

**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 LIGADO NETWORKS LLC, LIGADO NETWORKS
CORP., LIGADO NETWORKS HOLDINGS (CANADA) INC., LIGADO NETWORKS
(CANADA) INC., ATC TECHNOLOGIES, LLC, LIGADO NETWORKS INC. OF
VIRGINIA, ONE DOT SIX LLC, ONE DOT SIX TVCC LLC, LIGADO NETWORKS
SUBSIDIARY LLC, LIGADO NETWORKS FINANCE LLC and LIGADO NETWORKS
BUILD LLC**

**APPLICATION OF LIGADO NETWORKS LLC UNDER SECTION 46 OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C 36, AS AMENDED**

**FACTUM OF THE APPLICANT
(Initial Recognition Order and Supplemental Order)**

January 15, 2025

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(as of January 15, 2025)**

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**FACTUM OF THE APPLICANT
(Initial Recognition Order and Supplemental Order)**

PART I – OVERVIEW

1. The Applicant, Ligado Networks LLC (“**Ligado**”), files this factum on its own behalf and in its capacity as proposed foreign representative (in such capacity, the “**Proposed Foreign Representative**”) of Ligado Networks Corp., Ligado Networks Holdings (Canada) Inc., Ligado Networks (Canada) Inc., ATC Technologies, LLC, Ligado Networks Inc. of Virginia, One Dot Six LLC, One Dot Six TVCC LLC, Ligado Networks Subsidiary LLC, Ligado Networks Finance LLC and Ligado Networks Build LLC (collectively with Ligado, the “**Debtors**”) in support of its Application for certain relief pursuant to Part IV of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), specifically for the following Orders:¹

¹ Capitalized terms used but not otherwise defined in this factum have the meanings given to them in the Affidavit of Douglas Smith sworn January 14, 2025 (the “**Smith Affidavit**”).

- (a) an initial recognition order (foreign main proceeding) (the “**Initial Recognition Order**”), among other things:
 - (i) appointing Ligado as “foreign representative”, as defined in section 45 of the CCAA, of the Debtors;
 - (ii) declaring that the centre of main interest (“**COMI**”) of each of the Debtors is the United States of America and recognizing the chapter 11 cases (the “**Chapter 11 Cases**”) commenced by the Debtors in the United States Bankruptcy Court for the District of Delaware (the “**U.S. Court**”) under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**U.S. Bankruptcy Code**”) as a “foreign main proceeding”, as defined in section 45 of the CCAA;
 - (iii) granting a stay of proceedings in Canada in respect of the Debtors, including the property, business, directors and officers of the Debtors; and
 - (iv) requiring the Information Officer (defined herein), on behalf of the Foreign representative, to publish notice of the proceeding pursuant to subsection 53(b) of the CCAA; and
- (b) a supplemental order (foreign main proceeding) (the “**Supplemental Order**”), among other things:
 - (i) recognizing in Canada and enforcing certain orders of the U.S. Court made in the Chapter 11 Cases (collectively, the “**First Day Orders**”);

- (ii) appointing FTI Consulting Canada Inc. (“**FTI Canada**”) as the information officer in respect of this proceeding (in such capacity, the “**Information Officer**”);
- (iii) staying any claims, rights, liens or proceedings against or in respect of the Debtors, the business and property of the Debtors and the directors and officers of the Debtors;
- (iv) restraining the right of any person or entity to, among other things, discontinue or terminate any supply of products or services to the Debtors;
- (v) granting a super-priority charge up to the maximum amount of CA\$750,000 over the Debtors’ property, in favour of the Information Officer and its counsel, and the Foreign Representative’s Canadian counsel, as security for their professional fees and disbursements incurred in respect of these proceedings (the “**Administration Charge**”); and
- (vi) granting a super-priority charge over the Debtors’ property (the “**DIP Lender’s Charge**”) which shall be consistent with the liens and charges granted by the Interim DIP Order entered by the U.S. Court in the Chapter 11 Cases.

