

**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 Initial Recognition Order and Supplemental Order)**

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TABLE OF CONTENTS

PART I – OVERVIEW	1
PART II – SUMMARY OF THE FACTS	2
A. The Mitel Group	2
B. MNC and the Canadian Business.....	3
C. Background to the Commencement of the Restructuring Proceedings.....	3
D. The RSA and the Restructuring Transactions.....	5
E. Requested Relief.....	6
(i) Recognition of Foreign Main Proceeding.....	6
(ii) Stay of Proceedings.....	6
(iii) Recognition of Certain First Day Orders	7
(iv) Appointment of Information Officer	7
(v) Granting of Charges.....	7
PART III – ISSUES AND THE LAW	8
A. The Chapter 11 Cases are a “Foreign Main Proceeding”	9
(i) The requirements for recognizing MNC as “foreign representative” and the Chapter 11 Cases as a “foreign proceeding” have been satisfied	9
(ii) The Chapter 11 Cases are a “foreign main proceeding”; MNC’s COMI is in the United States	10
B. The Initial Recognition Order Should be Granted.....	15
C. The Supplemental Order Should be Granted	16
(i) A stay of proceedings in Canada in favour of MNC and its directors and officers is necessary and appropriate	16
(ii) The proposed recognition of certain First Day Orders is necessary to preserve the value of the Canadian Business and facilitate the implementation of the Restructuring Transactions	17
(iii) Recognition of the Interim DIP Order is necessary and appropriate to ensure the Debtors have the liquidity necessary to continue operations and fund restructuring efforts.....	18
(iv) It is appropriate to appoint FTI Canada as the Information Officer	21
(v) It is appropriate to grant the Administration Charge to secure professional fees.....	22
(vi) It is appropriate to grant the D&O Charge to secure MNC’s indemnity obligations to its directors and officers under the proposed Supplemental Order	23
(vii) It is appropriate to grant the DIP Charge to secure the DIP Financing	24
PART IV – RELIEF REQUESTED.....	25

PART I – OVERVIEW

1. Mitel Networks Corporation (the “**MNC**”), a company incorporated under the *Canada Business Corporations Act*, in its capacity as the Foreign Representative in respect of the Chapter 11 Cases (as defined below), seeks the proposed Initial Recognition Order and the proposed Supplemental Order pursuant to Part IV of the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) and section 106 of the *Courts of Justice Act*, as applicable.¹

2. On March 9 and 10, 2025, MLN TopCo Ltd. (“**TopCo**”) and certain of its affiliates, including MNC (collectively, the “**Debtors**”), commenced chapter 11 proceedings (the “**Chapter 11 Cases**”) in the United States Bankruptcy Court for the Southern District of Texas (Houston Division) (the “**U.S. Bankruptcy Court**”). The Debtors commenced the Chapter 11 Cases to give effect to a comprehensive restructuring transaction to be implemented pursuant to a prepackaged chapter 11 plan (the “**Restructuring Transactions**”) that will, among other things, provide for a substantial deleveraging of the Debtors’ balance sheet, significantly reduce annual cash interest expense, and position the reorganized Debtors for long-term growth.

3. The Restructuring Transactions have the support of the Debtors’ key stakeholders, including an ad hoc group of the Company’s Senior Lenders (the “**Ad Hoc Group**”) and the Junior Lenders. 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 signed the RSA. In addition, members of the Ad Hoc Group and certain other holders of Priority Lien Loans have committed to provide the necessary DIP Financing to fund the Chapter 11 Cases and these Canadian proceedings.

4. On March 10, 2025, MNC, in its capacity as the then proposed Foreign Representative, sought and obtained from this Court the Interim Stay Order, among other things, granting a stay of proceedings in Canada in respect of MNC and its directors and officers.

¹ 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**”). Unless otherwise indicated, dollar amounts referenced in this affidavit are references to United States dollars.

5. Following a hearing in respect of the Debtors' First Day Motions on March 11, 2025, the U.S. Bankruptcy Court granted certain orders (collectively, the **"First Day Orders"**), including the Foreign Representative Order authorizing MNC to act as the Foreign Representative for purposes of these recognition proceedings.

6. MNC, now as the Foreign Representative, seeks the proposed Initial Recognition Order and the proposed Supplemental Order.

7. The proposed Initial Recognition Order would, among other things, (a) recognize MNC as the Foreign Representative in respect of the Chapter 11 Cases, and (b) recognize the Chapter 11 Cases as a "foreign main proceeding" in respect of MNC.

8. MNC, as the Foreign Representative, submits that MNC's "centre of its main interests" is in the United States and that the Chapter 11 Cases are a "foreign main proceeding" with respect to MNC. Accordingly, the Foreign Representative submits that the relief requested pursuant to the proposed Initial Recognition Order should be granted.

9. The proposed Supplemental Order would, among other things, (a) recognize certain of the First Day Orders issued by the U.S. Bankruptcy Court in the Chapter 11 Cases, including the Interim DIP Order, (b) grant a stay of proceedings in respect of MNC and its directors and officers, (c) appoint FTI Canada as the Information Officer, and (d) grant the Administration Charge, the D&O Charge and the DIP Charge.

10. The Foreign Representative submits that the relief requested pursuant to the proposed Supplemental Order is appropriate in the circumstances and in the best interests of MNC and its stakeholders.

PART II – SUMMARY OF THE FACTS

A. The Mitel Group²

11. 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

² The facts with respect to this application are more fully set out in the Yetter Affidavit.

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.³

B. MNC and the Canadian Business

12. 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 registered and head office is located at leased premises in Ottawa, Ontario.⁴

13. 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.⁵

14. As discussed further herein, MNC is deeply integrated within the broader Mitel Group, which is managed on a consolidated and integrated basis. MNC's revenue during the third fiscal quarter of 2024 represented approximately 2.9% of the Company's total consolidated revenue.⁶ MNC is a guarantor of the Company's approximately \$1.31 billion of funded indebtedness, and has granted security over its assets in respect of its guarantees of the Senior Loans and the Junior Loans.⁷

C. Background to the Commencement of the Restructuring Proceedings

15. Over the last several years, the Mitel Group experienced a confluence of industry and other external headwinds that created unanticipated costs and adversely impacted the Company's operations and liquidity. Businesses shifted to remote work during the COVID-19 pandemic, reducing 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, the market has increasingly trended toward utilizing hybrid communications solutions. The Company

³ Yetter Affidavit, at para 11 [[A27; A27](#)] .

⁴ Yetter Affidavit, at paras 52 [[A39; A39](#)] and 57 [[A40; A40](#)].

⁵ Yetter Affidavit, at paras 53-56 [[A39; A39](#)].

⁶ Yetter Affidavit, at para 12 [[A28; A28](#)].

⁷ Yetter Affidavit, at para 12 [[A28; A28](#)], 75 [[A48; A48](#)], 85 [[A55; A55](#)].

identified the opportunity to pivot, but liquidity constraints limited the Company's ability to shift resources and optimize business operations. Moreover, 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.⁸

16. From 2021 to 2023, the Company undertook several strategic initiatives to address these headwinds and operational liquidity challenges including, among other things, pursuing the 2022 Transaction to address then-existing liquidity issues. The 2022 Transaction 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.⁹

17. Following the 2022 Transaction, the Company's funded debt obligations consist of the following: (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. MNC is a guarantor of all of the Company's approximately \$1.31 billion of funded indebtedness, and has also granted security interests in respect of its guarantees of the Senior Loans and the Junior Loans.¹⁰

18. Despite the 2022 Transaction, additional efforts and the implementation of certain strategic transactions designed to improve liquidity, the Company recently determined in the circumstances 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.

19. In late November 2024, the Company began engaging with its key stakeholders, including the Ad Hoc Group, in an effort to achieve a consensual, long term solution to the Mitel Group's

⁸ Yetter Affidavit, at para 98 [[A58](#); [A58](#)].

