

Court File No. \_\_\_\_\_

**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 MITEL NETWORKS CORPORATION**

**APPLICATION OF MITEL NETWORKS CORPORATION 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 Interim Stay Order)**

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## PART I – NATURE OF THIS APPLICATION

1. Mitel Networks Corporation (“**MNC**”), a company incorporated under the *Canada Business Corporations Act*, brings this application under Part IV of the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) and section 106 of the *Courts of Justice Act* (the “**CJA**”) in connection with the chapter 11 proceedings (the “**Chapter 11 Cases**”) commenced by MLN TopCo Ltd. (“**TopCo**”) and certain of its affiliates, including MNC (collectively, the “**Debtors**”), in the United States Bankruptcy Court for the Southern District of Texas (Houston Division) (the “**U.S. Bankruptcy Court**”).<sup>1</sup> As discussed herein, the purpose of the Chapter 11 Cases is to preserve value of the Debtors and to effect the Restructuring Transactions (as defined below), which are to be implemented pursuant to a chapter 11 plan.

2. MNC, the only Canadian Debtor, is the proposed foreign representative in respect of the Chapter 11 Cases (in such capacity, the “**Foreign Representative**”) and the only entity that would be subject to these Canadian recognition proceedings. MNC, as the proposed Foreign Representative, is commencing these Canadian recognition proceedings to preserve the value of the Canadian Business and facilitate the implementation of the Restructuring Transactions.

3. At this time, MNC seeks an order from this Court granting a stay of proceedings in Canada (the “**Interim Stay**”) in respect of MNC and its directors and officers (the “**Interim Stay Order**”). MNC anticipates returning before this Court on March 19, 2025, which will be following the First Day Hearing of the U.S. Bankruptcy Court, to seek additional orders to, among things, (a) declare MNC as the Foreign Representative in respect of the Chapter 11 Cases, (b) recognize the Chapter 11 Cases as a “foreign main proceeding” in respect of MNC, (c) recognize certain First Day Orders granted by the U.S. Bankruptcy Court, and (d) obtain certain other relief, including the appointment of an information officer and the granting of certain charges over MNC’s property in Canada.

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<sup>1</sup> Capitalized terms not otherwise defined in this Factum have the meanings set out in the Affidavit of Janine Yetter sworn March 10, 2025 (the “**Yetter Affidavit**”).

## PART II - OVERVIEW

4. The Debtors, including MNC, are part of a global company (the “**Mitel Group**” or the “**Company**”) that provides business communications and collaboration solutions. The Mitel Group was originally founded in Canada, and has grown and evolved to become a global company, with over 65 million end users in approximately 146 countries. MNC became a public company in 2010 through an initial public offering, and was taken private in 2018 when it was acquired by Searchlight Capital Partners L.P. (“**Searchlight**”) through a leveraged buyout transaction. Searchlight’s acquisition resulted in MNC becoming a direct wholly-owned subsidiary of Mitel Networks (International) Limited (“**MNIL**”), a holding company through which the Mitel Group today holds its United States, Canadian and international operating segments.<sup>2</sup>

5. The Mitel Group operates its global business on a consolidated and integrated basis. MNC is the principal entity through which the Company conducts its business in Canada, and MNC’s business generally consists of servicing the Canadian market on behalf of the Mitel Group. MNC’s revenue during the third fiscal quarter of 2024 represented approximately 2.9% of the Company’s total consolidated revenue. MNC is a guarantor of the Company’s approximately \$1.31 billion of funded indebtedness.<sup>3</sup>

6. While the Mitel Group has secured its position as a leader in the unified communications market, the Company’s liquidity situation has been negatively impacted in recent years by a number of factors that have necessitated a comprehensive restructuring solution.

7. Over the last several years, the Company experienced a confluence of industry and other external headwinds that created unanticipated costs and adversely impacted the Company’s operations and liquidity. Such challenges, among other things, resulted in the Company consummating a transaction in 2022 in an effort to generate additional liquidity (the “**2022 Transaction**”). The 2022 Transaction involved two main components: (a) certain of the Company’s secured lenders (the “**Senior Lenders**”) providing the Company with \$156 million in new money financing in priority to existing Junior Loans; and (b) the Company purchasing the

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<sup>2</sup> Yetter Affidavit, at para 11.

<sup>3</sup> Yetter Affidavit, at para 12.

Junior Loans held by such Senior Lenders in exchange for \$701 million of two tranches of higher-priority loans ranking behind the new money financing but in priority to the Junior Loans.<sup>4</sup>

8. Following the 2022 Transaction, the Company's \$1.31 billion of funded debt obligations consist of: (a) ABL Loans in the aggregate principal amount of approximately \$17 million; (b) Senior Loans in the aggregate principal amount of approximately \$953 million; and (c) Junior Loans in the aggregate principal amount of approximately \$344 million.<sup>5</sup>

9. Despite implementation of the 2022 Transaction and certain other strategic initiatives, the Company has continued to face liquidity constraints due to, among other things, the upfront costs of continued optimization of business operations, shifting capital to support evolving market opportunities, servicing its debt payments, inflationary pressures and a material increase in interest rates.<sup>6</sup> In addition, in March 2023, certain of the lenders under the Junior Loans that did not participate in the 2022 Transaction (the "**Junior Lenders**") commenced litigation in respect of the 2022 Transaction. As discussed below, such litigation has now been resolved in connection with the Restructuring Transactions, which are supported by the Junior Lenders.