2. On January 5, 2024 (the “**Petition Date**”), the Debtors commenced the Chapter 11 Cases in the U.S. Court under chapter 11 of title 11 of the U.S. Bankruptcy Code. On January 7, 2025, the U.S. Court granted the First Day Orders. On this Application, Ligado, as Proposed Foreign

Representative, seeks recognition by this Court of the Chapter 11 Cases and First Day Orders in Canada, together with the other relief set forth above and in its Notice of Application.²

3. The Debtors have sought relief under Chapter 11 of the U.S. Bankruptcy Code and are seeking corollary relief under Part IV of the CCAA to effectuate, among other things, a comprehensive balance sheet restructuring and to allow the Debtors to pursue and quantify claims involving the U.S. Government and Inmarsat (now Viasat). Concurrently with the filing of the Chapter 11 Cases, Ligado and their key stakeholders were able to successfully negotiate: (i) a restructuring transaction to recapitalize Ligado's balance sheet; and (ii) a binding term sheet with AST & Science, LLC ("**AST**") setting forth the terms of a long-term commercial transaction between Ligado and AST (the "**AST Transaction**"), which culminated in the signing of a restructuring support agreement on January 5, 2025 (the "**RSA**").³

4. Upon emergence from the Chapter 11 Cases and these Canadian recognition proceedings (the "**Recognition Proceedings**"), Ligado anticipates that its indebtedness will be reduced from US\$8.6 billion today to approximately US\$1.2 billion.⁴

5. The Debtors will continue to operate through the Chapter 11 Cases and Recognition Proceedings, providing services to its existing customers and advancing its mobile satellite plans to emerge from the Chapter 11 Cases and Recognition Proceedings on firm footing. In Canada, Ligado intends to continue paying its trade creditors in the ordinary course and does not anticipate

² Smith Affidavit, para. 2.

³ Smith Affidavit, para. 4.

⁴ Smith Affidavit, para. 5.

any changes to its local Canadian workforce of approximately 31 employees during the restructuring.⁵

6. The Proposed Foreign Representative submits that this Court should exercise its discretion to grant the Initial Recognition Order and Supplemental Order because the requested relief is necessary to protect and preserve the operations and value of the Debtors' business in Canada while the Debtors, including the Canadian Debtors (defined herein), pursue a comprehensive restructuring. Granting the requested orders is also consistent with the principles of comity that underlie the provisions of Part IV of the CCAA.

PART II – THE FACTS

A. The Debtors' Business

7. A detailed overview of the Debtors' business and operations is set forth in the Smith Affidavit, which should be read together with the pre-filing report of FTI Canada, in its capacity as proposed Information Officer, dated January 14, 2025.

8. In summary, the Debtors are a mobile communications company that operates a satellite network across North America that has been providing mobile satellite services (“MSS”) to government and commercial customers for over 25 years.⁶ In the near term, Ligado is planning to evolve its satellite services to easily integrate with terrestrial networks and to communicate directly to standard mobile devices. In addition, Ligado has the authority to develop terrestrial-based solutions for both 5G public and private networks using its coordinated licensed and leased

⁵ Smith Affidavit, para. 6.

⁶ Smith Affidavit, para. 7.

spectrum in the “L-Band,” located in the highly attractive one- to two- GHz spectrum category, known as the lower mid-band.⁷

9. As described in the Smith Affidavit, Ligado’s efforts to fully develop and implement its business plans have been severely hampered by the: (a) actions of the U.S. Government, which actions are the subject matter of ongoing litigation commenced by Ligado at the U.S. Court of Federal Claims; and (b) breaches (among other things) of an integral spectrum coordination agreement between Ligado and its contractual counterparty, Inmarsat (now Viasat), in respect of which Ligado has filed a complaint in an adversary proceeding in the Chapter 11 Cases.⁸

10. As a result of the foregoing, the Debtors face critical liquidity challenges and have sought breathing room through the Chapter 11 Cases and these Recognition Proceedings to, among other things, pursue its complaints against U.S. Government and Inmarsat, and effectuate a comprehensive restructuring to emerge on stable footing.