⁹ Yetter Affidavit, at para 105 [[A61](#); [A61](#)].

¹⁰ Yetter Affidavit, at para 33 [[A34](#); [A34](#)].

outstanding debt obligations. The Company also more recently engaged in discussions with the Junior Lenders in an effort to develop a broadly supported and comprehensive restructuring transaction.¹¹

20. After several weeks of extensive, arm's-length negotiations, the Debtors, the Ad Hoc Group, Searchlight, the Junior Lenders and certain other Consenting Lenders entered into the RSA, which, among other things, attaches a chapter 11 plan of reorganization (the "**Plan**") setting out the terms of the Restructuring Transactions.¹²

21. In connection with the RSA, certain members of the Ad Hoc Group and certain other holders of Priority Lien Loans have committed to provide the DIP Financing. The DIP Financing will enable the Debtors to fund their restructuring efforts and continue their operations, including to fund wages, salaries, and benefits to the Debtors' employees, procure necessary goods and services, maintain trade terms with the Debtors' vendors, finance the cost of the Chapter 11 Cases and these Canadian proceedings, and meet other working capital needs.¹³

22. To preserve value and effect the Restructuring Transactions, the Debtors, consisting of a subset of entities in the Mitel Group that are either borrowers or guarantors of the Company's prepetition funded indebtedness, including MNC, commenced the Chapter 11 Cases by filing voluntary petitions for relief (the "**Petitions**") under chapter 11 of the U.S. Bankruptcy Code on March 9 and 10, 2025. MNC commenced these Canadian proceedings by obtaining the Interim Stay Order from the Court on March 10, 2025.

D. The RSA and the Restructuring Transactions

23. The Restructuring Transactions provide for a substantial deleveraging of the Company's balance sheet, including by equitizing the Company's Senior Loans and Junior Loans into reorganized equity, and providing for access to significant new capital to fund the Company's go-forward, post emergence operations. The Restructuring Transactions will, among other things, result in a reduction of the Company's funded indebtedness of over \$1.15 billion and annual cash

¹¹ Yetter Affidavit, at paras 122-125 [[A67](#); [A67](#) – [A69](#); [A69](#)].

¹² Yetter Affidavit, at para 127 [[A69](#); [A69](#)].

¹³ Yetter Affidavit, at paras 137 [[A74](#); [A74](#)] and 143 [[A76](#); [A76](#)].

interest expense of approximately \$135 million, and position the reorganized Company for long-term growth. The Restructuring Transactions primarily address the Company's funded, secured debt. General Unsecured Claims will be unimpaired under the Plan and treated in the ordinary course. The Restructuring Transactions will also fully and finally resolve the litigation in respect of the 2022 Transaction. The RSA and Plan, including the key terms of the Restructuring Transactions, are discussed in detail in the Yetter Affidavit (including at paragraph 131 thereof).¹⁴

24. The RSA contemplates implementation of the Restructuring Transactions in accordance with the Milestones, certain of which are summarized in a chart at Schedule C hereto. As part of the Milestones, the RSA requires, among other things, the granting of the Initial Recognition Order and the Supplemental Order by no later than March 24, 2025. The failure to meet any Milestone constitutes a termination event under the RSA.¹⁵

E. Requested Relief

(i) Recognition of Foreign Main Proceeding

25. MNC, as Foreign Representative, seeks recognition of the Chapter 11 Cases as a "foreign main proceeding" in respect of MNC under Part IV of the CCAA. MNC is the only Canadian Debtor and the only entity subject to these Canadian recognition proceedings.¹⁶

(ii) Stay of Proceedings

26. By operation of the U.S. Bankruptcy Code, the Debtors (including MNC) obtained the benefit of an automatic stay upon the filing of the Petitions with the U.S. Bankruptcy Court. In issuing the Interim Stay Order, this Court granted a stay of proceedings in Canada in favour of the MNC and its directors and officers.¹⁷

27. The Foreign Representative is seeking the same stay of proceedings granted under the Interim Stay Order pursuant to the proposed Supplemental Order. It is critical to the preservation

¹⁴ Yetter Affidavit, at paras 129-131 [[A70](#); [A70](#)].

¹⁵ See the RSA, Exhibit "B" to the Yetter Affidavit [[A89](#); [A89](#)].

¹⁶ Yetter Affidavit at paras 26 [[A32](#); [A32](#)] and 151 [[A78](#); [A78](#)].

¹⁷ *Mitel Networks Corporation*, [Initial Stay Order \(Foreign Proceeding\)](#) dated March 10, 2025 (Court File No. CV-25-00738691-00CL); and Yetter Affidavit at para 146 [[A77](#); [A77](#)].

of the value of the Canadian Business and the Company's overall efforts to the implement Restructuring Transactions that MNC, as well as its directors and officers, be protected by a stay of proceedings and from enforcement rights in Canada pursuant to a Canadian court order. Obtaining a stay of proceedings in Canada is also a requirement under the RSA.¹⁸

(iii) Recognition of Certain First Day Orders

28. The Foreign Representative seeks this Court's recognition of the following First Day Orders: (a) Foreign Representative Order; (b) Interim DIP Order; (c) Cash Management Order; (d) Wages Order; (e) Critical Vendors Order; (f) Taxes Order; (g) Utilities Order; (h) NOL Order; (i) Customer Programs Order; (j) Stay Enforcement Order; (k) Insurance Order; (l) Joint Administration Order; and (m) Claims Agent Retention Order.¹⁹

(iv) Appointment of Information Officer

29. MNC seeks the appointment of FTI Canada as the Information Officer in these Canadian recognition proceedings. FTI Canada has consented to acting as Information Officer in these proceedings. Prior to the commencement of the Chapter 11 Cases, FTI US, an affiliate of FTI Canada, was retained by the Company and is serving as financial advisor to the Debtors.²⁰

(v) Granting of Charges

(a) The Administration Charge

The proposed Supplemental Order provides that Goodmans LLP, as counsel to MNC, the Information Officer and counsel to the Information Officer will be granted the Administration Charge in the maximum amount of CDN\$500,000 to secure the fees and disbursements of such professionals incurred in respect of these proceedings.²¹

¹⁸ Yetter Affidavit at para 147 [[A77](#); [A77](#)]. See also the RSA, Exhibit "B" to the Yetter Affidavit (definition of "Initial Recognition Order") [[A89](#); [A89](#)].

¹⁹ Yetter Affidavit at para 155 [[A80](#); [A80](#)].

²⁰ Yetter Affidavit at paras 156-158 [[A81](#); [A81](#) – [A82](#); [A82](#)]; and Report of the Proposed Information Officer, at para 12.

²¹ Yetter Affidavit at para 159 [[A82](#); [A82](#)].

(b) D&O Charge

30. MNC requires the continued support and involvement of its directors and officers, but MNC's D&O Insurance may not provide sufficient coverage against the potential liability that the directors and officers of MNC could incur during these proceedings. MNC therefore seeks the D&O Charge in favour of its directors and officers in the maximum amount of CDN\$3.8 million to secure the indemnity provided by MNC to its directors and officers pursuant to the proposed Supplemental Order in respect of liabilities they may incur during these proceedings in their capacities as directors and officers. This amount has been estimated, in consultation with the proposed Information Officer, with reference to MNC's payroll, vacation pay, termination and severance, and federal and provincial sales tax liability exposure.²²

(c) DIP Charge

31. The DIP Credit Agreement contemplates the granting of the DIP Charge over the assets and property of MNC in Canada in favour of the DIP Lenders to secure the obligations outstanding from time to time under the DIP Financing. MNC, as the Foreign Representative, therefore is seeking the granting of the DIP Charge pursuant to the Supplemental Order, which would be subordinate to the proposed Administration Charge and the D&O Charge, and rank in priority to all other encumbrances, except to the extent of any encumbrances in favour of any person that did not receive notice of the application for the Supplemental Order.²³

PART III – ISSUES AND THE LAW

32. The issues to be considered on this application are whether this Court should grant the relief sought in (a) the Initial Recognition Order, and (b) the Supplemental Order.

