

**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 A PLAN OF COMPROMISE OR ARRANGEMENT OF GNC HOLDINGS, INC., GENERAL NUTRITION CENTRES COMPANY, GNC PARENT LLC, GNC CORPORATION, GENERAL NUTRITION CENTERS, INC., GENERAL NUTRITION CORPORATION, GENERAL NUTRITION INVESTMENT COMPANY, LUCKY OLDSCO CORPORATION, GNC FUNDING INC., GNC INTERNATIONAL HOLDINGS INC., GNC CHINA HOLDSCO, LLC, GNC HEADQUARTERS LLC, GUSTINE SIXTH AVENUE ASSOCIATES, LTD., GNC CANADA HOLDINGS, INC., GNC GOVERNMENT SERVICES, LLC, GNC PUERTO RICO HOLDINGS, INC. and GNC PUERTO RICO, LLC

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

Applicant

**FACTUM OF THE APPLICANT
(Application for Recognition of Foreign Main Proceeding,
initially returnable June 24, 2020)**

June 24, 2020

Torys LLP

79 Wellington St. W., 30th Floor
Box 270, TD South Tower
Toronto, ON M5K 1N2
Fax: 416.865.7380

Scott A. Bomhof (LSO #: 37006F)
Tel: 416.865.7370 | sbomhof@torys.com

Adam M. Slavens (LSO #: 54433J)
Tel: 416.865.7333 | aslavens@torys.com

Jeremy Opolsky (LSO #: 60813N)
Tel: 416.865.8117 | jopolsky@torys.com

Leora Jackson (LSO #: 68448L)
Tel: 416.865.7547 | ljackson@torys.com

Lawyers for the Applicant

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PART I – NATURE OF THE APPLICATION

1. This factum is filed in support of an application by GNC Holdings, Inc., (“**GNC Holdings**”) as the proposed foreign representative (in such capacity, the “**Foreign Representative**”) of itself and the other debtors in possession¹ that recently filed voluntary petitions for relief pursuant to Chapter 11 of the U.S. Bankruptcy Code (collectively, the “**Debtors**” or “**GNC**”).

2. This application seeks Orders pursuant to sections 46 to 49 of the *Companies’ Creditors Arrangement Act*, RSC 1985, C. C-36, as amended (the “**CCAA**”) for, among other things:
 - (a) recognition of the cases commenced by the Debtors in the United States (the “**Chapter 11 Cases**”) as foreign main proceedings pursuant to Part IV of the CCAA;
 - (b) recognition of certain First Day Orders (as defined below);
 - (c) the appointment of FTI Consulting Canada Inc. (“**FTI Canada**”) as Information Officer (as defined below) in respect of these proceedings; and
 - (d) the granting of the Administration Charge, the DIP Charge, and the Directors’ Charge (each as defined below).

¹ In addition to GNC Holdings, Inc., the other Debtors are: General Nutrition Centres Company, GNC Parent LLC, GNC Corporation, General Nutrition Centers, Inc., General Nutrition Corporation, General Nutrition Investment Company, Lucky Oldco Corporation, GNC Funding Inc., GNC International Holdings Inc., GNC China Holdco, LLC, GNC Headquarters LLC, Gustine Sixth Avenue Associates, Ltd., GNC Canada Holdings, Inc., GNC Government Services, LLC, GNC Puerto Rico Holdings, Inc. and GNC Puerto Rico, LLC.

3. GNC Holdings will be seeking the relief set out above in stages. At the initial hearing in this application, the First Day Orders will not yet be available from the U.S. Court and therefore it will seek an interim stay on behalf of all Debtors pending the issuance of the First Day Orders in the U.S. Court. Once those orders have been formally issued by the U.S. Court, the foreign representative will return to seek an initial recognition order and a supplemental order.

4. The Debtors' centre of main interest (COMI) is in the United States. GNC operates as a consolidated business and all executive management and senior management decision-making for the broader corporate group, including General Nutrition Centres Company ("**GNC Canada**"), is centralized in Pittsburgh, Pennsylvania. The Chapter 11 proceedings should be recognized as a main proceeding.

5. In addition, the Debtors urgently require an injection of liquidity to finance their restructuring. The Restructuring Support Agreement (as defined below) includes a condition that requires the Debtors to obtain an order of this Court recognizing and giving effect to the Interim DIP Order within **3** business days of the Interim DIP Order being entered by the U.S. Court. As such, it is critical that the Applicant obtain recognition of the Chapter 11 Cases and the Interim DIP Order as soon as possible to permit the Debtors to access the liquidity necessary for them to continue as a going concern and to implement their restructuring plan.

PART II – THE FACTS

6. GNC is a global health and wellness brand with a diversified business. In its stores and online in certain regions, the Company sells an assortment of performance and nutritional supplements, vitamins, herbs and greens, health and beauty, food and drink, and other general

merchandise, featuring innovative GNC-branded products as well as nationally recognized third-party brands, many of which are exclusive to GNC.²

7. GNC evolved from a single health-food store opened in downtown Pittsburgh, Pennsylvania in 1935. Over the decades that followed, the store expanded and the company changed its name (in the 1960s) to General Nutrition Centers, or GNC. Stores began to open beyond Pennsylvania and then across the United States, so that by the time that the company's founder passed away in 1984, GNC had more than 1,000 locations across the United States.³