B. The Restructuring and AST Transaction

11. The RSA contemplates a restructuring of the Debtors through: (i) a prearranged chapter 11 plan and recognition proceedings pursuant to Part IV of the CCAA; (ii) DIP financing (the “**DIP Facility**”) to provide the Debtors with the liquidity necessary to fund the Chapter 11 Cases; (iii) the equitization of all of the Debtors’ prepetition funded indebtedness (except for debt that is repaid or rolled up through the DIP Facility); (iv) the retention of preferred and common equity interests and relative priority amongst current equity holders; (v) entry into the AST Transaction; and (vi)

⁷ Smith Affidavit, para. 8.

⁸ Smith Affidavit, paras. 57, 74-82.

the conversion of the DIP Facility into an exit facility upon the effective date of an acceptable plan pursuant to the DIP Facility.⁹

12. The AST Transaction involves, among other things, the provision by the Debtors to AST of certain usage rights with respect to the Debtors' L-band MSS spectrum and related assets in exchange for AST: (i) contributing certain AST common equity, warrants, convertible notes and/or cash to the Debtors; (ii) making certain annual usage-right payments to the Debtors; and (iii) paying the Debtors a certain percentage of revenues derived from AST's use of the L-band MSS spectrum and related assets.¹⁰

13. The Debtors and the consenting stakeholders believe that the AST Transaction, together with the recapitalization provided for in the RSA, represents a value maximizing transaction that benefits all stakeholders. The RSA also contains certain key case milestones to ensure these Chapter 11 Cases remain on track, including, among other things: (a) deadlines for entry of the interim and final DIP orders; (b) approval of a break-up fee in connection with the AST Transaction; (c) entry into definitive documentation in connection with the AST Transaction; and (d) emergence from Chapter 11 within 12 months of the Petition Date.¹¹

C. The Debtors' Corporate and Capital Structure

14. Ligado owns, directly or indirectly, ten domestic and foreign subsidiaries in two jurisdictions in the United States (Delaware and Virginia) and two jurisdictions in Canada (Ontario

⁹ Smith Affidavit, para. 35.

¹⁰ Smith Affidavit, para. 36.

¹¹ Smith Affidavit, para. 37.

and Nova Scotia). Ligado and all of its U.S. and Canadian subsidiaries are the Debtors in the Chapter 11 Cases.¹²

15. The Debtors’ capital structure as of the Petition Date is summarized in the below table:¹³

Obligation	Maturity / Redemption	Approximate Principal Amount Outstanding / Liquidation Preference
<i>Funded Debt Obligations¹⁴</i>		
Prepetition First Out Term Loans	November 1, 2023 ¹⁵	US\$319.5
Prepetition First Lien Notes	November 1, 2023	US\$5,491.8
Prepetition First Lien Senior Pari Term Loans	November 1, 2023	US\$122.3
Prepetition 1.5 Lien Facility	February 2, 2024	US\$591.5
Prepetition Second Lien Notes	May 1, 2024	US\$2,050.0
<i>Preferred Equity</i>		
Series A-0 Preferred Units	N/A	US\$6,230,714,260
Series A-1 Preferred Units	N/A	US\$1,672,843,762
Series A-2 Preferred Units	N/A	US\$326,915,279
Series B Preferred Units	N/A	US\$294,170,575
Series C Preferred Units	N/A	US\$658,128,799
<i>Common Equity</i>		
Series A Common Units	N/A	N/A
Series B Common Units	N/A	N/A

D. The Debtors’ Canadian Operations, Employees and Creditors

16. Three of the Debtors, each of which is a subsidiary of Ligado, are Canadian companies: Ligado Networks Corp. (“**Networks Corp.**”), Ligado Networks Holdings (Canada) Inc.

¹² Smith Affidavit, para. 38.

¹³ Smith Affidavit, para. 39.

¹⁴ All amounts reflected in million of US dollars.

¹⁵ All loans issued after this date pursuant to the Prepetition First Out Term Loans are payable on demand.