33. For the reasons set out below, MNC submits that it is necessary and appropriate for this Court to grant the relief sought on this application to preserve the value of the Canadian Business while the Company pursues its restructuring efforts pursuant to the Chapter 11 Cases and to give effect to certain of the relief granted the Chapter 11 Cases in Canada for the benefit of MNC and its stakeholders.

²² Yetter Affidavit at paras 161-166 [[A83](#); [A83](#) – [A84](#); [A84](#)].

²³ Yetter Affidavit at para 167 [[A84](#); [A84](#)].

A. The Chapter 11 Cases are a “Foreign Main Proceeding”

(i) *The requirements for recognizing MNC as “foreign representative” and the Chapter 11 Cases as a “foreign proceeding” have been satisfied*

34. Pursuant to subsection 46(1) of the CCAA, a person who is a foreign representative may apply to the court for recognition of a foreign proceeding in respect of which that person is a foreign representative.²⁴

35. Subsection 46(2) of the CCAA requires that the application for recognition of a foreign representative must be accompanied by certain required documentation, including: (a) a certified copy of the instrument that commenced the foreign proceeding, (b) a certified copy of the instrument authorizing the foreign representative 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.²⁵

36. A certified copy of MNC’s Petition and a certified copy of the Foreign Representative Order are attached to the Second Harmes Affidavit.²⁶ Moreover, the Yetter Affidavit states that there are no other foreign proceedings in respect of the Debtors that are known to MNC.²⁷

37. Further, subsection 47(1) of the CCAA provides that the court shall make an order recognizing a foreign proceeding if: (a) the proceeding is a “foreign proceeding”; and (b) the applicant is a “foreign representative” in respect of that foreign proceeding.²⁸

38. With respect to the first requirement, proceedings pursuant to chapter 11 of the U.S. Bankruptcy Code under the supervision of a U.S. bankruptcy court satisfy the definition of “foreign proceeding” under subsection 45(1) of the CCAA, and are consistently recognized by Canadian courts to be a “foreign proceeding” under the CCAA.²⁹

²⁴ [CCAA s 46\(1\)](#).

²⁵ [CCAA s 46\(2\)](#).

²⁶ Exhibits “A” and “O” to the Affidavit of Andrew Harmes sworn March 14, 2025 (the “**Second Harmes Affidavit**”) [[A635; A635 – A682; A682](#)] and [[A1355; A1355 – A1358; A1358](#)].

²⁷ Yetter Affidavit, at para 26 [[A32; A32](#)].

²⁸ [CCAA s 47\(1\)](#).

²⁹ [CCAA s 45\(1\)](#); *Lightsquared LP, Re*, 2012 ONSC 2994 at para 18 [*Lightsquared*]; *Hollander Sleep Products, LLC et al., Re*, 2019 ONSC 3238 at para 27 [*Hollander*]; *Paladin Labs Canadian Holding Inc*, 2022 ONSC 4931 at paras

39. With respect to the second requirement, on March 11, 2025, the U.S. Bankruptcy Court issued the Foreign Representative Order appointing MNC as the Foreign Representative of the Chapter 11 Cases. Accordingly, MNC is a foreign representative within the meaning of subsection 45(1) of the CCAA.³⁰

40. All of the requirements for recognizing MNC as “foreign representative” and the Chapter 11 Cases as a “foreign proceeding” pursuant to Sections 46 and 47 of the CCAA are thus satisfied.

(ii) *The Chapter 11 Cases are a “foreign main proceeding”; MNC’s COMI is in the United States*

41. Once the Court recognizes a foreign proceeding, the Court is required to specify whether the foreign proceeding is a “foreign main proceeding” or a “foreign non-main proceeding.”³¹ Subsection 45(1) of the CCAA defines a “foreign main proceeding” to be a foreign proceeding in a jurisdiction where the debtor company has the “centre of its main interests” (“COMI”).

42. While the CCAA does not define what constitutes a debtor’s COMI, subsection 45(2) provides that, absent evidence to the contrary, a debtor’s COMI is deemed to be the location of its registered office. The wording of subsection 45(2) and case law interpreting it establishes that this presumption can be rebutted with evidence demonstrating that a debtor company’s COMI is located in a jurisdiction other than the location of its registered office.³² The determination of COMI is substantive, rather than technical, and the integration of a specific debtor with a larger enterprise is a significant factor.³³

43. In *Paladin Labs Inc.* and *Diebold Nixdorf, Incorporated*, Chief Justice Morawetz confirmed that there are three primary factors which will be considered in assessing whether the location in which the foreign proceedings have been commenced is the debtor company’s COMI: (a) whether the location is readily ascertainable by creditors; (b) whether the location is one in

[13-14 \[Paladin\]; *Paladin Labs Inc.* \(19 August 2022\), Toronto, Ont Sup Ct J \[Commercial List\] CV-22-00685631-00CL \(Supplemental Order \(Foreign Main Proceeding\)\).](#)

³⁰ Yetter Affidavit at para 25 [[A32](#); [A32](#)]; [CCAA s 45\(1\)](#).

³¹ [CCAA s 47\(2\)](#).

³² [Paladin](#) at para 20.

³³ [CHC Group Ltd \(Re\)](#), 2016 BCSC 2623 at para 9; and [In the matter of CURO Canada Corp. and LendDirect Corp.](#), 2024 ONSC 1989.

which the debtor's principal assets or operations are found; and (c) whether the location is where the management of the debtor takes place.³⁴

44. Canadian courts have also considered the following factors, among others, to supplement the three primary factors: (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.³⁵

45. In this case, while MNC's registered office is in Ottawa, MNC is deeply integrated within the broader Mitel Group, which is managed on a consolidated and integrated basis and has strong and extensive ties to the United States.

46. Among other things, the Mitel Group is fully financially integrated. The Mitel Group's overall financial position is managed on a consolidated basis and the Mitel Group reports consolidated financial results of the entire group as opposed to on an entity-by-entity basis. Stand-alone financial statements for MNC are not typically prepared. Moreover, the Mitel Group's overall capital structure, including its funded indebtedness, is managed on a consolidated basis. The Mitel Group's funded indebtedness is borrowed by two entities that are borrowers under the Company's funded debt arrangements, and utilized or transferred to the Mitel Group's various operating entities as required. There are 29 entities in the Mitel Group, including MNC, that are guarantors of some or all of such funded debt obligations.³⁶

³⁴ [Paladin at para 21](#); [Diebold Nixdorf, Incorporated, 2023 ONSC 4230 at para 28](#) [*Diebold Nixdorf*]; see also [Lightsquared at para 25](#);

³⁵ [Hollander at para 32](#); [Massachusetts Elephant & Castle Group Inc, Re, 2011 ONSC 4201 at para 26](#) [*Massachusetts Elephant*]; [Paladin at para 23](#); [Diebold Nixdorf at para 29](#).

³⁶ Yetter Affidavit at para 73 [[A46](#); [A46](#)].

47. The extent of the Mitel Group's financial integration is also evident in the Mitel Group's Cash Management System, which is comprised of over 200 bank accounts and provides for the centralization of collections and disbursements for the entire corporate group, and the implementation of various Intercompany Transactions among such entities. The Cash Management System is managed by the Mitel Group's treasury and accounting personnel, which, given the global nature of the Company's operations and financial integration, includes employees of various Mitel Group entities across approximately 22 jurisdictions.³⁷

48. The Mitel Group is also deeply integrated from a business and operational perspective. Product offerings are generally consistent across the Mitel Group and key operational and business decisions are generally made by or under the oversight of senior leadership. The Mitel Group offers employee incentive plans, established by MNIL, to its global work force. Governance is also integrated as the Parent Boards are the primary governing bodies for the broader Mitel Group.³⁸

49. While the Mitel Group maintains expansive global operations, the Mitel Group has strong and extensive ties to the United States, including:

- (a) the United States is the Mitel Group's largest market, with approximately 30% of the Company's total 2024 consolidated revenue coming from customers in the United States;
- (b) six of the Mitel Group's 11 executives, including the Chief Executive Officer and the Chief Financial Officer, are based in the United States;
- (c) six of the seven members of the board of directors of MNIL (the immediate subsidiary of TopCo) are based in the United States, and two of the four members of the board of directors of TopCo are based on the United States;
- (d) the ABL Credit Documents, the Senior Credit Agreements and the Junior Credit Agreements are governed by United States law and the majority of the Mitel Group's lenders are United States based;

³⁷ Yetter Affidavit at para 73 [[A46; A46](#)].