8. GNC Canada Holdings, Inc. is the holding company for the Company's Canadian operating entity. It is a Nevada corporation. It is the parent of GNC Canada, an unlimited liability corporation organized pursuant to the laws of Nova Scotia. GNC Canada operates the Company-owned stores located in Canada, the plurality of which are located in Ontario. GNC Canada also has a small regional office in Mississauga, Ontario.⁴

9. GNC operates as a consolidated business and all executive management and senior management decision-making for the broader corporate group, including GNC Canada, is centralized in Pittsburgh. The regional head responsible for GNC Canada operations is in Pittsburgh.⁵

² GNC Affidavit, paras. 13-14

³ GNC Affidavit, paras. 15-17

⁴ GNC Affidavit, paras. 37-38, 51

⁵ GNC Affidavit, paras. 38, 42

A. The Chapter 11 Cases

10. On June 23, 2020 (the “**Petition Date**”), each of the Debtors filed voluntary petitions for relief (the “**Petitions**”) pursuant to Chapter 11 of the U.S. Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (the “**U.S. Court**”).⁶ The Debtors have also filed several first day motions (the “**First Day Motions**”) with the U.S. Court. The Debtors will be seeking recognition orders in respect of certain of the First Day Orders as they are entered by the U.S. Court.⁷

11. As part of their restructuring efforts, the Debtors were able to negotiate debtor-in-possession financing and a pre-arranged standalone plan of reorganization with certain of their secured lenders (the “**Standalone Plan Transaction**”), the details of which are memorialized in a restructuring support agreement (the “**Restructuring Support Agreement**”). The Restructuring Support Agreement is premised on US\$100 million in “new money” loans together with a “roll-up” on a dollar-for-dollar basis certain prepetition loans into postpetition debt facilities.⁸

12. Additionally, the Debtors, a significant majority of the Supporting Secured Lenders, and Harbin Pharmaceutical Group Holding Co., Ltd., an affiliate of GNC’s largest shareholder (the “Proposed Buyer”) have reached an agreement in principle for the sale of the Debtors’ business (the “Sale Transaction”). The Sale Transaction contemplates a US\$760 million purchase price for a going-concern sale of the Debtors’ business, which would be executed through a section

⁶ GNC Affidavit, para. 5

⁷ GNC Affidavit, para. 101

⁸ GNC Affidavit, paras. 78-79

363 auction process, at which higher and better bids may be presented. The Sale Transaction remains subject to definitive documentation acceptable to the Debtors, the Supporting Secured Lenders and the Proposed Buyer. If the Sale Transaction is timely consummated, it would be implemented instead of the Standalone Plan Transaction.⁹

B. Financial Position of the Debtors

13. Over the past two years, GNC has entered into several transactions that have contributed to the stability of its business. However, faced with decreased liquidity and a decline in sales caused by COVID-19, the Debtors had no option but to commence the Chapter 11 Cases. The Debtors filed the Chapter 11 Cases to effect both a restructuring of their funded debt obligations and operational changes necessary to ensure their future viability as a going concern.¹⁰

14. The Debtors' funded debt consists of: (a) an asset-based revolving credit facility; (b) an asset-based first-in, last-out secured term loan facility; (c) a secured term loan facility; and (d) unsecured convertible notes. The Debtors also have unsecured trade debt of about US\$111 million in the aggregate, on account of prepetition goods and services provided to the Debtors.¹¹

C. Integration of Canadian Operations with U.S.

15. GNC operates as a consolidated business with staff and decision-making centralized in the United States. Canadian revenues are not material in the context of the Debtors' operations.¹²

⁹ GNC Affidavit, para. 80

¹⁰ GNC Affidavit, para. 24

¹¹ GNC Affidavit, paras. 25,35

¹² GNC Affidavit, paras. 38, 45

Decision-making and staff are centralized in Pittsburgh, Penn.

16. All executive management and senior management decision-making for the broader corporate group, including GNC Canada, is centralized in Pittsburgh. Nearly all of the senior executives of the Debtors, including of GNC Canada, are located in the United States. None are located in Canada. The directors and officers of GNC Canada are all located in Pittsburgh. All of GNC Canada's three directors are also officers of GNC Holdings, Inc., which, as noted above, is GNC Canada's ultimate parent company. Board meetings, books and records, minute books and key decisions for GNC Canada are held at or made in Pittsburgh.¹³

17. GNC Canada has a small number of employees located at a regional office in Mississauga, Ontario. The function of these employees is to assist Pittsburgh with regional oversight of the company-owned store locations in Canada. They include a managing director for Canada and an office manager, two regional directors, an HR generalist and several additional mid-level managers.¹⁴

18. However, as noted, the regional head responsible for all GNC Canada operations is located in Pittsburgh. The Canadian operations do not include key management functions, including, for example, accounting, finance, treasury, legal or executive-level functions. They are reliant on the operations in Pittsburgh for those functions.¹⁵

¹³ GNC Affidavit, para. 40

¹⁴ GNC Affidavit, paras. 38, 39

¹⁵ GNC Affidavit, paras. 39, 42

19. Inventory management and purchasing for GNC Canada's retail stores is managed and coordinated by its U.S. operations. GNC manages purchasing primarily through its Pittsburgh headquarters. The Debtors do not lease or own any distribution centres in Canada and instead utilize a third-party logistics and warehousing provider (the "Canada DC") for distribution of inventory to its Canadian retail stores. A majority of inventory purchased by GNC on behalf of GNC Canada is received into GNC's U.S. distribution centres and is then shipped to the Canada DC. Certain inventory from Canadian vendors and suppliers is delivered directly to the Canada DC; however, this inventory is still managed, ordered, and purchased by GNC's operations in Pittsburgh.¹⁶