10. The Company recently determined that it would be unable to pursue a refinancing of its existing funded indebtedness – certain of which is set to mature in November 2025 – and would be unable to service its existing interest expense beyond the first quarter of 2025. Accordingly, the Company, under the direction of the Special Committee, began assessing and evaluating the Company's options to pursue a meaningful deleveraging transaction that would right-size the Company's balance sheet, materially reduce annual interest expense, and provide the Company with the necessary liquidity to execute on its go-forward business plan.<sup>7</sup>

11. Through several weeks of extensive, arm's-length negotiations by and among the Company, Searchlight, an ad hoc group of Senior Lenders (the "**Ad Hoc Group**"), the Junior Lenders, and certain other Consenting Lenders, the parties reached an agreement-in-principle on

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<sup>4</sup> Yetter Affidavit, at para 14.

<sup>5</sup> Yetter Affidavit, at para 15.

<sup>6</sup> Yetter Affidavit, at para 16.

<sup>7</sup> Yetter Affidavit, at para 18.

the material terms of a comprehensive restructuring transaction to be implemented pursuant to a prepackaged chapter 11 plan (the “**Restructuring Transactions**”).

12. The Restructuring Transactions contemplate, among other things, a substantial deleveraging of the Company’s balance sheet, including by equitizing the Company’s Senior Loans and Junior Loans into reorganized equity of the Company. Overall, the Restructuring Transactions will, among other things, reduce the Company’s funded indebtedness by over \$1.15 billion and reduce annual cash interest expense by approximately \$135 million, and position the reorganized Debtors for long-term growth.

13. On March 9, 2025, the Senior Lenders of the Ad Hoc Group, the Junior Lenders, Searchlight, the Company and certain other parties entered into a Restructuring Support Agreement (the “**RSA**”), which, among other things, attaches a chapter 11 plan of reorganization (the “**Plan**”) setting out the terms of the Restructuring Transactions. Pursuant to the RSA, the holders of 100% of the ABL Loan Claims, 72.1% of the Priority Lien Claims, and over 81.1% of the Non-Priority Lien Term Loan Deficiency Claims have agreed, subject to the terms and conditions of the RSA, to vote in favour of the Plan.<sup>8</sup>

14. In connection with the RSA, certain members of the Ad Hoc Group and certain other holders of Priority Lien Loans have committed to provide debtor-in-possession financing (the “**DIP Financing**”). The DIP Financing will enable the Debtors to fund their restructuring efforts and continue their operations, finance the cost of the Chapter 11 Cases and these Canadian recognition proceedings, and meet other working capital needs. Additionally, the Debtors expect to gain access to new capital to fund their go-forward operations through a committed exit term loan facility that will provide \$64.5 million of new money.<sup>9</sup>

15. To preserve value and effect the Restructuring Transactions, the Debtors, consisting of a subset of entities in the Mitel Group, including MNC, commenced the Chapter 11 Cases by filing voluntary petitions for relief (the “**Petitions**”) under chapter 11 of title 11 of the United States Code (the “**U.S. Bankruptcy Code**”) on March 10, 2025 (the “**Petition Date**”). The Debtors are

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<sup>8</sup> Yetter Affidavit, at paras 127 and 130.

<sup>9</sup> Yetter Affidavit, at para 22.

scheduled to appear before the U.S. Bankruptcy Court as soon as a date is fixed for the First Day Hearing to seek various First Day Orders, including the First Day Order appointing MNC as the Foreign Representative.<sup>10</sup>

16. MNC, as the proposed Foreign Representative of the Chapter 11 Cases, is first requesting the Interim Stay Order, which provides for the Interim Stay in respect of MNC and its directors and officers. The Interim Stay is intended to give effect in Canada to the automatic stay of proceedings in the Chapter 11 Cases with respect to MNC.

17. If the U.S. Bankruptcy Court grants the requested First Day Orders, MNC anticipates returning before this Court on March 19, 2025 to seek two additional orders:

- (a) an order (the “**Initial Recognition Order**”), among other things, (i) declaring MNC as the Foreign Representative in respect of the Chapter 11 Cases and (ii) recognizing the Chapter 11 Cases as a “foreign main proceeding” in respect of MNC; and
- (b) an order (the “**Supplemental Order**”), among other things, (i) recognizing certain First Day Orders, (ii) appointing FTI Consulting Canada Inc. (“**FTI Canada**”) as the information officer in respect of these proceedings (in such capacity, the “**Information Officer**”), (iii) granting the Administration Charge over the assets and property of MNC in Canada in favour of Canadian counsel to MNC, the Information Officer and counsel to the Information Officer, (iv) granting the D&O Charge over the assets and property of MNC in Canada in favour of the directors and officers of MNC to secure MNC’s indemnification obligations, and (v) granting the DIP Charge over the assets and property of MNC in Canada to secure the DIP Financing.<sup>11</sup>

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<sup>10</sup> Yetter Affidavit, at para 23.

<sup>11</sup> Yetter Affidavit, at para 7.