³⁸ Yetter Affidavit at paras 58 [[A40; A40](#)] and 73 [[A46; A46](#)].

- (e) MLN US HoldCo LLC (“**MLN US**”), the principal borrower of the Mitel Group’s funded indebtedness, is a United States entity;
- (f) 12 of the 16 Debtors in the Chapter 11 Cases are incorporated or formed under United States law, have their registered head office and corporate headquarters in the United States, carry out their business in the United States, and have all, or substantially all, of their assets located in the United States; and
- (g) the Mitel Group offers employees, including Canadian employees, the ability to participate in several health and welfare insurance and benefits programs and retirement plans, which programs are managed and overseen by the Mitel Group’s group director for compensation and benefits, who is based out of the United States.³⁹

50. With respect to MNC specifically, MNC is deeply integrated within the broader Mitel Group (including from a financial, funding, cash management, human resources and operational perspective), and also has strong ties to the United States. Among other things:

- (a) the Mitel Group’s senior leadership, which is predominantly United States based, exercises primary strategic oversight over MNC, including, among other things, with respect to:
 - (i) key operational and business decisions in respect of MNC;
 - (ii) funding, intercompany transactions and cash management matters; and
 - (iii) licensing of MNC’s intellectual property and other intellectual property arrangements;
- (b) the Parent Boards, which are also predominantly United States based, established the Special Committee to advance strategic options and alternatives on behalf of the Mitel Group as a whole, including MNC;

³⁹ Yetter Affidavit at para 74 [[A47](#); [A47](#)]; Report of the Proposed Information Officer, at para 23.

- (c) MNC is a guarantor of all of the Mitel Group's approximately \$1.31 billion of funded indebtedness, which is United States law governed debt advanced predominantly by United States based lenders to MLN US, a United States based borrower;
- (d) MNC's financial results are reported on a consolidated basis with the Mitel Group, and stand-alone financial statements for MNC are not typically prepared;
- (e) MNC is fully integrated into the Cash Management System, in which the Main Concentration Account that receives receipts from the Company's operations, including from MNC, is located in the United States; and
- (f) MNC's employees participate in health and welfare insurance and benefits programs and retirement plans that are managed out of the United States.⁴⁰

51. In a number of prior cases, this Court has determined that a Canadian debtor with significant business operations in Canada nevertheless had its COMI in the United States as a result of being an integrated member of the broader corporate group.⁴¹ In *Elephant and Castle*, for instance, the Court determined that the COMI of the Canadian debtors was in the United States notwithstanding that Canada accounted for nearly one-half of the corporate group's operating locations and approximately 43% of its employees because, among other reasons, the location of the debtors' senior management was in the United States and a key Canadian creditor did not oppose the relief sought.⁴² In *Paladin Labs*, the Court was satisfied that, while the Canadian debtors' registered head offices were in Canada, they were integrated members of the broader corporate group that was managed by the group's senior leadership located in the United States, and that the COMI of each of the Canadian debtors was in the United States.⁴³

52. Considering the key factors referenced above and the factual matrix, MNC submits that its COMI is the United States. In particular, MNC submits that the United States is readily

⁴⁰ Yetter Affidavit at para 75 [[A48](#); [A48](#)]; Cash Management Motion, at para 12 [[A739](#); [A739](#)], Exhibit "D" to the Second Harnes Affidavit.

⁴¹ *Massachusetts Elephant* at paras [25](#) and [32](#); *Paladin* at paras [23-24](#).

⁴² *Massachusetts Elephant* at para [25](#).

⁴³ *Paladin* at paras [23-24](#).

ascertainable by the principal creditors of MNC who are to be impacted by the Debtors' restructuring, such creditors being the Senior Lenders and the Junior Lenders. Under the Plan, General Unsecured Claims will be unimpaired. As referenced above, the Senior Credit Agreements and the Junior Credit Agreements are governed by United States law, and the borrower of the Senior Loans and the Junior Loans is MLN US, a United States entity. Further, the Senior Lenders and the Junior Lenders have executed the RSA and are supportive of the implementation of the Restructuring Transactions through the Chapter 11 Cases as the primary forum for the restructuring.

53. Accordingly, given the connections of the Mitel Group to the United States, MNC's integration within the consolidated Mitel Group, MNC's own connections to the United States, and the nature of the proposed restructuring, MNC submits that its COMI is the United States and that the Chapter 11 Cases ought to be recognized as a "foreign main proceeding" pursuant to subsection 47(2) of the CCAA.⁴⁴ The Foreign Representative Order requests the aid and assistance of the Canadian Court to recognize these chapter 11 cases as a "foreign main proceeding" in respect of MNC.⁴⁵

B. The Initial Recognition Order Should be Granted

54. Once the Court has recognized a foreign proceeding as a foreign main proceeding, subsection 48(1) of the CCAA requires the Court to grant an order, subject to any terms and conditions it considers appropriate, staying proceedings against the debtor company and certain related relief set forth in subsection 48(1).⁴⁶

55. MNC is seeking an Initial Recognition Order in substantially the form of the Ontario model order for foreign main proceedings. The primary effect of the proposed Initial Recognition Order is to recognize the Chapter 11 Cases as a foreign main proceeding and to make the order required pursuant to subsection 48(1) of the CCAA. Consistent with the Ontario model order and the Court's jurisdiction under subsection 48(1) to grant a stay "for any period that the court considers necessary", the proposed Initial Recognition Order provides that the stay will remain effective

⁴⁴ Yetter Affidavit at para 151 [[A78](#); [A78](#)].

⁴⁵ Foreign Representative Order, at para 2 [[A1357](#); [A1357](#)], Exhibit "O" to the Second Harmes Affidavit.

⁴⁶ [CCAA s 48\(1\)](#).

until otherwise ordered by the Court. Ontario courts regularly grant initial recognition orders with indefinite stay periods in Part IV proceedings.⁴⁷ MNC submits that the granting of the requested Initial Recognition Order is reasonable and appropriate and within the jurisdiction of the Court.

C. The Supplemental Order Should be Granted

- (i) *A stay of proceedings in Canada in favour of MNC and its directors and officers is necessary and appropriate*

56. The proposed Supplemental Order provides for a stay of proceedings in Canada in respect of the MNC and its directors and officers. MNC submits that the requested stay of proceedings in Canada is necessary to preserve and protect the value of the Canadian Business. It is important for MNC and the Canadian Business, as well as its directors and officers, to be protected pursuant to a Canadian court order from the exercise of rights or remedies to maintain stability and preserve the value of the Canadian Business while the Company implements the Restructuring Transactions.⁴⁸ MNC also relies on its submissions in respect of the Interim Stay Order, including paragraphs 57 to 67 of the factum filed in support of the Interim Stay Order.

57. Consistent with the Court's jurisdiction pursuant to subsection 49(1) of the CCAA to make any order that it considers appropriate, the proposed Supplemental Order provides for certain additional protections in respect of MNC and the Canadian Business in addition to the stay of proceedings provided for in subsection 48(1) of the CCAA. The proposed Supplemental Order, consistent with the Ontario model order, prohibits the exercise of rights or remedies against MNC or affecting its business or property in Canada, prohibits the discontinuance or termination of contracts with the MNC or affecting its business or property in Canada, requires the continued supply of goods and/or services in Canada pursuant to existing agreements with MNC, and stays all proceedings in respect of directors and officers of MNC in their capacity as such.