20. GNC Canada is charged by GNC for its share of corporate overhead costs and services (the "Intercompany Overhead Allocation") provided based on a percentage of GNC Canada's revenue plus an addition percentage-based premium. The amount charged to GNC Canada covers all head office services that GNC provides to GNC Canada, including executive management, finance and accounting, purchasing, ordering, and marketing.¹⁷

The Canadian operations are not material to the Debtors'

21. GNC Canada's operations are not significant in the context of the business of the Debtors as a whole. In 2019, GNC Canada represented only about 3.6% of GNC Holdings' total revenue. GNC Canada reported a loss of earnings before interest and taxes of US\$1.8 million in 2019.¹⁸

¹⁶ GNC Affidavit, para. 41

¹⁷ GNC Affidavit, para. 42

¹⁸ GNC Affidavit, paras. 47-48

22. GNC has 173 stores in Canada compared to 2,902 Company-owned stores worldwide (including Canada). It has approximately 730 employees in Canada compared to approximately 11,000 employees worldwide.¹⁹

23. The cash management system of GNC Canada and the other Debtors is managed centrally by the finance and accounting personnel located in the U.S.. This includes all treasury functions, accounts receivable and payable functions, all data processing and payroll functions, and all tracking and reconciliation of intercompany transactions. As noted above, GNC Canada does not employ any employees who provide finance and accounting support on behalf of the Canadian business.²⁰

D. Recent Events

24. As a result of GNC's current financial situation, it is not able to remain current with respect to all of its obligations to creditors and is insolvent. GNC's Chapter 11 filings will allow it to engage in a process of examination of every facet of its business to develop revenue and cost-saving initiatives to redress its long term financial and operational challenges.²¹

25. Any plan put forward that affects Canadian creditors of GNC will be subject to all the procedural and substantive safeguards of Chapter 11. GNC, with the help of its advisors, will be

¹⁹ GNC Affidavit, paras. 51, 53

²⁰ GNC Affidavit, para. 66

²¹ GNC Affidavit, para. 7

reviewing its operations and financial position with a view to implementing long-term solutions to address its current difficulties and to restore its long-term viability.²²

PART III – THE ISSUES

26. The issues to be determined in this motion are:

- (a) Should an interim stay be granted pending the issuance of the U.S. First Day Orders?
- (b) Are the Chapter 11 Cases "foreign main proceedings" pursuant to Part IV of the CCAA?
- (c) If so, are the Chapter 11 Debtors entitled to the relief sought, including,
 - (i) Granting the Stay of Proceedings;
 - (ii) Recognition of certain First Day Orders, including the Interim DIP Order;
 - (iii) Appointment of FTI Canada as Information Officer;
 - (iv) Granting of the Administration Charge and DIP Charges;
 - (v) Recognition of the Store Closing Order;
 - (vi) Confirming that matters related to this proceeding shall be brought before this Court.

²² GNC Affidavit, para. 76

PART IV – THE LAW

A. An Interim Stay Should Be Granted

27. The Debtors have commenced the Chapter 11 Proceedings in the U.S. Court by filing petitions for relief. While the first day hearing is scheduled for June 25, 2020, it is not anticipated that the formal order recognizing the applicant as the foreign representative of the Debtors will be issued by the U.S. Court until the close of business on June 25 at the earliest. The result is a period of time when GNC will not have the benefit in Canada of a stay of proceedings—i.e. during the delay between the commencement of a Chapter 11 proceeding and the time when the evidence required by section 46(2) of the CCAA is available.

28. As such, and consistent with this Court’s practice, the applicant is seeking an interim stay until such time as it is authorized to act as foreign representative in this Court.²³ A stay is necessary in order to safeguard the assets of the company and preserve its ability to restructure – indeed, two landlords in Canada have already issued notices of termination of lease.²⁴

29. This court has previously granted such orders in the context of pending CCAA applications as well as recognition proceedings, for example:

- (a) *Lightsquared* was a recognition proceeding and—as requested here—Justice Morawetz (as he then was) granted an interim stay on the basis that the Chapter

²³ See e.g. [Lightsquared LP \(Re\), 2012 ONSC 2994](#) at paras 1-3; the [Interim Initial Order dated October 19, 2010 granted by Morawetz J. in TerreStar Networks Inc.](#), Court File No. CV-10-8944-00CL; and the [Interim Initial Order dated December 21, 2009 \(no court file\) granted by Cumming J. in TLC Vision Corporation.](#)

²⁴ GNC Affidavit, para. 53

11 debtors were expected to have their first day hearing later that day. The initial recognition order was ultimately granted three days later.²⁵

- (b) In *Bondfield*, which was not a recognition proceeding, Justice Hainey granted an interim stay for more than 2 weeks pending a full hearing of the CCAA application.²⁶

30. Section 46(2) of the CCAA states that when a foreign representative seeks recognition of a foreign proceeding, its application must include certified copies of the instruments commencing the foreign proceeding and authorizing the foreign representative to act in that capacity. Because the U.S. Court has not yet heard the motion to appoint an interim foreign representative, interim relief is needed to order a short stay of proceedings pending the filing of the evidence required by section 46(2) of the CCAA. Absent interim relief, there will be nothing in Canada to protect GNC during the period of time between the commencement of the Chapter 11 Cases and the receipt of the formal order of the U.S. Court. This is in contrast to the United States where the stay is automatically effected from the filing itself, which occurred on the evening of June 23.²⁷