## **PART III– SUMMARY OF THE FACTS**

### **A. The Mitel Group’s Business**

18. The Mitel Group is one of the largest global unified communications providers. The Mitel Group’s business operations are divided into three categories: (a) Software and Subscription Products; (b) Professional and Support Services; and (c) Hardware Products. The Company serves customers in a variety of industries, including media, hospitality, education, financial services, healthcare, retail, government, and legal services. Its primary markets are the Americas, EMEA and APAC regions.<sup>12</sup>

19. The Mitel Group operates its global business on a consolidated and integrated basis, under the oversight of its senior leadership team. Reflective of the Mitel Group’s global operations, the Mitel Group’s senior leadership team is spread out across the United States, Canada and Europe.<sup>13</sup>

20. On a global basis, the Mitel Group employs a total workforce of approximately 4,284 individuals.<sup>14</sup>

21. The Mitel Group has strong and extensive ties to the United States. In 2024, the Mitel Group earned approximately 30% of its total consolidated revenue from customers in the United States.<sup>15</sup>

### **B. The Chapter 11 Debtors**

22. Not all of the entities of the Mitel Group are debtors in the Chapter 11 Cases. The Debtors in the Chapter 11 Cases consist of TopCo, MNIL, certain of MNIL’s United States subsidiaries, MNC and Mitel Europe. The Mitel Group has various non-Debtor entities that are not debtors in the Chapter 11 Cases or applicants in these Canadian recognition proceedings.<sup>16</sup>

23. Each of the Debtors are either borrowers or guarantors of certain of the Company’s prepetition funded indebtedness. Pursuant to the RSA, the Senior Lenders agreed not to pursue

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<sup>12</sup> Yetter Affidavit, at paras 30-32.

<sup>13</sup> Yetter Affidavit, at para 73.

<sup>14</sup> Yetter Affidavit, at para 42.

<sup>15</sup> Yetter Affidavit, at para 74.

<sup>16</sup> Yetter Affidavit, at paras 44-45.



remedies against the foreign non-Debtor guarantors as long as the RSA is in effect, and such entities are thus not debtors in the Chapter 11 Cases.<sup>17</sup>

24. As of the Petition Date, the Debtors, including MNC, collectively employ approximately 760 individuals, most of whom sit in the United States or Canada.<sup>18</sup>

### **C. Mitel Networks Corporation**

25. MNC is the sole Canadian entity in the Mitel Group and the principal entity through which the Company conducts its business in Canada. MNC's business generally consists of servicing the Canadian market on behalf of the Mitel Group. Most of MNC's customers and vendors are located in Canada, though MNC also does some business with non-Canadian customers and vendors. MNC owns much of the Company's intellectual property, which is used by other entities in the Mitel Group in return for royalty fees payable to MNC.<sup>19</sup>

26. MNC's registered and head office is located at leased premises in Ottawa, Ontario. MNC has approximately 323 employees in Canada. None of MNC's employees are unionized.<sup>20</sup>

27. MNC's revenue during the third fiscal quarter of 2024 represented approximately 2.9% of the Company's total consolidated revenue.<sup>21</sup>

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<sup>17</sup> Yetter Affidavit, at para 46.

<sup>18</sup> Yetter Affidavit, at para 47.

<sup>19</sup> Yetter Affidavit, at paras 48, 52-55.

<sup>20</sup> Yetter Affidavit, at paras 57-58.

<sup>21</sup> Yetter Affidavit, at para 12.

#### D. Capital Structure and Canadian Security

28. The Company's aggregate outstanding principal amount of funded indebtedness is approximately \$1.31 billion. The Company's funded debt obligations are summarized below:<sup>22</sup>

<u>Description</u>	<u>Secured Funded Debt</u>	<u>Maturity</u>	<u>Appx. Principal Amount Outstanding (as of March 2025)</u>
ABL Loans	Swiss ABL Loans	May 2027	\$3 million
	Non-Swiss ABL Loans	May 2027	\$14 million
Senior Loans	Priority Lien Term Loans	October 2027	\$156 million
	Incremental Revolving Loans	November 2025	\$64 million
	Second Lien Term Loans	October 2027	\$576 million
	Third Lien Term Loans	October 2027	\$125 million
	Third Lien Additional Facility	October 2027	\$32 million
Junior Loans	Legacy Senior Term Loans	November 2025	\$235 million
	Legacy Junior Term Loans	November 2026	\$108 million
<b><u>Total Secured Funded Debt</u></b>			<b><u>\$1.31 billion</u></b>

29. MNC is a guarantor of the obligations under the ABL Loans, the Senior Loans and the Junior Loans, and has also granted security interests in, among other things, its existing and after acquired personal property in respect of its guarantees of the Senior Loans and the Junior Loans. MNC has not granted security in respect of its guarantee of the ABL Loans.<sup>23</sup>

#### E. Background to the Restructuring Transactions and the Chapter 11 Cases

30. A confluence of factors, including industry and other external headwinds, have created unanticipated costs and adversely impacted the Company's operations and liquidity. This has necessitated a comprehensive restructuring solution and led to the commencement of the Chapter 11 Cases and these corresponding CCAA recognition proceedings.

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<sup>22</sup> Yetter Affidavit, at paras 76-77.

<sup>23</sup> Yetter Affidavit, at paras 85-96.

(i) *Impact of COVID-19 Pandemic, Market Pressures and Operational Challenges*

31. During the COVID-19 pandemic, businesses shifted to remote work. This accelerated the proliferation of team chat and video collaboration platforms in the market, but reduced the need for certain of the Company's communications products and services that were primarily developed for an in-office environment. Following the COVID-19 pandemic, which had accelerated the adoption of Unified Communications as a Service, customers in certain industries implemented return-to-office policies and additional requirements to manage increased security and resiliency risks, which has resulted in the market increasingly trending toward utilizing hybrid communications solutions. Following this shift, the Company identified the opportunity to pivot, but liquidity constraints limited the Company's ability to shift resources, optimize business operations, and fuel profitable growth. Inflationary pressures due to disrupted supply chains and constrained manufacturing also contributed to inventory constraints and higher material costs for the Company's Hardware Products. Higher interest rates and additional borrowing costs further hurt the Company's financial and liquidity position.<sup>24</sup>

(ii) *2022 Transaction and Subsequent Litigation*

32. From 2021 to 2023, the Company undertook several strategic initiatives to address industry headwinds and operational liquidity challenges.