⁴⁷ [David's Bridal, LLC \(18 April 2023\), Toronto, Ont Sup Ct J \[Commercial List\] CV-23-00698107-00CL \(Endorsement of Conway J\) at para 15 \[David's Bridal\]; Paladin at paras 28 and 39.](#)

⁴⁸ Yetter Affidavit at para 146 [[A77](#); [A77](#)].

- (ii) *The proposed recognition of certain First Day Orders is necessary to preserve the value of the Canadian Business and facilitate the implementation of the Restructuring Transactions*

58. The First Day Orders for which MNC is seeking recognition are listed above and described in the Disclosure Statement and the related First Day Motions, all of which are attached to the Second Harmes Affidavit.⁴⁹ A brief summary chart is provided at Schedule D hereto.

59. Subsection 49(1) of the CCAA provides the Court with broad jurisdiction to grant “any order that it considers appropriate” with respect to foreign proceedings 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. Subsection 52(1) of the CCAA requires that the Court “cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.”⁵⁰ In the context of Part IV recognition proceedings, this Court commonly grants orders recognizing first day orders granted in Chapter 11 proceedings.⁵¹

60. MNC submits that it is appropriate for this Court to recognize the requested First Day Orders given, among other things:

- (a) the U.S. Bankruptcy Court has assumed jurisdiction over the Chapter 11 Cases and comity will be furthered by this Court’s recognition of orders granted by the U.S. Bankruptcy Court in those proceedings;
- (b) as the Debtors operate a global, integrated business with a significant presence in the United States, it is appropriate for the Chapter 11 Cases overseen by the U.S. Bankruptcy Court to be the primary forum for the Debtors’ restructuring; and
- (c) the First Day Orders have been obtained by the Debtors to enable them to carry on their business in the ordinary course, minimize the adverse effects of the Chapter

⁴⁹ Exhibits “B” to “N” [[A683; A683 – A1337; A1337](#)], and “DD” [[A2000; A2000 – A2384; A2384](#)] to the Second Harmes Affidavit.

⁵⁰ [CCAA s 52\(1\)](#).

⁵¹ [Hollander at paras 41-43; Lightsquared at paras 35-36; Paladin at paras 32-34; YRC Freight Canada Company \(Re\), 2023 ONSC 4834 at paras 28-31 \[Yellow\]; Yellow Corporation et al \(29 August 2023\), Toronto, Ont Sup Ct J \[Commercial List\] CV-23-00704038-00CL \(Supplemental Order \(Foreign Main Proceeding\)\)](#).

11 Cases on their overall business, and to preserve value for the benefit of stakeholders.

61. MNC submits that recognition of the requested First Day Orders is necessary to preserve the value of the Canadian Business and facilitate the implementation of the Restructuring Transactions pursuant to the Chapter 11 Cases.

(iii) *Recognition of the Interim DIP Order is necessary and appropriate to ensure the Debtors have the liquidity necessary to continue operations and fund restructuring efforts*

62. The DIP Financing will enable the Debtors, including MNC, to fund their restructuring efforts and continue their operations, including to fund wages, salaries, and benefits to the Debtors' employees, procure necessary goods and services, maintain trade terms with the Debtors' vendors, finance the cost of the Chapter 11 Cases and these Canadian recognition proceedings, and meet other working capital needs. It is currently expected that approximately half of the DIP New Money Term Loans will be required to fund MNC.⁵²

63. The Debtors, through their investment banker, PJT Partners LP, had solicited post-petition financing proposals from certain potential new, third-party capital providers as well as from the Ad Hoc Group.⁵³ Given the existing liens on substantially all of the Debtors' assets and the need for immediate access to cash, the proposal received from the Ad Hoc Group proved to be the only practical, reasonable, and viable source of financing. Accordingly, the Debtors and their advisors, under the direction of the Special Committee, negotiated a secured postpetition financing facility with certain of the Senior Lenders (in such capacity, the "**DIP Backstop Parties**") in the form of (a) \$60 million of DIP New Money Term Loans, which became available immediately upon entry by the U.S. Bankruptcy Court of the Interim DIP Order, and (b) refinanced Priority Lien Loans through the roll-up and equitization on the date of the entry of the Final DIP Order of an aggregate principal amount of \$62 million of Priority Lien Loans held by the lenders under the facility (collectively, the "**DIP Facility**" and the lenders thereunder, the "**DIP Lenders**").⁵⁴

⁵² Report of the Proposed Information Officer, at paras 51 and 64.

⁵³ See the DIP Declaration, at paras 12-13 [[A2391](#); [A2391](#) – [A2392](#); [A2392](#)] , Exhibit "EE" to the Second Harmes Affidavit.

⁵⁴ Yetter Affidavit at para 140 [[A75](#); [A75](#)].

64. MLN US is the borrower under the DIP Credit Agreement and each of the Debtors (including MNC) are guarantors of the DIP Loans and the other DIP obligations.⁵⁵

65. Without the proceeds of the DIP Financing and access to cash collateral, the Debtors lack the liquidity necessary to continue operations. Access to the DIP Financing provides the Debtors with sufficient liquidity to operate their business, administer the Chapter 11 Cases and these Canadian proceedings to pursue a restructuring that will significantly deleverage the balance sheet, and implement operational initiatives that will position the Debtors to succeed upon emergence. It is a required Milestone under the RSA that the Court shall have recognized the Interim DIP Order by no later than March 24, 2025.⁵⁶

66. This Court has established various relevant factors when considering a Canadian guarantee of a cross-border DIP,⁵⁷ many of which apply here, including:

- (a) the DIP Facility is essential for the Debtors, including MNC, to continue to operate their businesses and fund the Chapter 11 Cases and these Canadian recognition proceedings to pursue the implementation of the Restructuring Transactions that will significantly deleverage their balance sheet and position the Debtors to succeed upon emergence, thereby furthering the objectives of the CCAA;
- (b) MNC is dependent on funding from the Mitel Groups' funded debt facilities and will benefit from MLN US, as borrower, being able to access the financing provided by the DIP Facility. As referenced above, MNC is expected to require approximately half of the DIP New Money Term Loans to fund the Canadian Business during the restructuring;
- (c) MNC's creditors are not expected to be prejudiced by its guarantee of the DIP Facility because, among other things, MNC's assets are already encumbered through MNC's secured guarantee of the Senior Loans and the Junior Loans, MNC

⁵⁵ Yetter Affidavit at para 141 [[A76; A76](#)].

⁵⁶ Yetter Affidavit at paras 143-144 [[A76; A76](#) – [A77; A77](#)]

⁵⁷ *Indalex Limited, Re* (8 April 2009), Toronto, Ont Sup Ct J [Commercial List] CV-09-8122-00CL (Endorsement of Morawetz J) at paras 8-9; *Hollander* at para 50; *Revlon, Inc., Re* (20 June 2023), Toronto, Ont Sup Ct J [Commercial List] CV-00682880-00CL (Endorsement of Conway J).

is also a debtor under the Chapter 11 Cases and subject to the restructuring efforts of the Company pursuant to such Chapter 11 Cases, and General Unsecured Claims are to be unimpaired under the Plan and treated in the ordinary course; and

- (d) Canadian stakeholders will benefit from the Debtors, including MNC, implementing the Restructuring Transactions and continuing their operations. The Debtors require the incremental liquidity from the DIP Facility to continue to fund wages, salaries, and benefits to the Debtors' employees, procure necessary goods and services, maintain trade terms with the Debtors' vendors, among other things.

