businesses in the ordinary course;
- (c) the Securitization Charges mirror the liens and claims granted under the Securitization Order; and
- (d) the only significant secured creditors of the Canadian Debtors are the Canadian SPVs in respect of limited accounts in the Canadian Debtors’ control and the agent under the Canada SPV II Facility in respect of equity interests of the applicable Canadian SPV and its general partner. Both the Canadian SPV Lenders and the

⁹⁷ Clark Affidavit at para 78.

Canadian SPVs have consented to the Securitization Charges and are supportive of the proposed structure.

PART V – RELIEF REQUESTED

70. The Proposed Foreign Rep requests that the Court grant the Interim Stay Order, the Initial Recognition Order, and the Supplemental Order, substantially in the proposed forms.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25th day of March, 2024.

Cassels Brock & Blackwell LLP
Lawyers for the Proposed Foreign
Representative

Ryan Jacobs LSO #: 59510J
Tel: 416.860.6465
Email: rjacobs@cassels.com

Jane Dietrich LSO #: 49302U
Tel: 416.860.5223
Email: jdietrich@cassels.com

Natalie E. Levine LSO #: 64908K
Tel: 416.860.6568
Email: nlevine@cassels.com

Alec Hoy LSO #: 85489K
Tel: 416.860.2976
Email: ahoy@cassels.com

**SCHEDULE A
LIST OF AUTHORITIES**

1. *Canwest Publishing Inc.*, [2010 ONSC 222](#)
2. *CHC Group Ltd. (Re)*, [2016 BCSC 2623](#)
3. [Endorsement of Cavanagh, J. dated March 9, 2021](#), *Knotel, Inc. and Knotel Canada, Inc.*, Court File No. CV-21-00658434-00CL
4. [Endorsement of Hainey J dated October 16, 2020](#), *Mallinckrodt Canada ULC et al.*, Court File No. CV-20-00649441-00CL
5. [Endorsement of Steele J dated November 7, 2023](#), *WeWork Canada GP ULC et al.*, Court File No. CV-23-00709258-00CL
6. [Endorsement of Koehnen J dated June 24, 2020](#), *GNC Holdings Inc., et al.*, Court File No. CV-20-00642970-00CL at paras 3 and 4
7. [Endorsement of Morawetz CJ dated August 8, 2023](#), *YRC Freight Canada Company et al.*, Court File No. CV-23-00704038-00CL
8. *Hollander Sleep Products, LLC (Re)*, [2019 ONSC 3238](#)
9. *In The Matter of Voyager Digital Ltd.*, [2022 ONSC 4553](#)
10. [Interim Initial Order dated October 19, 2010](#), *TerreStar Networks Inc.*, Court File No. CV-10-8944-00CL
11. [Interim Order \(Foreign Proceeding\) dated August 17, 2022](#), *Paladin Labs Canadian Holdings and Paladin Labs Inc.*, Court File No. CV-22-00685631-00CL
12. [Interim Stay Order \(Foreign Proceeding\) dated August 8, 2023](#), *YRC Freight Canada Company et al.*, Court File No. CV-23-00704038-00CL
13. [Interim Stay Order \(Foreign Proceeding\) dated November 7, 2023](#), *WeWork Canada GP ULC et al.*, Court File No. CV-23-00709258-00CL
14. [Lightsquared LP \(Re\)](#), 2012 ONSC 2994
15. *Magna Entertainment Corp. (Re)*, [2009 CanLII 9757 \(ONSC\)](#)
16. *Massachusetts Elephant & Castle Group, Inc. (Re)*, [2011 ONSC 4201](#)
17. *Paladin Labs Canadian Holdings Inc.*, [2022 ONSC 4748](#)
18. *Payless Holdings LLC, (Re)*, [2017 ONSC 2242](#)
19. [Supplemental Order \(Foreign Main Proceeding\) dated August 29, 2023](#), *YRC Freight Canada Company et al.*, Court File No. CV-23-00704038-00CL
20. [Supplemental Order \(Foreign Main Proceeding\) dated March 12, 2021](#), *Knotel, Inc. and Knotel Canada, Inc.*, Court File No. CV-21-00658434-00CL