33. Among other things, the Company completed the 2022 Transaction, which resulted in the Company purchasing the Senior Lenders' Junior Loans for approximately \$701 million of Second Lien Term Loans and Third Lien Term Loans, which have priority over the existing Junior Loans held by the Junior Lenders that did not participate in the 2022 Transaction, and the Company issuing \$156 million in new money Priority Lien Term Loans made available by the Senior Lenders.<sup>25</sup>

34. In March 2023, certain of the Junior Lenders commenced litigation against certain Company entities, Searchlight, Credit Suisse and the Senior Lenders seeking a judgment invalidating the 2022 Transaction and damages for breach of contract, breach of the implied

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<sup>24</sup> Yetter Affidavit, at para 98.

<sup>25</sup> Yetter Affidavit, at paras 104-105.

covenant of good faith and fair dealing, tortious interference, and fraudulent transfer (the “**2022 Transaction Litigation**”). The Company, the Senior Lenders, Credit Suisse and Searchlight each moved to dismiss the Junior Lenders’ claims. On December 15, 2023, in a bench ruling, New York Supreme Court denied the motion to dismiss the Junior Lenders’ claims for breach of certain express contractual provisions, but dismissed the Junior Lenders’ implied covenant of good faith and fair dealing, fraudulent transfer, and tortious interference claims, as well as the cross-claims asserted by certain Senior Lenders. The parties cross-appealed this ruling.<sup>26</sup>

35. On December 31, 2024, the NYS Appellate Division (a) unanimously affirmed the New York Supreme Court’s December 2023 dismissal of the breach of implied covenant of good faith and fair dealing, fraudulent transfer, and tortious interference claims, (b) unanimously reversed the New York Supreme Court’s decision to deny the motions to dismiss with respect to the other causes of action that had been filed by each of the Company, the Senior Lenders, the Junior Collateral Agent and Searchlight, and (c) directed the Clerk to enter judgment dismissing all claims. The Junior Lenders sought a discretionary appeal at the NY Court of Appeals, and the Company and other parties filed a joint opposition..<sup>27</sup>

36. Consistent with the Restructuring Transactions under the RSA, the parties to the 2022 Transaction Litigation will, by March 10, 2025, jointly inform the NY Court of Appeals that a consensual settlement on the outstanding issues in the 2022 Transaction Litigation has been reached, and request that the NY Court of Appeals refrain from issuing a ruling concerning any appeal of the Financing Litigation Ruling. Upon consummation of the Restructuring Transactions, the appeal shall be dismissed.<sup>28</sup>

(iii) *Retention of Professionals and Appointment of Independent Directors and Special Committee*

37. In 2024, as part of the Company’s ongoing efforts to enhance its liquidity ahead of the Legacy Senior Term Loans’ maturity in November 2025, the Company retained Paul, Weiss, Rifkind, Wharton & Garrison LLP, as restructuring counsel, PJT Partners LP, as investment

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<sup>26</sup> Yetter Affidavit, at paras 106-108.

<sup>27</sup> Yetter Affidavit, at paras 106-110.

<sup>28</sup> Yetter Affidavit, at para 110.

banker, and FTI Consulting, Inc., as financial advisor, to explore strategic alternatives. Also, in February 2024, the Parent Boards each appointed Mr. Julian Nemirovsky as an independent director, and in May 2024, the Parent Boards established the Special Committee and appointed Mr. Nemirovsky as a member of the Special Committee. In October 2024, Mr. Andrew Kidd was added as an additional independent director on the Parent Boards, and was also appointed as an additional member of the Special Committee.<sup>29</sup>

*(iv) Prepetition Liquidity-Enhancing Transactions*

38. The Company, in response to the continued certain challenges relating to its strategic partnerships, explored and ultimately consummated certain liquidity-enhancing transactions and strategic initiatives in 2024, including the ABL Facility Transaction, the 2024 RingCentral Transaction and the Zoom Transaction.<sup>30</sup>

39. While the forgoing efforts were value accretive and provided the Company with critical liquidity, the Company determined that it would be unable to pursue a refinancing of its existing funded indebtedness and would be unable to service its existing interest expense beyond the first quarter of 2025. Accordingly, the Company, under the direction of the Special Committee established by the boards of directors of TopCo and MNIL, began assessing and evaluating the Company's options to pursue a meaningful deleveraging transaction.<sup>31</sup>

*(v) Stakeholder Engagement, Forbearance Agreement and Execution of the RSA*

40. The Company understood that an effective and long-term solution to deleverage its capital structure was required and that this would necessitate broad-based support from its various stakeholders. Therefore, under the direction of the Special Committee, the Company initiated arm's-length, good-faith discussions around a consensual restructuring. The Company engaged first with the Ad Hoc Group, and more recently with the Junior Lenders, in an effort to develop a broadly supported and comprehensive restructuring transaction.<sup>32</sup>

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<sup>29</sup> Yetter Affidavit, at paras 112-113.

<sup>30</sup> Yetter Affidavit, at paras 116-121.

<sup>31</sup> Yetter Affidavit, at para 18.

