

**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 RED LOBSTER MANAGEMENT LLC; RED LOBSTER  
HOSPITALITY LLC and RED LOBSTER CANADA, INC.**

APPLICATION OF RED LOBSTER MANAGEMENT LLC  
UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, C. C-36, AS AMENDED

**FACTUM OF THE FOREIGN REPRESENTATIVE  
(Recognition of Foreign Main Proceeding)**

**BLAKE, CASSELS & GRAYDON LLP**  
199 Bay Street  
Suite 4000, Commerce Court West  
Toronto, ON M5L 1A9

**Linc Rogers**, LSO#: 43562N  
Tel: (416) 863-4168  
Email: [linc.rogers@blakes.com](mailto:linc.rogers@blakes.com)

**Caitlin McIntyre**, LSO#: 72306R  
Tel: (416) 863-4174  
Email: [caitlin.mcintyre@blakes.com](mailto:caitlin.mcintyre@blakes.com)

**Jake Harris**, LSO#: 85481T  
Tel: (416) 863-2523  
Email: [jake.harris@blakes.com](mailto:jake.harris@blakes.com)

Lawyers for the Foreign Representative

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**PART 1 – OVERVIEW**

1. This factum is filed in support of an application under Part IV of the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") by Red Lobster Management LLC ("**RL Management**") in its capacity as foreign representative (in such capacity, the "**Foreign Representative**") of itself, Red Lobster Hospitality LLC ("**RL Hospitality**") and Red Lobster Canada, Inc. ("**RL Canada**" and, together with RL Management and RL Hospitality, the "**Canadian Debtors**"), for, among other things, recognition of proceedings in the United States of America (the "**Chapter 11 Cases**") under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**") commenced the Canadian Debtors and certain affiliated entities (collectively, the "**Debtors**") in the United States Bankruptcy Court for the Middle District of Florida, Orlando Division (the "**US Court**"), and recognizing certain orders of the US Court made in the US Proceedings (the "**First Day Orders**").<sup>1</sup>

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<sup>1</sup> Affidavit of Jonathan Tibus sworn May 24, 2024 (the "**Tibus Affidavit**") at para. 4.

2. On May 19, 2024 (the “**Petition Date**”) the Debtors commenced the Chapter 11 Cases by filing voluntary petitions (the “**Petitions**”) for relief pursuant to the Bankruptcy Code. The Debtors commenced the Chapter 11 Cases to provide a protective platform for a comprehensive operational restructuring and value maximizing going-concern sale of the business as a whole, including the Canadian Business.<sup>2</sup>

3. On May 21, 2024, RL Management, in its capacity as the proposed foreign representative of the Canadian Debtors, sought and obtained an order for an interim stay of proceedings (the “**Interim Stay Order**”) from this Court in respect of the Canadian Debtors, as well as their respective directors and officers, in Canada.<sup>3</sup>

4. Also on May 21, following a hearing in respect of certain “First Day Pleadings” in the Chapter 11 Cases, the US Court entered a number of First Day Orders, including an order (the “**Foreign Representative Order**”) authorizing RL Management to act as Foreign Representative in respect of the Debtors and the Chapter 11 Cases.<sup>4</sup>

5. RL Management, in its capacity as duly appointed Foreign Representative, now seeks the following relief on this application:

- (a) an order (the “**Initial Recognition Order**”), among other things:
  - (i) recognizing RL Management as the Foreign Representative in respect of the Canadian Debtors;
  - (ii) recognizing the US Proceedings as a “foreign main proceeding” in respect of the Canadian Debtors; and

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<sup>2</sup> Tibus Affidavit at para. 6.

<sup>3</sup> Tibus Affidavit at para. 7.

<sup>4</sup> Tibus Affidavit at para. 8.