31. The Court has jurisdiction to grant the requested stay under section 11.02, which provides for a stay on an initial application in respect of a debtor company, so long as the relief is reasonably necessary for the continued operations of the debtor company in the ordinary course

²⁵ [Endorsement of Morawetz J dated May 15, 2012](#) in Court File CV-19-615560-00CL

²⁶ [Endorsement of Hainey J dated March 18, 2019](#) in Court File CV-19-615560-00CL

²⁷ [US Bankruptcy Code, 11. U.S.C. s. 362](#)

of business during that period. As detailed above, this stay is necessary to bridge the practical gap between the filing of the Chapter 11 proceedings and the requirements of recognition under Part IV. Section 11.02 applies to all applications under the CCAA, including applications for recognition.

32. Alternatively, the Court is entitled to rely on s. 106 of the *Courts of Justice Act* or its inherent jurisdiction, including its inherent jurisdiction to control its own process.

B. The Chapter 11 Cases are Foreign Main Proceedings

33. Part IV of the CCAA establishes a process for addressing the administration of cross-border and multi-national insolvencies in a coordinated and cooperative manner with foreign courts.²⁸

34. The underlying basis of Part IV of the CCAA is the principle of comity and cooperation between courts of various jurisdictions, whereby a Canadian court will accord respect to “the overall thrust of foreign bankruptcy and insolvency legislation in any analysis, unless in substance generally it is so different from the bankruptcy and insolvency law of Canada or perhaps because the legal process that generates the foreign order diverges radically from the process here in Canada.”²⁹ Cooperation between courts under Part IV of the CCAA promotes the “fair and efficient administration of cross-border insolvencies” and the “protection and maximization of the value of the debtors’ property.”³⁰

²⁸ CCAA, s. 44.

²⁹ [Babcock & Wilcox Canada Ltd., Re](#), 5 BLR (3d) 75 (Ont SCJ) at para 21.

³⁰ [MtGox Co., Ltd \(Re\)](#), 2014 ONSC 5811 at paras 10-12.

35. This Court routinely grants recognition orders under Part IV of the CCAA, including for large retail organizations like GNC.³¹ This includes the recognition of U.S. lease rejection orders, as sought here.³²

(a) The Chapter 11 Cases are Foreign Proceedings

36. Pursuant to Section 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.³³

37. Section 47 of the CCAA provides that the Court shall make an order recognizing a foreign insolvency proceeding if the following two requirements are met:

- (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.

38. Section 45(1) of the CCAA defines a "foreign proceeding" as any judicial proceeding in a jurisdiction outside of Canada dealing with creditors' collective interests generally under any law relating to bankruptcy or insolvency in which a debtor company's business and financial affairs

³¹ See, for example, the [Endorsement of Justice Hainey dated February 18, 2020 in Court File No. CV-20-00636511-00CL \(Pier One Inc. Recognition Application\)](#).

³² See, for example, [Laidlaw Inc. \(Re\) \(In Bankruptcy\), 2003 CanLII 8003 \(Ont SCJ\)](#) at para 19; [Order of Hainey J., as issued & entered on Feb. 21, 2020](#), re Amended and Restated Supplemental Order (Pier One Inc. Recognition Application)

³³ CCAA, s. 46(1).

are subject to control or supervision by a foreign court for the purpose of reorganization. Canadian courts have consistently recognized insolvency proceedings commenced under the Bankruptcy Code to be a “foreign proceeding” for purposes of the CCAA.³⁴

39. The second requirement under section 47 of the CCAA is that the applicant is a “foreign representative” in respect of the foreign proceeding. 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.³⁵ In this case, the applicant is seeking that the U.S. Court issue an order declaring GNC Holdings Inc. to be the foreign representative for purposes of the Chapter 11 Cases.³⁶

40. Once that order has been issued, the requirements for recognition of the Chapter 11 Cases as “foreign proceedings” pursuant to section 47 of the CCAA will be satisfied and the Chapter 11 Cases should be recognized as a foreign proceeding.

(b) The Chapter 11 Cases are Foreign Main Proceedings

41. The Chapter 11 Cases are foreign main proceedings because the COMI of each of the Debtors is in the United States.

42. If the Court grants an order under section 47(1) of the CCAA, section 47(2) requires that the Court specify whether the foreign proceeding is a “foreign main proceeding” or a “foreign

³⁴ [*Hollander Sleep Products, LLC et al., Re*, 2019 ONSC 3238](#) at para 27; [*Payless Holdings LLC \(Re\)*, 2017 ONSC 2242](#) at para 22; [*Zochem Inc. \(Re\)*, 2016 ONSC 958](#) at para 20

³⁵ CCAA, s 45(1)

³⁶ GNC Affidavit at paras. 81, 101(j)

non-main proceeding.” If a foreign proceeding is recognized as a “foreign main proceeding” then s. 48(1) provides for an automatic stay against any action, suit or proceedings against the Debtors in Canada.

43. Section 45(1) of the CCAA provides that a “foreign main proceeding” is a foreign proceeding in a jurisdiction where the debtor company has the “centre of its main interests” (“COMI”).