<sup>32</sup> Yetter Affidavit, at para 122.

41. As the Company advanced discussions, the Special Committee determined that it was imperative to preserve the Company's liquidity to provide it with the necessary runway to work toward a consensual, value-maximizing restructuring transaction. As a result, the Special Committee determined, in consultation with the Company's advisors, that it was in the best interest of the Company to forgo the interest payment under the Junior Loans due December 19, 2024. This payment default under the Junior Credit Agreements triggered a cross-default under the Senior Credit Agreements.<sup>33</sup>

42. In response to this payment default, the Company and its advisors engaged with the Ad Hoc Group and executed a forbearance agreement on December 19, 2024 (the "**Forbearance Agreement**"). Under the Forbearance Agreement, Ad Hoc Group members representing the "Required Lenders" under the Senior Credit Agreements agreed to forbear from exercising remedies against the Company on account of the events of default triggered by the Company's non-payment of interest and other defaults under the Junior Credit Agreements and the Senior Credit Agreements through and including January 30, 2025 (the "**Forbearance Period**"). The Forbearance Period was extended through and including March 10, 2025.<sup>34</sup>

43. During the Forbearance Period, the Company engaged with members of the Ad Hoc Group, the Junior Lenders and Searchlight to develop the Restructuring Transactions. As a result of these efforts, the Company, Searchlight, the Ad Hoc Group and the Junior Lenders reached an agreement-in-principle on the material terms of the Restructuring Transactions.<sup>35</sup>

44. The Special Committee and the Company, in consultation with the Company's advisors, ultimately determined that implementing the Restructuring Transactions through a chapter 11 plan of reorganization (and these Canadian recognition proceedings) was optimal, as it maintains the maximum achievable creditor support, is fair to all creditors and other stakeholders, and best positions the Company for success upon emergence.<sup>36</sup>

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<sup>33</sup> Yetter Affidavit, at para 123.

<sup>34</sup> Yetter Affidavit, at para 124.

<sup>35</sup> Yetter Affidavit, at paras 125-127.

<sup>36</sup> Yetter Affidavit, at para 127.

45. On March 9, 2025, the Debtors entered into the RSA with members of the Ad Hoc Group, the Junior Lenders, Searchlight, and certain other parties thereto, and proceeded to commence the Chapter 11 Cases.<sup>37</sup>

**F. Description and Effect of the Restructuring Transactions**

46. The RSA attaches the Plan, which sets out the terms of the Restructuring Transactions. At a high level, the RSA and the Plan provide for a substantial deleveraging of the Debtors' balance sheet, including by equitizing the Senior Loans and the Junior Loans into reorganized equity of the Company. Pursuant to the RSA and subject to the conditions specified therein, holders of 100% of the ABL Loan Claims, 72.1% of the Priority Lien Claims, and over 81.1% of the Non-Priority Lien Term Loan Deficiency Claims have agreed, subject to the terms and conditions of the RSA, to vote in favour of the Plan.<sup>38</sup>

47. The RSA and Plan contemplate the following key terms of the Restructuring Transactions:

- (a) receipt of an aggregate principal amount of \$60 million of DIP New Money Term Loans which, together with the DIP Upfront Premium and the DIP Backstop Premium, will be converted into exit term loans on the Effective Date;
- (b) the roll-up and equitization of an aggregate principal amount of \$62 million of Priority Lien Loans held by the DIP Lenders;
- (c) entry into the Exit Facility, comprised of:
  - (i) Tranche A-1 Term Loans in an aggregate principal amount equal to \$20 million; and
  - (ii) Tranche A-2 Term Loans, consisting of (A) \$69 million of converted DIP New Money Term Loans (inclusive of all fees and premiums payable-in-kind), and (B) \$51 million in New Money Tranche A-2 Term Loans (inclusive of all fees and premiums payable-in-kind);

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<sup>37</sup> Yetter Affidavit, at para 127.

<sup>38</sup> Yetter Affidavit, at para 130.

- (d) the Consenting Junior Lenders' Fee Consideration on account of the settlement with the Junior Lenders, consisting of (i) \$1.25 million in cash and (ii) \$3.75 million of Incremental Tranche A-2 Term Loans issued to the Junior Lien Financing Parties (or their designee(s)), which shall not consist of New Money Tranche A-2 Term Loans;
- (e) (i) lenders that commit to funding the Tranche A-1 Term Loans will each receive their pro rata share of the Tranche A-1 Backstop Premium, in the form of New Common Equity; (ii) lenders that commit to funding the New Money Tranche A-2 Term Loans will each receive their pro rata share of the Tranche A-2 Term Loan Backstop Premium, payable-in-kind; and (iii) lenders that actually fund the New Money Tranche A-2 Term Loans will each receive their pro rata share of the Tranche A-2 Term Loan Funding Premium in the form of New Common Equity, subject to further dilution by the MIP Equity Pool;
- (f) lenders that commit to funding the DIP New Money Term Loans and New Money Tranche A-2 Term Loans (which, for the avoidance of doubt, excludes Incremental Tranche A-2 Exit Term Loans) will additionally receive their pro rata share of the DIP Backstop Premium in the form of DIP New Money Term Loans and the Tranche A-2 Term Loan Backstop Premium in the form of New Money Tranche A-2 Term Loans, respectively;
- (g) the equitization of Allowed Priority Lien Claims and Non-Priority Lien Term Loan Deficiency Claims, in each case, subject to dilution on account of any DIP Equitization Shares, any New Common Equity issued in connection with the Tranche A-1 Term Loan Backstop Premium, any New Common Equity issued in connection with the Tranche A-2 Term Loans Funding Premium, and the MIP Equity Pool;
- (h) the ABL Loan Claims shall continue in full force and effect against the Reorganized Debtors on the Effective Date in accordance with the Amended and Restated ABL Loan Credit Agreements, subject to a waiver of change of control triggers on



account of the restructuring and extensions of deadlines for deliverables under the ABL Loan Credit Agreements;