- (iii) granting a stay of proceedings in respect of the Canadian Debtors in Canada;  
and
- (b) an order (the “**Supplemental Order**” and, together with the Initial Recognition Order, the “**Orders**”), among other things:
  - (i) recognizing certain of the interim and final orders issued by the US Court in the US Proceedings, including, among others, an order approving a debtor-in-possession facility (the “**DIP Facility**”).
  - (ii) granting a further stay of proceedings in respect of the Canadian Debtors, and their respective directors and officers, in Canada prohibiting, among other things, the commencement or continuation of proceedings, exercise of rights and remedies, or interference with the rights of the Canadian Debtors;
  - (iii) appointing FTI Consulting Canada Inc. (“**FTI**”) as information officer in respect of these proceedings (in such capacity, the “**Information Officer**”);
  - (iv) granting a Court-ordered charge over the assets and property of the Canadian Debtors to secure payment of the fees and disbursements of Canadian counsel to the Canadian Debtors, the Information Officer and counsel to the Information Officer (the “**Administration Charge**”);
  - (v) granting a Court-ordered charge over the assets and property of the Canadian Debtors to secure the DIP Facility (the “**DIP Charge**”); and
  - (vi) granting a Court-ordered charge over the assets and property of the Canadian Debtors to secure the indemnity obligations of the Canadian Debtors to their directors and officers in respect of the obligations and

liabilities that such directors and officers may incur during these proceedings in their capacities as directors and officers (the “**D&O Charge**”).

6. Capitalized terms not otherwise defined herein have the meanings given to them in the Tibus Affidavit.

## **PART II – SUMMARY OF THE FACTS**

### **A. THE BUSINESS**

7. Red Lobster is an iconic seafood restaurant chain founded in 1968. It expanded across the United States throughout the 1970s. In 1983, Red Lobster expanded north into Canada.<sup>5</sup>

8. Today, Red Lobster operates approximately 550 restaurant locations, currently operating across 44 states and 4 provinces in Canada.<sup>6</sup>

### **B. THE CANADIAN BUSINESS**

9. Red Lobster operates 27 restaurants in Canada, including 20 in Ontario, 4 in Alberta, 2 in Saskatchewan and 1 in Manitoba. These restaurants are all operated through the Canadian Debtor, RL Canada.<sup>7</sup>

10. RL Canada is a Delaware corporation which, like the other Debtors, is a wholly owned subsidiary of RL Management.<sup>8</sup>

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<sup>5</sup> Tibus Affidavit at para. 12.

<sup>6</sup> Tibus Affidavit at para. 15.

<sup>7</sup> Tibus Affidavit at para. 19.

<sup>8</sup> Tibus Affidavit at para. 20.

11. RL Hospitality is a limited liability company organized under the laws of Delaware. RL Hospitality is also a wholly owned subsidiary of RL Management. RL Hospitality is the registered owner of certain intellectual property in Canada.<sup>9</sup>

12. As of the Petition Date, RL Canada had approximately 2000 employees. Approximately 155 of these employees are unionized through collective bargaining units in place at two of RL Canada's restaurants (one located in Ontario and one in Alberta). RL Management and RL Hospitality do not have any Canadian based employees.<sup>10</sup>

13. RL Canada owns two pieces of real property in Canada. The first is located in Brantford, Ontario at 67 King George Road, N3R 3K2 (the "**Brantford Property**"). The Brantford Property is used by RL Canada as the premises for a Red Lobster restaurant.<sup>11</sup> RL Canada also owns the building improvement located on a property in Etobicoke, which RL Canada leases pursuant to a ground lease (the "**Etobicoke Ground Lease**"). The building on the property is used as a Red Lobster restaurant.<sup>12</sup>

14. RL Canada leases 26 properties in Canada, including the Etobicoke Ground Lease. All 26 properties are used as Red Lobster restaurant locations.<sup>13</sup>

### **C. PREPETITION DEBT OBLIGATIONS**

15. As of the Petition Date, the Debtors' outstanding third-party funded debt obligations totalled approximately \$294 million<sup>14</sup> which are summarized in the table below and described in detail in the First Day Declaration:

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<sup>9</sup> Tibus Affidavit at para. 21.

<sup>10</sup> Tibus Affidavit at paras. 27 and 28.