44. The CCAA does not define what constitutes COMI, merely providing a rebuttable presumption under s. 45(2) that, absent evidence to the contrary, a debtor’s COMI is presumed to be the location of its registered office. However, COMI is a substantive, not technical, determination.³⁷

45. A determination of a debtor's COMI will necessarily depend upon the particular facts and circumstances of each case. Canadian courts have accepted the following test for determining whether the statutory presumption of a debtor company's COMI has been rebutted:

In circumstances where it is necessary to go beyond the s. 45(2) registered office presumption [...] the following principal factors, considered as a whole, will tend to indicate whether the location in which the proceeding has been filed is the debtor's centre of main interest. The factors are:

- (i) the location is readily ascertainable by creditors;
- (ii) the location is one in which the debtor's principal assets or operations are found; and
- (iii) the location is where the management of the debtor takes place.³⁸

³⁷ [*CHC Group Ltd. \(Re\)*, 2016 BCSC 2623](#) at para 9; [*Lightsquared LP \(Re\)*](#) at para 26.

³⁸ [*Lightsquared LP \(Re\)*](#) at para 25; [*Zochem Inc. \(Re\)*](#) at para 22.

46. In addition to the above “principal” factors, Canadian courts have made reference to the following factors in conducting the COMI analysis:

- (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
- (j) The seat of an enterprise's treasury management functions, including management of accounts receivable and accounts payable.³⁹

47. The Debtors’ COMI is in the United States. While GNC Canada’s registered office is in Nova Scotia, that is not its COMI; instead, its principal operations and the management of GNC Canada take place in Pittsburgh, Pennsylvania.

48. As described above at paragraphs 16-23, the centre of GNC’s corporate, banking, strategic and management functions is in Pittsburgh. Similarly, oversight of cash management and accounting functions, the seat of treasury management functions, and decision-making around pricing decisions and new business development initiatives all happen in the U.S. No serious management, financial or executive decision making occurs in Canada.

³⁹ [*Massachusetts Elephant & Castle Group, Inc. \(Re\)*, 2011 ONSC 4201](#) at paras 26-31; [*Angiotech Pharmaceuticals Ltd. \(Re\)*, 2011 BCSC 115](#) at para 7.

C. The Initial Recognition Order and Supplemental Order should be granted

49. Section 48(1) of the CCAA provides that on the making of an order recognizing a foreign proceeding that is specified by the Court 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.

50. The Initial Recognition Order sought by the applicant is based on the Court's Model CCAA Initial Recognition Order (Foreign Main Proceeding) and provides for all of the relief required by section 48 of the CCAA.

51. In addition to the mandatory relief provided for in section 48, section 49 of the CCAA grants this Court broad discretion to make any order that it considers appropriate, if it is satisfied that the order is necessary for the protection of the debtor company's property or the interests of creditors. The Court may make such orders on any terms and conditions that the Court considers appropriate in the circumstances.

52. The Supplemental Order includes the broader stay of proceedings typically granted in Part IV and other CCAA proceedings. Given the nature of the ongoing litigation in the United

States and Canada granting this broad stay of proceedings is appropriate in order to preserve the *status quo* while the Debtors attempt to find a global resolution based upon the Debtors' joint Chapter 11 Plan of Reorganization for the benefit of the Debtors, their stakeholders and the public-at-large.

(a) *Stay of Proceedings is required and appropriate*

53. By operation of the U.S. Bankruptcy Code, the Debtors obtained the benefit of a stay of proceedings upon filing the voluntary Petitions with the U.S. Court. A stay of proceedings in Canada is essential to protect the efforts of the Debtors to proceed with the Chapter 11 Cases and emerge from the reorganization process.

54. Section 48(1) of the CCAA provides that once the Court has found that a foreign proceeding is a "foreign main proceeding", it is required to grant certain mandatory relief, including a stay of proceedings.

55. In addition to the automatic relief provided for in section 48, section 49 of the CCAA grants this Court broad discretion to make any order that it considers appropriate, if it is satisfied that the order is necessary for the protection of the debtor company's property or the interests of creditors. The Court may make such orders on any terms and conditions that the Court considers appropriate in the circumstances.

56. Finally, section 52(1) of the CCAA requires that 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".

57. In light of the requirements of the CCAA and the exigencies of the circumstances facing the Debtors, they require a stay of proceedings and recognition of the First Day Orders in order to proceed with the Chapter 11 Cases.

(b) Recognition of the First Day Orders is appropriate

58. The applicant is seeking an order recognizing and giving effect to certain First Day Orders to be entered by the U.S. Court following the First Day Motions.⁴⁰

59. The list of First Day Orders that are sought to be recognized are set out in the GNC Affidavit. The relief includes: (a) authorization to pay pre-filing workforce obligations; (b) authorization to pay certain pre-filing amounts related to the Debtors' continuing business and operations; and (c) approving the Chapter 11 Debtors' cash management arrangements, which is substantially similar to relief that would be sought upon the commencement of proceedings in Canada under the CCAA.⁴¹

60. As set out above, section 49 of the CCAA provides that the Court may make any order that it considers appropriate if it is satisfied that it is necessary for the protection of a debtor company's property or the interests of a creditor or creditors. Section 50 of the CCAA further provides that an order made under Part IV of the CCAA, including pursuant to section 49, may be made on any terms and conditions that the Court considers appropriate.

⁴⁰ GNC Affidavit, para. 101

⁴¹ GNC Affidavit, para. 101

61. 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

62. In furtherance of the principle of comity, Canadian courts should allow a foreign court to exercise principal control over the insolvency process if that other jurisdiction has the closest connection to the proceeding.