(“**Holdings**”) and Ligado Networks (Canada) Inc. (“**Networks Inc.**” and, collectively with Networks Corp. and Holdings, the “**Canadian Debtors**”).¹⁶

17. Networks Corp. is a Nova Scotia corporation that is extra-provincially registered to carry on business in Ontario, with its principal place of business located at 1601 Telesat Court, Ottawa, Ontario (the “**Ottawa Premises**”). Holdings and Networks Inc. are both incorporated under the laws of Ontario.¹⁷

18. Networks Corp. is the sole operating entity in Canada. Networks Inc. and Networks Corp. hold the Canadian spectrum and regulatory licenses on behalf of the Debtors, and Holdings is an inactive holding company without books or records.¹⁸

19. The Canadian Debtors, through Networks Corp., carry on substantially the same business as Ligado, i.e., delivery of satellite capacity and related services to end customers. The Debtors have two satellite gateway locations in Canada: one in Ottawa, Ontario, and a second location in Saskatoon, Saskatchewan.¹⁹

20. In practice, the operations of the Canadian Debtors are deeply integrated with Ligado and the other Debtors in the United States. Most core business functions for the Canadian operations, including legal and accounting, are administered centrally from the United States. A majority of the Canadian Debtors’ funding needs are provided by Ligado through intercompany contributions, specifically: (a) Networks Corp. is funded by Ligado (i.e., Ligado Networks LLC), with such contributions treated as equity; and (b) Networks Inc. is in turn funded by Networks Corp., with

¹⁶ Smith Affidavit, para. 41.

¹⁷ Smith Affidavit, para. 42.

¹⁸ Smith Affidavit, para. 43.

¹⁹ Smith Affidavit, para. 44.

such contributions treated as intercompany payables or receivables, as applicable.²⁰ At present, Networks Inc. owes Networks Corp approximately US\$4.2 million in such intercompany payables. The Canadian Debtors do not have the resources to repay the intercompany indebtedness and are financially dependent on Ligado to maintain operations.²¹

21. In Canada, day-to-day operations are carried out by Networks Corp, which employs approximately 31 people, primarily from its operations offices at the Ottawa Premises.²² The Debtors do not contemplate making any operational or employee changes to its Canadian operations through the Chapter 11 Cases or these Recognition Proceedings.²³ The Canadian Debtors are current on payroll, accounts payable to trade vendors and landlords with, in many cases, pre-payments made to the Petition Date.²⁴

E. Connection to the Province of Ontario

22. The Debtors' main interests in Canada are located in the Province of Ontario, specifically:
- (a) the Canadian Debtors operate from the Ottawa Premises and substantially all of their Canadian employees reside in the Ottawa area;
 - (b) one of the Debtors' two Canadian-based satellite gateways is located in Ontario;
 - (c) Canadian counsel to Debtors are situated in Toronto, Ontario; and

²⁰ Smith Affidavit, para. 45.

²¹ Smith Affidavit, para. 46.

²² Smith Affidavit, para. 49.

²³ Smith Affidavit, para. 50.

²⁴ Smith Affidavit, para. 51.

- (d) the proposed Information Officer and its counsel, Stikeman Elliott LLP, are situated in Toronto, Ontario.²⁵

PART III – THE ISSUES

- 23. The issues before this Honourable Court are whether:
 - (a) the Chapter 11 Cases are a “foreign main proceeding” pursuant to Part IV of the CCAA;
 - (b) if so, the Debtors are entitled to the relief sought in the Initial Recognition Order and Supplement Order, which relief includes: (i) recognizing the First Day Orders issued by the U.S. Court in the Chapter 11 Cases; (ii) granting the stay of proceedings; (iii) appointing FTI Canada as Information Officer; and (iv) granting the Administration Charge and the DIP Lender’s Charge.

PART IV – THE LAW AND ARGUMENT

A. It is Appropriate to Recognize the Chapter 11 Cases as Foreign Main Proceedings

- 24. Part IV of the CCAA establishes the applicable process for addressing the administration of cross-border insolvencies to promote cooperation and coordination between Canadian and foreign courts.²⁶ In *Hollander Sleep Products, LLC*,²⁷ this Court summarized the principles underlying such proceedings:

[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,

²⁵ Smith Affidavit, para. 55.