<sup>11</sup> Tibus Affidavit at para. 22.

<sup>12</sup> Tibus Affidavit at para. 23.

<sup>13</sup> Tibus Affidavit at para. 24.

<sup>14</sup> All dollar amounts referenced herein are in USD unless otherwise stated.

<b>Funded Debt</b>	<b>Maturity</b>	<b>Approximate Outstanding Principal Amount as of the Petition Date</b>
<b>Secured Debt</b>		
Prepetition ABL Revolving Facility	January 2025	\$29.3 million (of issued letters of credit)
Prepetition Term Facility	January 2026	\$264.7 million
	<b>Total Funded Debt</b>	\$294 million

16. The Debtors have an asset-based loan facility (the “**ABL Facility**”) in place with an aggregate commitment of \$100 million, including a \$40 million sublimit for letters of credit. The administrative agent under the ABL Facility is Wells Fargo Bank, National Association (“**Wells Fargo**”). As of the Petition Date no loans are outstanding under the ABL Facility. However, Wells Fargo has issued letters of credit with an aggregate face amount of approximately \$29.3 million. The outstanding obligations under the ABL Facility are secured by substantially all of the Debtors’ assets, including certain cash collateral accounts held by Wells Fargo.<sup>15</sup>

17. Pursuant to an intercreditor agreement between Wells Fargo and the Prepetition Term Loan Agent (as defined below), Wells Fargo has a senior lien on certain assets (e.g. cash, cash accounts, inventory and credit card receivables) (the “**ABL Priority Collateral**”) and the Prepetition Term Loan Agent has a senior lien on all other assets of the Debtors.<sup>16</sup>

18. On January 22, 2021, RL Management, Fortress Credit Corp. (“**Fortress**” or the “**Prepetition Term Loan Agent**”), certain lenders (the “**Prepetition Term Loan Lenders**”), each of the other co-Debtors (with certain exceptions) and non-Debtor, Red Lobster Intermediate Holdings LLC, entered into a Financing Agreement (as amended or otherwise modified from time to time, the “**Prepetition Term Loan Credit Agreement**”). As of the Petition Date, the

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<sup>15</sup> Tibus Affidavit at para. 38.

<sup>16</sup> Tibus Affidavit at para. 39.

Prepetition Term Loan Lenders were owed approximately \$264.7 million. The outstanding obligations under the Prepetition Term Loan Credit Agreement are secured by a senior lien on substantially all of the Debtors' assets, other than the ABL Priority Collateral, over which such obligations are secured by a secondary lien.<sup>17</sup>

#### **D. FINANCIAL CHALLENGES**

19. Like many other casual dining restaurants, RL Group has seen certain operational headwinds and challenges in recent years, including disruptions to its supply chain, inflationary pressure affecting food, labour, and delivery costs, substantial increases in the cost of capital and real property leases, and shifts in casual dining trends that were occurring prior to and as a result of the COVID-19 pandemic. RL Group has also been weighed down in recent years by macroeconomic factors including consumer sensitivities and inflationary pressures.<sup>18</sup>

20. Beginning in February 2024, the RL Group launched a strategic plan to improve its operations, including by making certain upgrades and investments in facilities, and by reducing the RL Group's cost structure.<sup>19</sup>

21. Despite the efforts to improve operations over the previous twelve months, RL Group has continued to face significant liquidity and operational challenges that led to the closure of 93 restaurants in the United States prior to the Petition Date. The Debtors determined that a comprehensive operational restructuring and value maximizing sale inside of a chapter 11 process would likely be the best possible alternative under the circumstances.<sup>20</sup>

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<sup>17</sup> Tibus Affidavit at paras. 40-41.

<sup>18</sup> Tibus Affidavit paras. 53-54.

<sup>19</sup> Tibus Affidavit at paras. 56-57.

<sup>20</sup> Tibus Affidavit at paras. 58 and 61.