63. The granting of an order recognizing and giving effect to the First Day Orders is appropriate for the following reasons:

- (a) The U.S. Court has appropriately taken jurisdiction over the Chapter 11 Cases, so comity will be furthered by this Court's recognition of and support for the Chapter 11 Cases already under way in the United States;
- (b) Coordination of proceedings in the two jurisdictions will ensure equal and fair treatment of all stakeholders irrespective of where they are located;
- (c) Given the close connection between the Debtors and the United States, it is reasonable and sensible for the U.S. Court to have principal control over the insolvency process; and

⁴² [*Hollander Sleep Products, LLC et al., Re*](#) at para 41.

- (d) The First Day Orders were obtained by the applicant to minimize the adverse effects of the Chapter 11 Cases on their business in order to preserve value of the Debtors' assets for the benefit of the claimants.

64. Recognition of the First Day Orders is important to ensure the equal treatment of Canadian stakeholders, that the proceedings are coordinated with the Chapter 11 Cases and that Canadian trade creditors and suppliers (if any) receive the benefit of the First Day Orders, such as the order permitting payment of critical vendors.

(c) FTI Canada should be appointed Information Officer

65. It has become common in proceedings under Part IV of the CCAA for the Court to appoint an information officer, pursuant to the court's broad discretion under section 49. The Model Supplemental Order now includes the appointment of the information officer. An information officer helps effect cooperation between the Canadian proceeding, the foreign representative and foreign court, as required by section 52(1) of the CCAA.⁴³

66. The applicant seeks to appoint FTI Canada as the Information Officer in this proceeding. The applicant submits that the appointment of FTI Canada as Information Officer will help facilitate these proceedings and the dissemination of information concerning developments in the Chapter 11 Cases to affected creditors, stakeholders and the Court.

67. The proposed role of FTI Canada as Information Officer is based on the Model Order that includes the appointment of an information officer and is consistent with the terms of

⁴³ CCAA, s. 52.

appointment of information officers in other recent recognition proceedings under the CCAA in Ontario.

(d) The Interim DIP Order should be recognized and the DIP Charge granted

68. The DIP Motion seeks an order that, among other things, authorizes the Debtors to (a) obtain senior secured postpetition financing on a superpriority basis in the aggregate principal amount of US\$200,000,000 (the “DIP Term Facility”) and (b) incur senior secured postpetition obligations on a superpriority basis in respect of a prepetition senior secured superpriority credit facility in the aggregate principal amount of US\$275,000,000 plus any and all accrued and unpaid interest on all outstanding FILO Term Loans (the “DIP ABL FILO Facility”).⁴⁴

69. Immediate access to incremental liquidity pursuant to the DIP financing facilities is critical to preserving the Debtors’ ability to operate. The Debtors do not have sufficient liquidity to operate their business in the ordinary course without the financing provided by the DIP financing facilities. Among other things, the Debtors need such liquidity to pay vendors and other participants in the Debtors’ supply chain, to execute on certain initiatives, and to pay fees and costs related to their restructurings.⁴⁵

70. The Debtors have determined, in the exercise of their business judgment, that the terms of the DIP financing facilities are reasonable and appropriate in the circumstances.⁴⁶

⁴⁴ GNC Affidavit, para. 89

⁴⁵ GNC Affidavit, paras. 90-91

⁴⁶ GNC Affidavit, para. 92

71. The amount actually borrowed by the Debtors under the DIP financing facilities is proposed to be secured by, among other things, Court-ordered charges on the Debtors' property in Canada.⁴⁷

72. This Court has concluded in previous proceedings that there is no impediment to granting approval of interim DIP financing including a full roll-up provision in foreign recognition proceedings under Part IV of the CCAA. In doing so, it has emphasized the importance of comity in foreign recognition proceedings.⁴⁸

73. A similar analysis applies to the present situation. The applicant is seeking that the Chapter 11 Cases be recognized as a foreign main proceeding, and the U.S. Court is expected to grant the Interim DIP Order. Assuming that occurs, consistent with the expected findings of the U.S. Court, the relief requested is necessary for the protection of the 11 Debtors' property and for the interests of creditors in Canada and the U.S.

(e) The Administration Charge should be granted

74. The Debtors propose to grant Canadian counsel to the Debtors, the proposed Information Officer and its legal counsel an administration charge with respect to their fees and disbursements in the maximum amount of CDN\$250,000 (the "Administration Charge") on the

⁴⁷ GNC Affidavit, para. 93

⁴⁸ [Hollander Sleep Products, LLC et al., Re](#) at paras 46-47; [Hartford Computer Hardware, Inc. \(Re\)](#), [2012 ONSC 964](#) at paras 10-14, 18-19; [Xinergy Ltd., Re](#), [2015 ONSC 2692](#) at paras 18, 21-23.

Debtors' property in Canada, as well as retainers in the amount of CDN\$350,000 for the Information Officer and CDN\$100,000 for its counsel.⁴⁹

75. Section 11.52 of the CCAA expressly provides that the Court has jurisdiction to grant an administration charge. This section is permissive and does not contain any specific criteria for a court to consider in granting such a charge.

76. In *Canwest Publishing*, the court provided a non-exhaustive list of factors to be considered in approving an administration charge, including: (a) the size and complexity of the businesses being restructured; (b) the proposed role of the beneficiaries of the charge; (c) whether there is an unwarranted duplication of roles; (d) whether the quantum of the proposed charge appears to be fair and reasonable; (e) the position of the secured creditors likely to be affected by the charge; and (f) the position of the Monitor.⁵⁰

77. The applicant 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 proposed Information Officer and its legal counsel.