²⁶ CCAA, s. 44.

²⁷ [*Hollander Sleep Products, LLC \(Re\)*](#), 2019 ONSC 3238.

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.²⁸

25. Pursuant to section 46(1) of the CCAA, a person who is a foreign representative may apply for recognition of the foreign proceeding in respect of which that person is a foreign representative.²⁹

26. Section 47 of the CCAA provides that the Court shall make an order recognizing a foreign insolvency proceeding if it is satisfied that 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.³⁰

27. 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 are subject to control or supervision by a foreign court for the purpose of reorganization.”³¹

²⁸ *Ibid.* at paras. 41-42.

²⁹ CCAA, s. 46(1).

³⁰ CCAA, s. 47.

³¹ CCAA, s. 45(1).

Insolvency proceedings commenced under the U.S. Bankruptcy Code are accordingly consistently recognized by Canadian Courts to be a “foreign proceeding” under the CCAA.³²

28. 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 that 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.³³ In the present case, Ligado is authorized pursuant to the Foreign Representative Order granted by the U.S. Court to act as the Debtors’ representative in these Recognition Proceedings.³⁴

(i) The Debtors’ Centre of Main Interest is in the United States

29. Section 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. While the CCAA does not define what constitutes a debtor’s COMI, section 45(2) provides that, absent evidence to the contrary, a debtor’s COMI is deemed to be the location of its registered office. Courts have held that the determination of COMI is substantive, rather than technical.³⁵

30. Where it is necessary to go beyond the presumption under section 45(2) to designate a debtor’s COMI, courts have found COMI to be where: (a) the location is readily ascertainable by creditors; (b) the location of the debtor’s principal assets or operations; and (c) the location is

³² [Hollander Sleep Products, LLC \(Re\)](#), 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.

³³ CCAA, s. 47(2).

³⁴ Affidavit of Sarah Lam sworn January 14, 2025 (the “**Lam Affidavit**”), Exhibit “E”. A certified copy of the Foreign Representative Order will be filed with this Court prior to the initial recognition hearing, or as soon as practicable thereafter.

³⁵ [CHC Group Ltd. \(Re\)](#), 2016 BCSC 2623 at para 9.

where the management of the debtor takes place.³⁶ In addition to those primary considerations, Canadian courts have also considered:

- (a) the location of employee administrations, including human resource functions;
- (b) the location of the company's marketing and communication functions;
- (c) whether the enterprise is managed on a consolidated basis;
- (d) the extent of integration of an enterprise's international operations;
- (e) the centre of an enterprise's corporate, banking, strategic and management functions;
- (f) the existence of shared management within entities and in an organization;
- (g) the location where cash management and accounting functions are overseen;
- (h) the location where pricing decisions and new business development initiatives are created; and
- (i) the location of an enterprise's treasury management functions, including management of accounts receivable and accounts payable.³⁷

31. The COMI of the Debtors in this case, including the Canadian Debtors, is in the United States. Among other things:

³⁶ [Zochem](#), 2016 ONSC 958, at para. 22.

³⁷ [Massachusetts Elephant & Castle Group, Inc. \(Re\)](#), 2011 ONSC 4201 at paras. 26-31.

- (a) their operating mind and management are in all respects located in the United States and all material decision making is made by Ligado personnel in the United States;
- (b) the Debtors' headquarters is located at 10802 Parkridge Boulevard, Reston, Virginia;
- (c) the majority of directors are located in the US;
- (d) virtually all back-office functions (including administrative, tax, accounting, technical support, legal and other functions) are directed by senior management in the United States;
- (e) all authorized signatories for the bank accounts reside in the United States;
- (f) the Canadian Debtors do not have separate audited financial statements;
- (g) although the Canadian Debtors have some unique customers, most of their customers are cross-border customers with primary and/or originating ties to Ligado's relationships in the United States; and
- (h) the Canadian Debtors are funded by and operate on an integrated basis with Ligado and would be unable to operate independently.³⁸

32. Accordingly, the granting of an order recognizing the Chapter 11 Cases as a "foreign main proceeding" under section 47(2) of the CCAA is appropriate.