### **PART III – ISSUES AND THE LAW**

22. This factum addresses the following issues:
- a. Should the Chapter 11 Cases be recognized as “foreign main proceedings”?
  - b. Should the Foreign Representative be granted the relief requested in the Orders, including:
    - i. granting the stay of proceedings in respect of the Canadian Debtors;
    - ii. recognition of certain First Day Orders, including the Interim DIP Order and related DIP Charge;
    - iii. appointment of FTI as Information Officer; and
    - iv. granting the Administration Charge and the D&O Charge.
23. For the reasons set out herein, the Foreign Representative submits that the Initial Recognition Order and Supplemental Order should be granted.

### **PART IV – THE LAW AND ARGUMENT**

#### **A. THE CHAPTER 11 CASE IS A FOREIGN MAIN PROCEEDING**

##### *(i) Requirements for Recognition of a Foreign Proceeding Are Met*

24. Pursuant to Section 46(1) of the CCAA, a foreign representative may apply to the court for recognition of a foreign proceeding, in respect of which that person is a foreign representative.<sup>21</sup>

25. Section 46(2) of the CCAA provides that, where a foreign representative applies to the court for recognition of a foreign proceeding, such application must be accompanied by: (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

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<sup>21</sup> CCAA, s. 46(1).

identifying all foreign proceedings in respect of the debtor company that are known to the foreign representative.<sup>22</sup>

26. A certified copy of the Foreign Representative Order is attached as an exhibit to the Tibus Affidavit.<sup>23</sup> Certified copies of the Petitions filed by each of the Canadian Debtors are attached to the Affidavit of Nancy Thompson sworn May 26, 2024.<sup>24</sup>

27. The Tibus Affidavit contains a statement identifying all foreign proceedings of the Debtors known to the Foreign Representative.<sup>25</sup>

28. Accordingly, all of the technical requirements under section 46(2) of the CCAA are met.

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

- a. The application for recognition of a foreign proceeding relates to a “foreign proceeding” within the meaning of the CCAA; and
- b. The applicant is a “foreign representative” within the meaning of the CCAA in respect of that foreign proceeding.<sup>26</sup>

30. As set out below, the requirements of section 47 are satisfied in the present case.

**a. The Chapter 11 Cases are “foreign proceedings”**

31. Section 45(1) of the CCAA defines a “foreign proceeding” as any judicial proceeding in a jurisdiction outside of Canada dealing with creditors’ collective interests generally under any law

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<sup>22</sup> CCAA, s. 46(2).

<sup>23</sup> Tibus Affidavit, Exhibit “M”.

<sup>24</sup> Affidavit of Nancy Thompson sworn May 26, 2024, Exhibit “A”.

<sup>25</sup> Tibus Affidavit at paras. 4-5.

<sup>26</sup> CCAA, s. 47.

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.<sup>27</sup>

32. Canadian courts have generally considered it self-evident that proceedings pursuant to the Bankruptcy Code under the supervision of a US bankruptcy court, satisfy the criteria of section 45. Canadian courts have consistently recognized such proceedings to be "foreign proceedings" for the purposes of the CCAA.<sup>28</sup>

33. The Chapter 11 Cases are proceedings pursuant to the Bankruptcy Code, a law relating to bankruptcy or insolvency. The Chapter 11 Cases are subject to the supervision of the US Court, a US bankruptcy court, for the purposes of reorganization. The Chapter 11 Cases are thus a "foreign proceeding" for the purposes of the CCAA.

34. The Canadian Debtors are debtor companies within the meaning of the CCAA. The definition of "debtor company" in the CCAA includes any company "that is insolvent." Under the CCAA, a company includes any company having assets or doing business in Canada. The Canadian Debtors have assets and/or conduct business in Canada.<sup>29</sup>

35. At the Petition Date, the Debtors were facing a looming liquidity crisis and/or had material amounts of indebtedness in arrears or had liabilities in excess of their assets and were thus insolvent for the purposes of the CCAA.<sup>30</sup>

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<sup>27</sup> CCAA, s. 45.