(f) *The Interim Store Closing Sale Order should be recognized*

78. The Store Closing Motion seeks interim and final orders that, among other things,

- (a) authorize on an interim and final basis store closing or similar themed sales (“Store Closings”) in accordance with the terms of the U.S. and Canadian store closing sale procedures (the “U.S. Store Closing Procedures” and the “Canadian

⁴⁹ GNC Affidavit, para. 97

⁵⁰ [Canwest Publishing Inc.](#), [2010 ONSC 222](#) at para 54.

Store Closing Procedures”, respectively, and, together, the “Store Closing Procedures”);

- (b) authorize the Debtors to pay customary bonuses to employees of certain stores (the “Closing Stores”);
- (c) authorize the Debtors to assume consulting agreements between certain of the Debtors and a consultant in relation to the Store Closings

79. The Debtors are seeking to wind down numerous store locations throughout the U.S. and Canada through a store closing sales process. Given continuously declining profitability and operational challenges, and despite the best efforts of the Debtors and their advisors to secure the capital necessary to preserve the entire business as a going concern, the Debtors are simply unable to meet their financial obligations. The Debtors have worked in concert with their secured lenders to develop a budget for the use of cash collateral to facilitate an expedited sale and orderly wind-down process for certain stores that will maximize value and recoveries for stakeholders in these cases.⁵¹

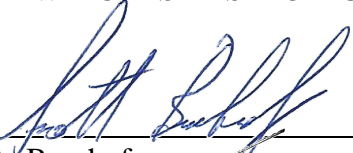
80. The Debtors selected and engaged the Consultant to manage the Store Closings, sell their store inventory as well as other tangible personal property, and otherwise prepare the stores for turnover to their landlords, in accordance with Canadian Sale Guidelines, which are substantially consistent with the store closing process that is typically used in Canada.

PART V – RELIEF REQUESTED


81. The Applicant requests that the Court grant the interim order, Consulting Agreement Order, Initial Recognition Order and the Supplemental Order.

⁵¹ GNC Affidavit, para. 108


ALL OF WHICH IS RESPECTFULLY SUBMITTED




Scott A. Bomhof



Adam Slavens



Jeremy Opolsky



Leora Jackson

Lawyers for the Applicant

SCHEDULE A – LIST OF AUTHORITIES

Authority	Pinpoints
1 <i>Lightsquared LP (Re)</i> , 2012 ONSC 2994	1-3, 25-26
2 Interim Initial Order dated October 19, 2010 granted by Morawetz J. in TerreStar Networks Inc., Court File No. CV-10-8944-00CL	
3 Interim Initial Order dated December 21, 2009 granted by Cumming J. in TLC Vision Corporation (no court file)	
4 Endorsement of Morawetz J dated May 15, 2012 in Court File CV-19-615560-00CL	
5 Endorsement of Hainey J dated March 18, 2019 in Court File CV-19-615560-00CL	
6 <i>Babcock & Wilcox Canada Ltd., Re</i> , 5 BLR (3d) 75	21
7 <i>MtGox Co., Ltd (Re)</i> , 2014 ONSC 5811	10-12
8 Endorsement of Justice Hainey dated February 18, 2020 in Court File No. CV-20-00636511-00CL (<i>Pier One Inc. Recognition Application</i>)	
9 <i>Laidlaw Inc. (Re) (In Bankruptcy)</i> , 2003 CanLII 8003 (ON SC)	19
10 Order of Hainey J., as issued & entered on Feb. 21, 2020, re Amended and Restated Supplemental Order (<i>Pier One Inc. Recognition Application</i>)	
11 <i>Hollander Sleep Products, LLC et al., Re</i> , 2019 ONSC 3238	27, 41, 46-47
12 <i>Payless Holdings LLC (Re)</i> , 2017 ONSC 2242	22
13 <i>Zochem Inc. (Re)</i> , 2016 ONSC 958	20, 22
14 <i>CHC Group Ltd. (Re)</i> , 2016 BCSC 2623	9
15 <i>Massachusetts Elephant & Castle Group, Inc. (Re)</i> , 2011 ONSC 4201	26-31
16 <i>Angiotech Pharmaceuticals Ltd. (Re)</i> , 2011 BCSC 115	7

Authority	Pinpoints
17 <i>Hartford Computer Hardware, Inc. (Re)</i> , 2012 ONSC 964	10-14, 18-19
18 <i>Xinergy Ltd., Re</i> , 2015 ONSC 2692	18, 21-23
19 <i>Canwest Publishing Inc.</i> , 2010 ONSC 222	54

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

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.

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.

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.

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.

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.

SCHEDULE C

Order and Endorsement of Hainey J., dated March 18, 2019

Schedule "C"

Court File No. CV-19-615560-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) MONDAY, THE 18th
JUSTICE HAINEY) DAY OF MARCH, 2019

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF BONDFIELD CONSTRUCTION COMPANY LIMITED, 950504 ONTARIO INC., 352021 ONTARIO LIMITED, 2433485 ONTARIO INC. and 2433486 ONTARIO INC.