67. MNC also submits that the roll-up of \$62 million of the Priority Lien Loans held by the DIP Lenders, which is to be effective on the date of the entry of the Final DIP Order, is appropriate in the circumstances. Although a roll-up provision may not be permissible in plenary proceedings under section 11.2 of the CCAA, this Court has concluded that there is no impediment to granting approval of interim DIP financing including a roll-up provision in foreign recognition proceedings under Part IV of the CCAA.⁵⁸

68. This Court has concluded that, in the context of a foreign proceeding, section 49 of the CCAA permits Canadian courts to (a) recognize DIP orders made in foreign main proceedings that have the effect of facilitating the payment of pre-filing obligations, and (b) grant charges over assets located in Canada to give effect to such foreign orders.⁵⁹

69. This Court, in considering whether to recognize a foreign DIP orders containing roll-up provisions, has also considered whether there would be any material prejudice to any Canadian interests in recognizing such roll-up.⁶⁰ In this case, there will be no be material prejudice to any Canadian interests in recognizing the roll-up provisions of the Interim DIP Order given MNC's assets are already encumbered. Counsel to the proposed Information Officer has provided a

⁵⁸ *Hollander* at [para 46](#) (citing *Hartford Computer Hardware Inc, (Re)*, 2012 ONSC 964 [*Hartford*] at paras. [18-19](#)).

⁵⁹ *Diebold Nixdorf* at [paras 43-44](#); *Instant Brands Acquisition Holdings Inc et al* (23 June 2023), Toronto, Ont Sup Ct J [Commercial List] CV 23-00701159-00CL ([Endorsement of Justice Osborne](#)) at [paras 11-28](#); *Hollander* at paras [46-50](#); *Hartford*, at paras [10-14](#) and [18-19](#); and *GNC Holdings, Inc et al* (29 June 2020), Toronto, Ont Sup Ct J [Commercial List] CV-20-00642970-00CL ([Endorsement of Justice Conway](#)) at [paras 21-22](#).

⁶⁰ *Diebold Nixdorf*, at [para 45\(b\)](#) (citing *Xinergy Ltd., Re*, at [paras. 20-21](#)).

security opinion to the proposed Information Officer confirming the validity of the security granted by MNC in respect of the Priority Lien Loans, subject to standard qualifications and restrictions.⁶¹

70. Accordingly, MNC submits that the DIP Facility, including the guarantee by MNC and the roll-up of prepetition debt contemplated thereby, is appropriate in the circumstances, and that recognition by this Court of the Interim DIP Order is consistent with Part IV of the CCAA, the principles of comity, and the approval of interim financing commonly granted in Canadian restructuring proceedings.

(iv) *It is appropriate to appoint FTI Canada as the Information Officer*

71. MNC seeks the appointment of FTI Canada as the Information Officer.⁶² The CCAA does not require the appointment of an information officer, but it is common in Part IV proceedings for the Court to do so pursuant to its broad discretionary powers under sections 49 and 50 of the CCAA.⁶³ The information officer's role is to help facilitate cooperation between the Canadian proceeding, the foreign representative and the foreign court, including to keep the Court apprised of the status of the foreign proceeding and to act as a point of contact to respond to inquiries from interested parties in Canada. The terms of the Supplemental Order relating to the appointment, role and protections of the Information Officer are based on the terms of the Ontario model order and are consistent with the terms of orders granted in other recent Part IV recognition proceedings.⁶⁴ Courts in a number of prior cases have approved the appointment of a Canadian affiliate of the financial advisor to the chapter 11 debtors as the information officer in the Canadian proceeding.⁶⁵

⁶¹ Report of the Proposed Information Officer, at para 52.

⁶² Yetter Affidavit at para 156 [[A81](#); [A81](#)].

⁶³ [CCAA, s 49 and 50](#).

⁶⁴ *Yellow*, [Supplemental Order](#) dated August 29, 2023 (Court File No.: CV-23-00704038-00CL); *Paladin Labs*, [Supplemental Order](#) dated August 19, 2022 (Court File No.: CV-22-00685631-00CL) [*Paladin*]; *Revlon, Inc. et al.*, [Supplemental Order](#) dated June 20, 2022 (Court File No.: CV-22-00682880-00CL); *David's Bridal*, [Supplemental Order](#) dated April 18, 2023 (Court File No.: CV-23-00698107-00CL).

⁶⁵ *Yellow*, [Supplemental Order](#) dated August 29, 2023 at para 5 (Court File No.: CV-23-00704038-00CL); *WeWork Inc.*, [Supplemental Order](#) dated November 16, 2023 at para 6 (Court File No.: CV-23-00709258-00CL); *Ligado Networks LLC et al.*, [Supplemental Order](#) dated January 16, 2025 at para 5 (Court File No.: CV-25-00734802-00CL).

(v) *It is appropriate to grant the Administration Charge to secure professional fees*

72. The proposed Supplemental Order provides for the Administration Charge over the assets and property of MNC in Canada in the maximum amount of CDN\$500,000 to secure the fees and disbursements of Canadian counsel to the MNC, the Information Officer and counsel to the Information Officer incurred in respect of these proceedings. The Administration Charge is proposed to rank in priority to all other encumbrances in respect of MNC, other than those not given notice of the application for the proposed Supplemental Order.⁶⁶

73. While not directly applicable in the context of a Part IV recognition proceeding, it is instructive that section 11.52 of the CCAA expressly provides that the Court has the jurisdiction to grant an administration charge.⁶⁷ In the context of Part IV proceedings, this Court commonly grants administration charges to secure obligations owing to the debtor's counsel and the information officer and its counsel.⁶⁸

74. Factors that the Court has considered when approving an administration charge pursuant to section 11.52 of the CCAA include: (a) the size and complexity of the business being restructured; (b) the proposed role of the beneficiaries of the charge; (c) whether there is 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.⁶⁹

75. MNC submits that the amount of the proposed Administration Charge is reasonable in the circumstances having regard to the size and complexity of these proceedings and the roles that will be required of Canadian counsel to MNC and the proposed Information Officer and its counsel, and that the granting of the proposed Administration Charge is appropriate in the circumstances.⁷⁰

⁶⁶ Yetter Affidavit at para 159 [A82; A82].

⁶⁷ [CCAA, s 11.52](#).

⁶⁸ [Lightsquared at para 37](#); [Hollander at para 56](#); [David's Bridal at para 16](#); [Paladin at para 37](#); [Yellow at para 35](#).

⁶⁹ [Canwest Publishing Inc, 2010 ONSC 222 at paras 54-55](#) [Canwest]; [Timminco Ltd, Re, 2012 ONSC 106 at para 26](#) [Timminco].

⁷⁰ Yetter Affidavit at para 160 [A82; A82].

- (vi) *It is appropriate to grant the D&O Charge to secure MNC's indemnity obligations to its directors and officers under the proposed Supplemental Order*

76. The proposed Supplemental Order also provides for the D&O Charge in a maximum aggregate amount of CDN\$3.8 million over the assets and property of MNC in Canada as security for the indemnity obligations of MNC to its directors and officers under the proposed Supplemental Order in respect of obligations and liabilities that such directors and officers may incur during these proceedings in their capacities as directors and officers.⁷¹ The D&O Charge would be subordinate to the proposed Administration Charge and rank in priority to the DIP Charge and all other encumbrances, except to the extent of any encumbrances in favour of any person that did not receive notice of the application for the Supplemental Order.

77. Similar to the discussion above, while not directly applicable in the context of a Part IV recognition proceeding, section 11.51 of the CCAA expressly provides that the Court has the jurisdiction to grant a charge in favour of directors and officers.⁷² In deciding whether to grant a director's charge, the Court must be satisfied that: (i) notice has been given to the likely affected secured creditors; (ii) the amount is appropriate; (iii) the debtor company could not obtain adequate indemnification insurance for the directors and officers at a reasonable cost; and (iv) the charge does not apply to obligations incurred by a director or officer as a result of their gross negligence or willful misconduct.⁷³ In the context of Part IV proceedings, this Court has granted charges to secure debtor companies' indemnity obligations to their directors and officers.⁷⁴

78. MNC seeking the D&O Charge is consistent with the purpose of the CCAA and is appropriate in the circumstances for the following reasons:

- (a) MNC requires the continued support and involvement of its directors and officers in connection with the continued operation of the Canadian Business and the implementation of the Restructuring Transactions;

⁷¹ Yetter Affidavit at para 164 [[A83; A83](#)].