- (i) Allowed General Unsecured Claims will be Unimpaired under the Plan and treated in the ordinary course;
- (j) the cancellation of all Existing Mitel Interests on the Effective Date; and
- (k) the Company, Searchlight, the Senior Lenders, and the Junior Lenders will seek to the dismiss the 2022 Transaction Litigation.<sup>39</sup>

48. In summary, the Restructuring Transactions will, among other things, result in a substantial deleveraging of the Company's balance sheet by over \$1.15 billion and a reduction in annual cash interest expense by approximately \$135 million, and position the reorganized Debtors for long-term growth.<sup>40</sup>

#### **G. Need for Relief in Canada and the Proposed Path Forward**

49. MNC is a guarantor of the Company's approximately \$1.31 billion of funded indebtedness, and has granted security in respect of its guarantees of the Senior Loans and the Junior Loans. MNC is a Debtor in the Chapter 11 Cases.<sup>41</sup>

50. MNC requires recognition of the Chapter 11 Cases in Canada to preserve the value of the Canadian Business and facilitate the implementation of the Restructuring Transactions. The Mitel Group operates on a consolidated basis, and MNC and the Canadian Business are integrated within the Mitel Group's broader operations.<sup>42</sup>

51. MNC first seeks the proposed Interim Stay Order to preserve stability for the Canadian Business. The filing of MNC's Petition resulted in an automatic stay under the U.S. Bankruptcy Code, but as MNC conducts the Canadian Business primarily in Canada, it is also important for

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<sup>39</sup> Yetter Affidavit, at para 131.

<sup>40</sup> Yetter Affidavit, at para 129.

<sup>41</sup> Yetter Affidavit, at paras 85-96.

<sup>42</sup> Yetter Affidavit, at para 24.

MNC and the Canadian Business to be immediately protected by a stay of proceedings and from enforcement rights in Canada pursuant to a Canadian court order.<sup>43</sup>

52. Once the Foreign Representative Order has been granted by the U.S. Bankruptcy Court, MNC, in its capacity as Foreign Representative, will return to Court to seek the Initial Recognition Order and the Supplemental Order.<sup>44</sup>

53. The Initial Recognition Order will seek to, among things, declare MNC as the Foreign Representative in respect of the Chapter 11 Cases, and recognize the Chapter 11 Cases as a “foreign main proceeding” in respect of MNC. The relief sought pursuant to the Supplemental Order will include recognition of certain First Day Orders, including the Foreign Representative Order and the Interim DIP Order, the appointment of FTI Canada as the Information Officer, and the granting of the Administration Charge, the D&O Charge and the DIP Charge over the assets and property of MNC in Canada. The Initial Recognition Order and the Supplemental Order will also include terms providing for a stay of proceedings that will replace the Interim Stay provided by the proposed Interim Stay Order.<sup>45</sup>

54. The RSA contemplates implementation of the Restructuring Transactions in accordance with the Milestones, which include:

Deadline	Milestone
No later than March 10, 2025	Pursuant to and consistent with Section 5.07(a) of the RSA, the Financing Litigation Parties (as defined in the RSA) will jointly inform the NY Court of Appeals that the Financing Litigation Parties have reached a consensual settlement on the outstanding issues in the Financing Litigation, and request that the NY Court of Appeals refrain from issuing a ruling concerning any appeal of the Financing Litigation Ruling.
No later than March 12, 2025	Entry by the U.S. Bankruptcy Court of the Interim DIP Order (as defined below) and the Scheduling Order.
No later than March 24, 2025	Entry by the Court of the Initial Recognition Order, the Supplemental Order, and the Interim DIP Recognition Order; provided that the Supplemental Order may constitute the Interim DIP Recognition Order if the Supplemental Order provides for the recognition of the Interim DIP Order.

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<sup>43</sup> Yetter Affidavit, at paras 24 and 146-147.

<sup>44</sup> Yetter Affidavit, at paras 149-150.

<sup>45</sup> Yetter Affidavit, at paras 150-155.

Deadline	Milestone
No later than April 8, 2025	Entry by the U.S. Bankruptcy Court of the Final DIP Order.
No later than April 18, 2025	Entry by the Court of the Final DIP Recognition Order.
No later than April 23, 2025	Entry by the U.S. Bankruptcy Court of the Confirmation Order.
No later than May 3, 2025	Entry by the Court of the Confirmation Recognition Order.
No later than May 23, 2025, subject to further extensions	Consummation of the Plan.

55. Accordingly, in addition to seeking the Initial Recognition Order and the Supplemental Order at a further hearing scheduled for March 19, 2025, MNC also expects to return to this Court following the entry of the Final DIP Order and the Confirmation Order (if granted) to, among other things, seek the Final DIP Recognition Order and the Confirmation Recognition Order.<sup>46</sup>

#### **PART IV– LAW AND ARGUMENT**

56. The issue to be considered is whether this Court should grant the Interim Stay Order providing for the Interim Stay in Canada. For the reasons set out below, MNC submits that the Interim Stay Order should be granted.