APPLICANTS

ORDER

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Steven Aquino sworn March 5, 2019 and the Exhibits thereto (collectively, the **Aquino Affidavit**"), and the pre-filing report dated March 5, 2019 of Ernst & Young Inc. ("**E&Y**"), in its capacity as the proposed Monitor of the Applicants (herein, the "**Insolvency Officer**"), and on hearing the submissions of counsel for Applicants, counsel to the Insolvency Officer, counsel to Zurich Insurance Company Ltd, and counsel to Bridging Finance Inc., as agent (the "**Agent**") under the credit letter agreement with Bondfield Construction Company Limited dated July 24, 2017, as amended (the "**Credit Agreement**");



NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

1. **THIS COURT ORDERS** that until and including April 3, 2019, or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Applicants or affecting the Applicants’ business (the “**Business**”), or affecting the Applicants’ current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”), except with the written consent of the Applicants and the Insolvency Officer, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

2. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Applicants or affecting the Business or the Property, are hereby stayed and suspended, except with the written consent of the Applicants and the Insolvency Officer, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business that the Applicants are not lawfully entitled to carry on; (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for a lien with the consent of the Insolvency Officer or leave of the Court.

NO INTERFERENCE WITH RIGHTS

3. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence or permit in favour of or held by the Applicants, except with the written consent of the Insolvency Officer, or leave of this Court.

CONTINUATION OF SERVICES

4. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all trademark license and other intellectual property, computer software, communication and other data services, centralized banking services, payroll and benefit services, insurance, warranty services, vehicle and transportation services, temporary labour and staffing services, freight services, sub-contractors, trade suppliers, equipment vendors and rental companies, utility, customs, clearing, warehouse and logistics services or other services to the Applicants' Business or in respect of the Applicants' Property, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply or license of such goods, services, trademarks and other intellectual property as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of the trademarks and other intellectual property licensed to, used or owned by the Applicants, premises, telephone numbers, facsimile numbers, internet addresses and domain names and building and other permits, provided in each case that the normal prices or charges for all such goods or services or trademarks or other intellectual property received or used after the date of this Order are paid by the applicable Applicants, with the prior consent of the Insolvency Officer, in accordance with normal payment practices of the Applicants, or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Insolvency Officer, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

5. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

6. **THIS COURT ORDERS** that during the Stay Period, no Proceeding may be commenced or continued against any of the current or future directors or officers of the Applicants or Ralph Aquino in his capacity as a former director and officer of the Applicants (collectively, the “**Directors and Officers**”) with respect to any claim against the Directors or Officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the Directors or Officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

NO AFFECT

7. **THIS COURT ORDERS** that nothing in this Order, including, without limitation, the stay of proceedings, has any affect on any right, remedy, action suit or proceeding against any personal guarantor in respect of his guarantee under the Credit Agreement (each a “**Personal Guarantor**”), and the Agent may continue to exercise any right or remedy or bring any action, suit or proceeding in connection with a Personal Guarantor, and no right, remedy or claim against a Personal Guarantor in connection with the Credit Agreement may be compromised, released or otherwise affected or impacted in any way in the CCAA proceedings, or any plan filed thereunder, or any proceedings under the *Bankruptcy and Insolvency Act* or any proposal filed thereunder.

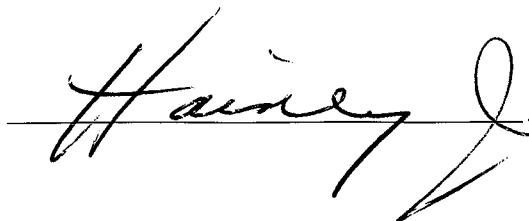
GENERAL

8. **THIS COURT ORDERS** that the Insolvency Officer shall not be liable for any act done in good faith in accordance with this Order pursuant to Section 142 of the *Courts of Justice Act* (Ontario)

9. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Toronto time) on the date of this Order.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

MAR 18 2019



PER / PAR: *fw*

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

Court File No: CV-19-615560-00CL.

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF BONDFIELD
CONSTRUCTION COMPANY LIMITED, 950504 ONTARIO INC., 352021 ONTARIO LIMITED,
2433485 ONTARIO INC. and 2433486 ONTARIO INC.

Ontario
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

ORDER

OSLER, HOSKIN & HARCOURT LLP

Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

Michael De Lellis (LSO# 48038U)

Tel: 416.862.5997

Email: mdelellis@osler.com

Jeremy Dacks (LSO# 41851R)

Tel: 416.862.4923

Email: jdacks@osler.com

Shawn T. Irving (LSO# 500035U)

Tel: 416.862.4733

Email: sirving@osler.com

Lawyers for the Applicants

Matter No: 1192590

March 18, 2019

This order is the result of extensive negotiations among the principal parties. I am satisfied that it should be granted on the terms of the attached order.

Hainey J.

The matter is adjourned to April 3, 2019 for 1 hour before the at 10 AM.

Hainey J.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED Court File No.

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GNC HOLDINGS, INC. et al.

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**FACTUM OF THE APPLICANT
(Application for Recognition of Foreign Main
Proceeding, initially returnable June 24, 2020)**

Torys LLP

79 Wellington St. W., 30th Floor
Box 270, TD South Tower
Toronto, ON M5K 1N2
Fax: 416.865.7380

Scott A. Bomhof (LSO #: 37006F)
Tel: 416.865.7370 | sbomhof@torys.com

Adam M. Slavens (LSO #: 54433J)
Tel: 416.865.7333 | aslavens@torys.com

Jeremy Opolsky (LSO #: 60813N)
Tel: 416.865.8117 | jopolsky@torys.com

Leora Jackson (LSO #: 68448L)
Tel: 416.865.7547 | ljackson@torys.com

Lawyers for the Applicant