⁷² [CCAA, s 11.51](#).

⁷³ [CCAA ss. 11.51\(3\) and 11.51\(4\); Canwest Global Communications Corp, 59 CBR \(5th\) 72, \[2009\] OJ No 4286 \(QL\) \(Ont Sup Ct\) at paras 44-46; Timminco at paras 31-32 and 36.](#)

⁷⁴ [Yellow at para 41; David's Bridal at para 17.](#)

- (b) the D&O Insurance may not provide sufficient coverage against the potential liability that the directors and officers of MNC could incur during these proceedings;
- (c) the D&O Charge does not cover willful misconduct or gross negligence;
- (d) the amount of the proposed D&O Charge has been estimated, in consultation with the proposed Information Officer, with reference to MNC's payroll, vacation pay, termination and severance, and sales tax liability exposure; and
- (e) the secured creditors affected by the D&O Charge have been, or prior to the hearing of the within application will be, provided with notice of the proposed Supplemental Order.⁷⁵

79. The Foreign Representative respectfully submits that, taking into account the above factors, it is reasonable and appropriate to grant the requested D&O Charge.

(vii) It is appropriate to grant the DIP Charge to secure the DIP Financing

80. The DIP Credit Agreement requires the granting of the DIP Charge to secure the obligations outstanding from time to time under the DIP Facility.⁷⁶ The DIP Charge would be subordinate to the proposed Administration Charge and the D&O Charge, and rank in priority to all other encumbrances, except (i) to the extent of any encumbrances in favour of any person that did not receive notice of the application for the Supplemental Order, and (ii) to the extent the Interim DIP Order provides that any such encumbrance ranks in priority to or *pari passu* with the liens granted in favour of the DIP Lenders pursuant to the Interim DIP Order.⁷⁷ For reference, a chart summarizing the relative priorities of the liens granted pursuant to the Interim DIP Order is included at Exhibit 2 to the Interim DIP Order and reproduced at Schedule E hereto.⁷⁸

⁷⁵ Yetter Affidavit at paras 161-166 [[A83; A83](#) – [A84; A84](#)]; Report of the Proposed Information Officer, at para 62.

⁷⁶ Yetter Affidavit at para 167 [[A84; A84](#)].

⁷⁷ Yetter Affidavit at para 167 [[A84; A84](#)]; Report of the Proposed Information Officer at paras 63-65.

⁷⁸ Interim DIP Order, Second Harmes Affidavit at Exhibit "AA" [[A1498; A1498](#) – [A1755; A1755](#)].

81. Again, while not directly applicable in the context of a Part IV recognition proceeding, Section 11.2 of the CCAA provides the Court with express jurisdiction to grant a DIP financing charge. When considering whether to grant a DIP financing charge under Section 11.2 of the CCAA, the Court refers to the factors outlined in Section 11.2(4) of the CCAA.⁷⁹

82. The DIP Charge is reasonable in the circumstances taking into account:

- (a) the time sensitive nature of these proceedings and the immediate need for liquidity;
- (b) the Debtors, including MNC, require DIP financing to preserve the value of their assets, continue to operate their businesses and fund the Chapter 11 Cases and these proceedings to pursue the implementation of the Restructuring Transactions;
- (c) for the reasons discussed above regarding the guarantee of the DIP Facility by MNC, creditors are not expected to be materially prejudiced by the proposed DIP Charge; and
- (d) the Debtors have commenced the Chapter 11 Cases and these Canadian proceedings, and obtained the DIP Financing in connection therewith, with significant support, including from creditors potentially impacted by the DIP Charge. 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 signed the RSA and pursuant thereto consented to the DIP Facility and the DIP Charge.⁸⁰

PART IV – RELIEF REQUESTED

83. MNC, in its capacity as Foreign Representative, respectfully requests that the Court grant the Initial Recognition Order and the Supplemental Order.

⁷⁹ [CCAA s 11.2\(4\)](#); [Canwest at para 44](#).

⁸⁰ DIP Motion, at para 66 [[A1234](#); [A1234](#)], Exhibit “M” to the Second Harmes Affidavit.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 17th day of March, 2025.

GOODMANS LLP

Goodmans LLP

SCHEDULE A
LIST OF AUTHORITIES

Tab	Description
1.	<i>Lightsquared LP, Re</i>, 2012 ONSC 2994
2.	<i>Hollander Sleep Products, LLC et al., Re</i>, 2019 ONSC 3238
3.	<i>Paladin Labs Inc.</i> (19 August 2022), Toronto, Ont Sup Ct J [Commercial List] CV-22-00685631-00CL (Supplemental Order (Foreign Main Proceeding))
4.	<i>Paladin Labs Canadian Holding Inc.</i>, 2022 ONSC 4931
5.	<i>CHC Group Ltd (Re)</i>, 2016 BCSC 2623
6.	<i>In the matter of CURO Canada Corp. and LendDirect Corp.</i>, 2024 ONSC 1989
7.	<i>Diebold Nixdorf, Incorporated</i>, 2023 ONSC 4230
8.	<i>Massachusetts Elephant & Castle Group Inc.</i>, Re, 2011 ONSC 4201
9.	<i>David's Bridal, LLC</i> (18 April 2023), Toronto, Ont Sup Ct J [Commercial List] CV-23-00698107-00CL (Endorsement of Conway J)
10.	<i>YRC Freight Canada Company (Re)</i>, 2023 ONSC 4834
11.	<i>Yellow Corporation et al</i> (29 August 2023), Toronto, Ont Sup Ct J [Commercial List] CV-23-00704038-00CL (Supplemental Order (Foreign Main Proceeding))
12.	<i>Indalex Limited, Re</i> (8 April 2009), Toronto, Ont Sup Ct J [Commercial List] CV-09-8122-00CL (Endorsement of Morawetz J)
13.	<i>Revlon, Inc, Re</i> (20 June 2023), Toronto, Ont Sup Ct J [Commercial List] CV-00682880-00CL (Endorsement of Conway J)
14.	<i>Instant Brands Acquisition Holdings Inc et al</i> (23 June 2023), Toronto, Ont Sup Ct J [Commercial List] CV 23-00701159-00CL (Endorsement of Justice Osborne) at paras 11-28
15.	<i>GNC Holdings, Inc et al</i> (29 June 2020), Toronto, Ont Sup Ct J [Commercial List] CV-20-00642970-00CL (Endorsement of Justice Conway)
16.	<i>Re Xinergy Ltd.</i>, 2015 ONSC 2692
17.	<i>Canwest Publishing Inc.</i>, 2010 ONSC 222
18.	<i>Timminco Ltd, Re</i>, 2012 ONSC 106
19.	<i>Canwest Global Communications Corp</i>, 59 CBR (5th) 72, [2009] OJ No 4286 (QL) (Ont Sup Ct)
20.	<i>Payless ShoeSource Canada Inc. and Payless ShoeSource Canada GP Inc. (Re)</i>, 2019 ONSC 1215

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

Date: March 17, 2025

A handwritten signature in blue ink, appearing to read "Attorney", followed by a long horizontal line extending to the right.