³⁸ Smith Affidavit, para. 85.

B. It is Appropriate to Grant the Initial Recognition Order and Supplemental Order

(i) The Stay of Proceedings is Appropriate

33. Pursuant to subsection 48(1) of the CCAA, this Court shall, in the case of a foreign main proceeding, exercise its jurisdiction to prohibit the commencement or continuance of any action, suit or proceeding against the Debtors, subject to any terms and conditions that this Court considers appropriate.³⁹

34. The stay of proceedings in Canada is essential to protect the efforts of the Debtors to proceed in the Chapter 11 Cases and implement the RSA, particularly in light of certain key assets and licences within Canada held by certain of the Debtors, i.e. the Canadian Debtors.

35. The Initial Recognition Order sought by the Proposed Foreign Representative provides for all the relief required under section 48 and is consistent with the Commercial List Model CCAA Initial Recognition Order (Foreign Main Proceeding).

(ii) Recognition of First Day Orders is Appropriate

36. Ligado as Proposed Foreign Representative is seeking an order recognizing and giving effect in Canada to the First Day Orders.⁴⁰

37. In addition to the required relief under section 48 of the CCAA, if an order recognizing a foreign proceeding is made, section 49 of the CCAA provides this Court with broad discretion to make any order it considers appropriate where it is satisfied that the order is necessary for the

³⁹ CCAA, s. 48(1).

⁴⁰ Lam Affidavit, Exhibits “B” – “K”.

protection of the debtor company's property or the interests of creditors.⁴¹ Section 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".⁴²

38. 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.⁴³ 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.⁴⁴

39. 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."⁴⁵

40. It is appropriate for this Court to grant the Supplemental Order recognizing and giving effect to the First Day Orders for the following reasons:

- (a) the U.S. Court has properly assumed jurisdiction over the Chapter 11 Cases and comity will be furthered by this Court's recognition of the First Day Orders it granted;

⁴¹ CCAA, s. 49(1).

⁴² CCAA, s. 52(1).

⁴³ CCAA, s. 52(1).

⁴⁴ [Hollander](#), 2019 ONSC 3238, at para 41.

⁴⁵ [Magna Entertainment Corp. \(Re\)](#), [2009] 51 CBR (5th) 82 (Ont Sup Ct J (Commercial List)) at para. 9; see also, [Endorsement of Hainey J dated October 16, 2020](#) in *Mallinckrodt Canada ULC et al.*, Court File No. CV-20-00649441-00CL at paras. 1 and 4-6.

- (b) coordination of proceedings in Canada and the United States will ensure equal and fair treatment of all stakeholders regardless of their location;
- (c) the First Day Orders are being sought by the Debtors to minimize the adverse effects of the Chapter 11 Cases on their overall businesses and to preserve value for the benefit of stakeholders, both in the United States and Canada.

(iii) FTI Canada should be appointed Information Officer

41. The Proposed Foreign Representative seeks to appoint FTI Canada as the Information Officer in this proceeding. FTI Canada is a licensed insolvency trustee, well-known for its expertise in CCAA matters, including cross-border plenary and ancillary proceedings under the CCAA, and has consented to act as Information Officer in these proceedings.

42. Although the CCAA does not require that an information officer be appointed, 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.⁴⁶ The information officer's role is to help effect cooperation between the Canadian proceeding, the foreign representative and foreign court, including to keep the Court apprised of the status of the foreign proceeding.⁴⁷

43. FTI Canada's proposed role as Information Officer is based on the terms of the Commercial List Model Order dealing with the appointment of an information officer and is consistent with the

⁴⁶ CCAA, ss. 49 and 50.