##### **A. The Court has Jurisdiction to Grant the Interim Stay Order**

57. This Court often grants interim orders providing for a temporary stay of proceedings in Canada following the initiation of Chapter 11 proceedings in recognition of the fact that such a stay is necessary to protect the assets of certain of the debtors and to enable them to implement a coordinated cross-border restructuring through the Chapter 11 process.

58. As recognized by Justice Cavanagh in *Knotel*, the Court has the jurisdiction to grant an interim stay in the context of a pending recognition application pursuant to section 106 of the CJA, section 11.02 of the CCAA, and its inherent jurisdiction.<sup>47</sup> Section 106 of the CJA states: “A court,

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<sup>46</sup> Yetter Affidavit, at para 170.

<sup>47</sup> [Knotel Canada, Inc. Re \(9 March 2021\), Toronto, Ont Sup Ct J \[Commercial List\] CV-21-00658434-00CL \(Endorsement of Cavanagh J\) at para 3.](#)

on its own initiative or on motion by any person, whether or not a party, may stay any proceeding in the court on such terms as are considered just.”<sup>48</sup>

59. This Court has granted interim stay orders in the recent cases of *Red Lobster Management LLC*, *Hornblower Cruises and Events Canada Ltd.*, *YRC Freight Canada Company*, *Paladin Labs Inc.* and *Sungard Availability Services*.<sup>49</sup>

60. In *Paladin*, Chief Justice Morawetz concluded that granting the interim stay and other relief as proposed in the interim order was “in accordance with the principles of cooperation and comity” and within the Court’s jurisdiction. The Court concluded that the relief was both necessary and appropriate.<sup>50</sup>

61. In *YRC Freight*, Chief Justice Morawetz reiterated the Court’s conclusion in *Paladin* and determined that the granting of the requested interim stay and other relief was within the Court’s jurisdiction and “consistent with this Court’s practice in recent Part IV recognition proceedings.” The Court similarly concluded that the relief was both necessary and appropriate, including finding that such relief was important for the preservation of value of the Canadian business as part of the company’s restructuring efforts.<sup>51</sup>

## **B. The Interim Stay Order is Appropriate**

62. The Debtors commenced the Chapter 11 Cases in the U.S. Bankruptcy Court by filing Petitions for relief under chapter 11 of U.S. Bankruptcy Code. The Petitions resulted in an automatic stay under the U.S. Bankruptcy Code that acts as an injunction against all parties from taking certain actions against the Debtors in the United States.

63. It is also important for MNC to be immediately protected by a stay of proceedings and from enforcement rights in Canada pursuant to a Canadian court order. MNC conducts the

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<sup>48</sup> CJA, s 106.

<sup>49</sup> [\*Red Lobster Management LLC\* \(21 May 2024\), Toronto, Ont Sup Ct J \[Commercial List\] CV-24-00720567-00CL \(Endorsement of Penny J\)](#); [\*Hornblower Cruises and Events Canada Ltd.\*, 2024 ONSC 1094 at para 19](#); [\*YRC Freight Canada Company \(Re\)\*, 2023 ONSC 4492 at para 9 \[YRC Freight Interim Stay Endorsement\]](#); [\*Paladin Labs Canadian Holding Inc.\*, 2022 ONSC 4748 at para 20 \[Paladin Interim Stay Endorsement\]](#); and [\*Sungard Availability Services\* \(11 April 2022\), Toronto, Ont Sup Ct J \[Commercial List\] CV-22-00679628-00CL \(Endorsement of Conway J\)](#).

<sup>50</sup> [\*Paladin Interim Stay Endorsement\* at para 20.](#)

<sup>51</sup> [\*YRC Freight Interim Stay Endorsement\* at para 11.](#)

Canadian Business primarily in Canada, and it is critical to the preservation of the value of the Canadian Business and the Company's overall efforts to implement the Restructuring Transactions that a stay of proceedings is granted in Canada to protect against the exercise of rights or remedies against MNC and in Canada. In addition to having guaranteed the Company's prepetition funded debt obligations, MNC has one leased location in Canada and is party to certain of the Company's operational agreements with third-party service providers.<sup>52</sup> The Chapter 11 Cases potentially constitute an event of default under such contractual arrangements.

64. Absent the granting of the Interim Stay by this Court pursuant to the requested Interim Stay Order, there will be a period of time where MNC would not be protected by a stay of proceedings in Canada. As referenced above, the Debtors expect to be before the U.S. Bankruptcy Court in the coming days to seek entry of the First Day Orders, including the Foreign Representative Order appointing MNC as the Foreign Representative in respect of the Chapter 11 Cases. But there will be a period of time between the commencement of the Chapter 11 Cases and the time when MNC is able to file the certified materials contemplated by subsection 46(2) of the CCAA to return to this Court as the formally appointed Foreign Representative to seek the relief – including the contemplated stays of proceedings – in the Initial Recognition Order and the Supplemental Order.

65. MNC therefore seeks the Interim Stay pursuant to the proposed Interim Stay Order to provide for a stay of proceedings in Canada in favour of MNC and its directors and officers, as well as its property and business. It is a temporary measure necessary to give effect to the automatic stay arising under the U.S. Bankruptcy Code upon the filing of MNC's Petition, and to provide stability and protect the value of the Canadian Business in Canada until the Foreign Representative Order has been issued in the Chapter 11 Cases and MNC is able to return to this Court to seek the Initial Recognition Order and the Supplemental Order.