Signature

SCHEDULE B
STATUTORY REFERENCES

COMPANIES' CREDITORS ARRANGEMENT ACT
R.S.C. 1985, c. C-36, as amended

s. 11.2(1)

On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

s. 11.2(2)

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

s. 11.2(3)

The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

s. 11.2(4)

In deciding whether to make an order, the court is to consider, among other things,

- (a) the period during which the company is expected to be subject to proceedings under this Act
- (b) how the company's business and financial affairs are to be managed during the proceedings;
- (c) whether the company's management has the confidence of its major creditors;
- (d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
- (e) the nature and value of the company's property;
- (f) whether any creditor would be materially prejudiced as a result of the security or charge;
and

s. 11.51(1)

On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of the company is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of proceedings under this Act.

s. 11.51(2)

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

s. 11.51(3)

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

s. 11.51(4)

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

s. 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

- (g) 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;
- (h) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and
- (i) 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.

s. 11.52(2)

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

s. 45(1) (“**Foreign Main Proceeding**”)

“foreign main proceeding” means a foreign proceeding in a jurisdiction where the debtor company has the centre of its main interests.

s. 45(1) (“**Foreign Proceeding**”)

foreign proceeding means a judicial or an administrative proceeding, including an interim proceeding, in a jurisdiction outside 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.

s. 45(1) (“**Foreign Representative**”)

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.

s. 45(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.

s. 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.

s. 46(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.

s. 46(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.

s. 46(4)

In the absence of the documents referred to in paragraphs (2)(a) and (b), the court may accept any other evidence of the existence of the foreign proceeding and of the foreign representative's authority that it considers appropriate.

s. 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.

s. 47(2)

The court shall specify in the order whether the foreign proceeding is a foreign main proceeding or a foreign non-main proceeding.

s. 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.

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.

s. 50

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

s. 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.

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.

SCHEDULE C
MILESTONES

Deadline	Milestone
No later than March 24, 2025	Entry by the Court of (i) the Initial Recognition Order, (ii) the Supplemental Order and (iii) 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.
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.

SCHEDULE D
FIRST DAY ORDERS TO BE RECOGNIZED
PURSUANT TO THE SUPPLEMENTAL ORDER⁸¹

Order	Description
Foreign Representative Order	The Foreign Representative Order authorizes MNC to act as the Foreign Representative in these Canadian recognition proceedings.
Interim DIP Order	The Interim DIP Order authorizes the Debtors to, among other things, obtain the DIP Financing pursuant to the DIP Credit Agreement and access cash collateral.
Cash Management Order	The Debtors maintain the sophisticated Cash Management System in the ordinary course of their business. To lessen the disruption caused by the Chapter 11 Cases, the Debtors have obtained the Cash Management Order to be able to maintain the Cash Management System and be authorized to, among other things, pay any outstanding bank, processing, and security fees owed in relation to their cash management system, continue utilizing their corporate credit cards, maintain their existing business forms, and continue engaging in intercompany transactions in the ordinary course of business.
Wages Order	The Debtors employ approximately 760 Employees as at the Petition Date. The Debtors obtained the Wages Order to have the authorization to, among other things, (i) pay prepetition wages, salaries, other compensation, and reimbursable expenses to their employees and (ii) continue employee benefits programs in the ordinary course of business, including payment of certain prepetition obligations related thereto.
Critical Vendors Order	The Debtors incur obligations to various vendors and service providers in the ordinary course of business. The Debtors obtained the Critical Vendors Order to have the authorization to, among other things, maintain and administer their customer and partner programs, including honoring prepetition obligations related thereto, on a postpetition basis in the ordinary course.
Taxes Order	The Debtors, including MNC, incur various taxes, fees, and similar charges in a multitude of jurisdictions in the ordinary course of business. The Debtors' failure to pay certain taxes and fees when due may adversely affect their business operations. Accordingly, the Debtors obtained the Taxes Order to have the authorization to pay all taxes, fees, assessments, and other charges to applicable taxing authorities in the ordinary course of business that may be due under applicable law both prior to and after the Petition Date.
Utilities Order	The Debtors incur certain expenses related to essential utility services in the ordinary course of business, including, electricity, natural gas, water and sewage, telephone, internet, and other similar services. The Debtors obtained the Utilities Order to (a) prohibit utility providers from altering, refusing, or discontinuing utility services, (b) deem the utility providers to

⁸¹ The descriptions of the First Day Orders provided herein are provided for summary purposes only and are qualified in their entirety to the terms and provisions of such First Day Orders.

Order	Description
	be adequately assured of future payment, and (c) establish procedures for determining adequate assurance of payment.
NOL Order	The Debtors possess net operating loss (“ NOL ”) carryforwards and other tax attributes. Under the U.S. Internal Revenue Code, the Debtors’ ability to use these NOL carryforwards and other tax attributes may be limited if, among other things, the Debtors experience a change of control. To protect the Debtors’ ability to use their tax attributes, the Debtors obtained the NOL Order, among other things, approving notification and hearing procedures for certain transfers of, and declarations of worthlessness with respect to, the common equity of TopCo and notification, hearing, and sell-down procedures related to claims against the Debtors.
Customer Programs Order	The Debtors provide certain incentives, discounts, promotions, and accommodations, and administer related programs, to attract customers and maintain positive customer relationships. Continuing to administer these programs without interruption during the pendency of the Chapter 11 Cases is critical to preserve the value of the Debtors’ assets by, most importantly, preserving the Debtors’ valuable customer relationships, goodwill, and market share. Accordingly, the Debtors obtained the Customer Programs Order to confirm their authority to maintain and administer their customer-related programs, policies, and practices and honor certain prepetition obligations related thereto.
Stay Enforcement Order	The Debtors contract with a number of non-U.S. vendors and other counterparties in the ordinary course of their business, who may be unfamiliar with the chapter 11 process or the provisions of the Bankruptcy Code. To protect the worldwide automatic stay and enforce the <i>ipso facto</i> provisions set forth in the Bankruptcy Code, the Debtors obtained the Stay Enforcement Order restating and enforcing the worldwide automatic stay, anti-discrimination provisions, and <i>ipso facto</i> protections of the Bankruptcy Code.
Insurance Order	The Debtors maintain a variety of insurance policies and surety arrangements in the ordinary course of their business which are essential to preserve the value of the Debtors’ business, properties, and assets. Failure to make the payments required to maintain the Debtors’ insurance policies could have a significant negative impact on the Debtors’ operations. As a result, the obtained authorization to continue their prepetition insurance and surety arrangements and pay premiums and other amounts arising thereunder pursuant to the Insurance Order.
Joint Administration Order	The Joint Administration Order orders that the Debtor’s Chapter 11 Cases be consolidated for procedural purposes and jointly administered by the U.S. Bankruptcy Court under the case of MLN US HoldCo LLC.
Claims Agent Retention Order	The Claims Agent Retention Order authorizes the Debtors to employ Stretto Inc. as claims, noticing, and solicitation agent.

SCHEDULE E
INTERIM DIP ORDER – SCHEDULE OF RELATIVE PRIORITIES⁸²

Priority	Prepetition Loan Collateral	Prepetition ABL Collateral	Unencumbered Property
1 st	Carve-Out / Canadian Priority Charges	Carve-Out / Canadian Priority Charges	Carve-Out / Canadian Priority Charges
2 nd	Prepetition Loan Permitted Senior Liens	Prepetition ABL Permitted Senior Liens	DIP Liens
3 rd	DIP Liens	ABL Adequate Protection Liens	Priority Lien Adequate Protection Liens
4 th	Priority Lien Adequate Protection Liens	Prepetition ABL Liens	Second Lien Adequate Protection Liens
5 th	Prepetition Priority Lien Liens	DIP Liens	Third Lien Adequate Protection Liens
6 th	Second Lien Adequate Protection Liens	Priority Lien Adequate Protection Liens	Legacy Senior Adequate Protection Liens
7 th	Prepetition Second Lien Liens	Second Lien Adequate Protection Liens	Legacy Junior Adequate Protection Liens
8 th	Third Lien Adequate Protection Liens	Third Lien Adequate Protection Liens	
9 th	Prepetition Third Lien Liens	Legacy Senior Adequate Protection Liens	
10 th	Legacy Senior Adequate Protection Liens	Legacy Junior Adequate Protection Liens	
11 th	Legacy Senior Liens		
12 th	Legacy Junior Adequate Protection Liens		
13 th	Legacy Junior Liens		

⁸² Capitalized terms used in this schedule but not otherwise defined herein have the meanings given to them in the Interim DIP Order, including by way of cross-reference therein.

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

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