⁴⁷ CCAA, s. 52(1).

terms of orders granted in other recent recognition proceedings under Part IV of the CCAA in Ontario.⁴⁸

(iv) The Administration Charge is Appropriate

44. The Proposed Foreign Representative is requesting that the Court grant to the proposed Information Officer, its legal counsel (Stikeman Elliott LLP) and Ligado's Canadian legal counsel (Dentons Canada LLP), the Administration charge with respect to their fees and disbursements in the maximum amount of CA\$750,000 on the Debtors' property in Canada.

45. 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.

46. 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; and (e) the position of the secured creditors likely to be affected by the charge.⁴⁹ An administration charge and the approval of retention of professionals is appropriate in Part IV proceedings because the work performed is supervised by this Court, not the foreign court.⁵⁰

⁴⁸ [Supplemental Order \(Foreign Main Proceeding\) dated March 12, 2021](#), granted by Cavanagh, J. in *Knotel, Inc. and Knotel Canada, Inc.*, Court File No. CV-21-00658434-00CL at paras 5 and on [*Knotel*].

⁴⁹ *Canwest Publishing Inc.*, 2010 ONSC 222 at para, 54.

⁵⁰ [Supplemental Order \(Foreign Main Proceeding\) dated August 9, 2019](#), granted by Hailey J. in *Jack Cooper Ventures Inc. et al.*, Court File No. CV-19-625200-00CL at paras 17-18; *Knotel*, at para. 19.

47. The Proposed Foreign Representative 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 Foreign Representative's legal counsel, the proposed Information Officer and its legal counsel.

(v) The DIP Lender's Charge Should be Granted

48. As of the Petition Date, the Debtors had approximately US\$9.6 million of cash on hand. During the Chapter 11 Cases and these Recognition Proceedings, the Debtors will need current liquidity to satisfy payroll, meet overhead obligations, satisfy the costs, fees, and expenses (including all professional fees and expenses) of administering these cases and for the continued management, operation, and preservation of their business. The ability to satisfy these expenses as and when due is essential to the Debtors' successful operation of their business during these proceedings. The DIP Facility is intended, among other things, to address the Debtors' funding needs during the Chapter 11 Cases and these Recognition Proceedings. Accordingly, this Court should recognize the Interim DIP Order and grant the associated DIP Lender's Charge to avoid destabilizing the Debtors' business operations and jeopardizing the restructuring contemplated by the RSA, including the AST Transaction.

49. Courts have have established various factors relevant in considering whether to approve a cross-border debtor-in-possession financing,⁵¹ many of which apply in the present case:

- (a) the DIP Facility furthers the objectives of the CCAA and enables the Debtors to fund their operations and administrative costs during the Chapter 11 Cases and

⁵¹ [Hollander Sleep Products, LLC \(Re\)](#), 2019 ONSC 3238, at para. 50; [Indalex Limited \(Re\)](#), 2009 CanLII 17351 (ONSC), at para. 8.

these Recognition Proceedings, preserve the value of their businesses, and maximize such value by implementing the RSA and consummating the AST Transaction;

- (b) the DIP Facility represents the best available option for the Debtors;
- (c) the Canadian Debtors' creditors are not prejudiced, as the Canadian Debtors' assets were already encumbered by the existing security granted in favour of the secured lenders; and
- (d) funds available under the DIP Facility will indirectly flow to the Canadian Debtors to enable their continued operation during these Recognition Proceedings.

50. The factors in section 11.2(4) of the CCAA, while not directly applicable in a Part IV proceeding, also indicate that the DIP Charge is reasonable in the circumstances, particularly in light of the time-sensitive nature of these proceedings, the Debtors' need to access liquidity to continue their operations, and the lack of material prejudice to Canadian stakeholders.