66. The granting of the Interim Stay Order is important to preserve the value of the Canadian Business and ensure that the Mitel Group's efforts to effect the Restructuring Transactions are not jeopardized by any creditors in Canada purporting to exercise rights and enforcement remedies

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<sup>52</sup> Yetter Affidavit, at paras 52-53, and 57.

against MNC in violation of the automatic stay granted under the U.S. Bankruptcy Code upon the filing of MNC's Petition.

67. The Interim Stay Order requested is consistent with interim stay orders granted by this Court in similar circumstances.<sup>53</sup>

## **PART V– RELIEF REQUESTED**

68. For the reasons set out above, MNC submits that the granting of the requested Interim Stay is (a) within the Court's jurisdiction, (b) consistent with this Court's practice in recent Part IV recognition proceedings, (c) important for the preservation of the value of the Canadian Business as part of the Debtors' restructuring efforts, including efforts to implement the Restructuring Transactions, and (d) necessary to reduce the potential risk of any creditor not respecting in Canada the automatic stay under the U.S. Bankruptcy Code in favour of MNC.

69. MNC respectfully requests that the Court grant the Interim Stay Order in the form attached to MNC's Application Record.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 10<sup>th</sup> day of March, 2025.

GOODMANS LLP

Goodmans LLP

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<sup>53</sup> [\*Red Lobster Management LLC\* \(21 May 2024\), Toronto, Ont Sup Ct J \[Commercial List\] CV-24-00720567-00CL \(Interim Stay Order \(Foreign Proceeding\)\)](#); [\*Hornblower Group Inc.\* \(21 February 2024\), Toronto, Ont Sup Ct J \[Commercial List\] CV-24-00715202-00CL \(Interim Stay Order \(Foreign Proceeding\)\)](#); [\*Yellow Corporation\* \(8 August 2023\), Ont Sup Ct J \[Commercial List\] CV-23-00704038-00CL \(Interim Stay Order \(Foreign Proceeding\)\)](#); [\*Paladin Labs Inc.\* \(17 August 2024\), Toronto, Ont Sup Ct J \[Commercial List\] CV-22-00685631-00CL \(Interim Order \(Foreign Proceeding\)\)](#); and [\*Sungard Availability Services \(Canada\) Ltd. / Sungard, Services de Continuite des Affaires \(Canada\) Ltee\* \(11 April 1011\), Toronto, Ont Sup Ct J \[Commercial List\] CV-22-00679628-00CL \(Interim Order \(Foreign Main Proceeding\)\)](#).

**SCHEDULE A**  
**LIST OF AUTHORITIES**

Tab	Description
1.	<a href="#"><i>Knotel Canada, Inc, Re</i> (9 March 2021), Toronto, Ont Sup Ct J [Commercial List] CV-21-00658434-00CL (Endorsement of Cavanagh J)</a>
2.	<a href="#"><i>Red Lobster Management LLC</i> (21 May 2024), Toronto, Ont Sup Ct J [Commercial List] CV-24-00720567-00CL (Endorsement of Penny J)</a>
3.	<a href="#"><i>Hornblower Cruises and Events Canada Ltd.</i>, 2024 ONSC 1094</a>
4.	<a href="#"><i>YRC Freight Canada Company (Re)</i>, 2023 ONSC 4492</a>
5.	<a href="#"><i>Paladin Labs Canadian Holding Inc.</i>, 2022 ONSC 4748</a>
6.	<a href="#"><i>Sungard Availability Services</i> (11 April 2022), Toronto, Ont Sup Ct J [Commercial List] CV-22-00679628-00CL (Endorsement of Conway J)</a>
7.	<a href="#"><i>Red Lobster Management LLC</i> (21 May 2024), Toronto, Ont Sup Ct J [Commercial List] CV-24-00720567-00CL (Interim Stay Order (Foreign Proceeding));</a>
8.	<a href="#"><i>Hornblower Group Inc.</i> (21 February 2024), Toronto, Ont Sup Ct J [Commercial List] CV-24-00715202-00CL (Interim Stay Order (Foreign Proceeding))</a>
9.	<a href="#"><i>Yellow Corporation</i> (8 August 2023), Ont Sup Ct J [Commercial List] CV-23-00704038-00CL (Interim Stay Order (Foreign Proceeding))</a>
10.	<a href="#"><i>Paladin Labs Inc.</i> (17 August 2024), Toronto, Ont Sup Ct J [Commercial List] CV-22-00685631-00CL (Interim Order (Foreign Proceeding))</a>
11.	<a href="#"><i>Sungard Availability Services (Canada) Ltd. / Sungard, Services de Continuite des Affaires (Canada) Ltee</i> (11 April 2022), Toronto, Ont Sup Ct J [Commercial List] CV-22-00679628-00CL (Interim Order (Foreign Main Proceeding))</a>

I certify that I am satisfied as to the authenticity of every authority cited in this Factum.

Date: March 10, 2025



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Signature

**SCHEDULE B**  
**STATUTORY REFERENCES**

***COMPANIES' CREDITORS ARRANGEMENT ACT***

**R.S.C. 1985, c. C-36, as amended**

s. 11

Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

s. 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.

s. 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.



***COURTS OF JUSTICE ACT***  
**R.S.O. 1990, c. C.43, as amended**

s. 106

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

Court File No. \_\_\_\_\_

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

**AND IN THE MATTER OF MITEL NETWORKS CORPORATION**

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

Applicant

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**  
Proceeding commenced at Toronto

**FACTUM OF THE APPLICANT  
(Application Returnable March 10, 2025)**

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