21. [Supplemental Order \(Foreign Main Proceeding\) dated August 9, 2019](#), *Jack Cooper Ventures Inc. et al.*, Court File No. CV-19-625200-00CL
22. [Supplemental Order \(Foreign Main Proceeding\) dated November 16, 2023](#), *WeWork Canada GP ULC et al.*, Court File No. CV-23-00709258-00CL
23. *Zochem Inc. (Re)*, [2016 ONSC 958](#)

**SCHEDULE B
TEXT OF STATUTES, REGULATIONS & BY-LAWS**

Companies' Creditors Arrangement Act, RSC 1985, c. C-36, as amended

PART II – JURISDICTION OF COURTS

Stays, etc. — Initial Application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the 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 company; and

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

Security or charge relating to director's indemnification

11.51 (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, the court may make an order declaring that all or part of the property of the company is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of proceedings under this Act.

Priority

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

Restriction — indemnification insurance

(3) The court may not make the order if in its opinion the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

Negligence, misconduct or fault

(4) The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

Court May Order Security or Charge to Cover Certain Costs

11.52 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is

subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

- (a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;
- (b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and
- (c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

Priority

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

PART IV – CROSS-BORDER INSOLVENCIES

PURPOSE

Purpose

44 The purpose of this Part is to provide mechanisms for dealing with cases of cross-border insolvencies and to promote

- (a) cooperation between the courts and other competent authorities in Canada with those of foreign jurisdictions in cases of cross-border insolvencies;
- (b) greater legal certainty for trade and investment;
- (c) the fair and efficient administration of cross-border insolvencies that protects the interests of creditors and other interested persons, and those of debtor companies;
- (d) the protection and the maximization of the value of debtor company's property; and
- (e) the rescue of financially troubled businesses to protect investment and preserve employment.

INTERPRETATION

Definitions

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

[...]

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

[...]

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.

RECOGNITION OF FOREIGN PROCEEDING

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.

[...]

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.

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.

[...]

Other Orders

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.

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.

Terms and Conditions of Orders

50 An order under this Part may be made on any terms and conditions that the court considers appropriate in the circumstances.

[...]

OBLIGATIONS

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.

Obligations of foreign representative

53 If an order recognizing a foreign proceeding is made, the foreign representative who applied for the order shall

- (a) without delay, inform the court of
 - (i) any substantial change in the status of the recognized foreign proceeding,
 - (ii) any substantial change in the status of the foreign representative's authority to act in that capacity, and

(iii) any other foreign proceeding in respect of the same debtor company that becomes known to the foreign representative; and

(b) publish, without delay after the order is made, once a week for two consecutive weeks, or as otherwise directed by the court, in one or more newspapers in Canada specified by the court, a notice containing the prescribed information.

[Courts of Justice Act, RSO 1990, c. C.43](#)

INTERLOCUTORY ORDERS

Stay of proceedings

106 A court, on its own initiative or on motion by any person, whether or not a party, may stay any proceeding in the court on such terms as are considered just.

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

AND IN THE MATTER OF CURO CANADA CORP. AND LENDDIRECT CORP.

APPLICATION OF CURO GROUP HOLDINGS CORP. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

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

PROCEEDING COMMENCED AT TORONTO

FACTUM

CASSELS BROCK & BLACKWELL LLP

Suite 3200, Bay Adelaide Centre – North Tower
40 Temperance Street
Toronto, Ontario M5H 0B4

Ryan Jacobs LSO#: 59510J

Tel: 416.860.6465
rjacobs@cassels.com

Jane Dietrich LSO#: 49302U

Tel: 416.860.5223
jdietrich@cassels.com

Natalie Levine LSO#: 64908K

Tel: 416.860.6568
nlevine@cassels.com

Alec Hoy LSO#: 85489K

Tel: 416.860.2978
ahoy@cassels.com

Lawyers for the Proposed Foreign Representative