51. While the Final DIP Order is not presently before the Court for recognition, the Proposed Foreign Representative expects that the Final DIP Order will include a roll-up of pre-existing obligations (defined in the Smith Affidavit as the "Roll-Up").⁵²

52. The Proposed Foreign Representative submits that the Roll-Up contemplated by the DIP Facility would be no obstacle to this Court's recognition of the Final DIP Order. Section 11.2(1) of the CCAA, which applies in a plenary CCAA proceeding, provides that an interim financing

⁵² Smith Affidavit, para. 99.

charge may not secure an obligation that existed prior to the granting of an initial order under the CCAA. By contrast, rolling up “prepetition debt into post-petition super priority financing can, and in appropriate circumstances should, be approved in the context of foreign recognition proceedings pursuant to Part IV of the CCAA.”⁵³

53. On a number of occasions, this Court has recognized U.S. court orders regarding DIP financing that included partial and full roll-up provisions.⁵⁴ In so doing, this Court has emphasized the importance of comity, finding no basis to “second guess the decision of the U.S. Court.”⁷⁴ The absence of material prejudice to Canadian creditors, as here, favours recognition of a foreign roll-up DIP facility in this Court. In addition: (a) the Canadian Debtors are guarantors of the pre-filing secured debt; and (b) the DIP Facility will provide liquidity to pay creditors of the Canadian Debtors in the ordinary course.

PART V – ORDERS SOUGHT

54. For the reasons set forth herein, the Applicant respectfully requests that the Court grant the Initial Recognition Order and Supplemental Order.

DATE: January 15, 2025



DENTONS CANADA LLP
Lawyers for the Applicant

⁵³ *Instant Brands Acquisition Holdings Inc. et al.*, 2023 ONSC 4252, at paras. 20-21.

⁵⁴ See, for example, *Hartford Computer Hardware Inc. (Re)*, 2012 ONSC 964, at paras. 6, 15 (a partial roll-up); *Xinergy Ltd., Re*, 2015 ONSC 2692, at paras. 18-23 (a full roll-up); *Hollander Sleep Products, LLC (Re)*, 2019 ONSC 3238, at paras. 45-48 (a creeping roll-up); *Instant Brands Acquisition Holdings Inc. et al.*, 2023 ONSC 4252, at paras. 19-22 (a full roll-up).

**Schedule “A”
List of Authorities**

1. [Hollander Sleep Products, LLC \(Re\)](#), 2019 ONSC 3238
2. [Payless Holdings LLC, \(Re\)](#), 2017 ONSC 2242
3. [Zochem Inc. \(Re\)](#), 2016 ONSC 958
4. [CHC Group Ltd. \(Re\)](#), 2016 BCSC 2623
5. [Massachusetts Elephant & Castle Group, Inc. \(Re\)](#), 2011 ONSC 4201
6. [Magna Entertainment Corp. \(Re\)](#), [2009] 51 CBR (5th) 82 (Ont Sup Ct J (Commercial List))
7. [Endorsement of Hainey J dated October 16, 2020](#) in *Mallinckrodt Canada ULC et al.*, Court File No. CV-20-00649441-00CL
8. [Supplemental Order \(Foreign Main Proceeding\) dated March 12, 2021](#) in *Knotel, Inc. and Knotel Canada, Inc.*, Court File No. CV-21-00658434-00CL
9. [Canwest Publishing Inc.](#), 2010 ONSC 222
10. [Indalex Limited \(Re\)](#), 2009 CanLII 17351 (ONSC)
11. [Instant Brands Acquisition Holdings Inc. et al.](#), 2023 ONSC 4252
12. [Hartford Computer Hardware Inc. \(Re\)](#), 2012 ONSC 964
13. [Xinergy Ltd., Re](#), 2015 ONSC 2692

Schedule "B"
Relevant Statutes

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

AND IN THE MATTER OF LIGADO NETWORKS LLC, LIGADO NETWORKS CORP., LIGADO NETWORKS HOLDINGS (CANADA) INC., LIGADO NETWORKS (CANADA) INC., ATC TECHNOLOGIES, LLC, LIGADO NETWORKS INC. OF VIRGINIA, ONE DOT SIX LLC, ONE DOT SIX TVCC LLC, LIGADO NETWORKS SUBSIDIARY LLC, LIGADO NETWORKS FINANCE LLC and LIGADO NETWORKS BUILD LLC

APPLICATION OF LIGADO NETWORKS LLC 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

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