<sup>28</sup> *Hornblower Cruises and Events Canada Ltd.*, [2024 ONSC 1209](#) [**Hornblower**] at para. 21; *Payless Holdings LLC (Re)*, [2017 ONSC 2242](#) [**Payless**] at para. 22; *Paladin Labs Canadian Holding Inc.*, [2022 ONSC 4931](#) at paras. 13-14.

<sup>29</sup> CCAA, s. 2 "debtor company" and "company"; Tibus Affidavit at paras. 18-21.

<sup>30</sup> *Stelco Inc. Re*, [48 C.B.R. \(4<sup>th</sup>\) 299](#), [2004] O.J. No. 1257 (Ont. S.C.J.) at para. 40; Tibus Affidavit at paras. 53-55.

**b. RL Management is a Foreign Representative**

36. The second requirement is that RL Management be a “foreign representative”. The CCAA defines a “foreign representative” as:

a person or body, including one appointed on an interim basis, who is authorized in a foreign proceeding in respect of a debtor company, to (a) monitor the debtor’s business and financial affairs for the purpose of a reorganization, or (b) act as a representative in respect of the foreign proceeding.<sup>31</sup>

37. RL Management was appointed by the US Court to act as a representative of the Debtors in respect of the Chapter 11 Cases and with respect to this recognition proceeding by way of the Foreign Representative Order.<sup>32</sup> Therefore, RL Management meets the CCAA definition of a “foreign representative” in respect of the foreign proceeding.

**(ii) The Chapter 11 Cases are “Foreign Main Proceedings”**

38. If the Court grants an order under section 47(1) of the CCAA, section 47(2) requires that the Court specify whether the foreign proceeding is a “foreign main proceeding” or a “foreign non-main proceeding.”<sup>33</sup>

39. Section 45(1) of the CCAA provides that a “foreign main proceeding” is a foreign proceeding in a jurisdiction where the debtor company has the “centre of its main interests”(“COMI”).<sup>34</sup>

40. While the CCAA does not define what constitutes a debtor’s COMI, pursuant to section 45(2) of the CCAA, in absence of proof to the contrary, a debtor company’s COMI is presumed to be the location of its registered office.<sup>35</sup>

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<sup>31</sup> CCAA, s. 45 “foreign representative”.

<sup>32</sup> Tibus Affidavit, at para. 8.

<sup>33</sup> CCAA, s. 47.

<sup>34</sup> CCAA, s. 45(1).

<sup>35</sup> CCAA, s. 45(2).

41. The registered offices of RL Management, RL Canada and RL Hospitality are all located in Orlando, Florida.<sup>36</sup> As a result, the Canadian Debtors' presumed COMI is the US, and the Chapter 11 Cases should be recognized as "foreign main proceedings".

42. The following principal factors set out by Justice Morawetz (as he then was) in *Lightsquared LP, (Re)*, are also relevant to a determination of whether the jurisdiction in which the foreign proceeding has been filed is the debtor company's COMI:

- a. the location is readily ascertainable by creditors;
- b. the location is one in which the debtor's principal assets or operations are found;  
and
- c. the location is where the management of the debtor takes place.<sup>37</sup>

43. Based on the following factors, drawn from the list above, it is clear that the operational realities of the Canadian Debtors are such that COMI for each of them is in the US:

- a. the Debtors are all Delaware incorporated companies and Delaware limited liability companies, as applicable;
- b. the RL Group's senior leadership, including the sole directors, chief executive officer and chief restructuring officer are located in the US and such senior leadership exercises primary strategic management and control of the corporate group, including each of the Canadian Debtors;
- c. all of the Debtors' outstanding secured indebtedness is advanced by US-based lenders and the related loan documentation is governed by US law; and

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<sup>36</sup> Tibus Affidavit at para. 20.

<sup>37</sup> *Lightsquared LP, (Re)*, [2012 ONSC 2994](#) at para. 25.

d. Red Lobster's overall financial position is managed on a consolidated basis, principally from its US head office.<sup>38</sup>

44. By way of the Foreign Representative Order, the US Court specifically requested the aid and assistance of the Canadian Court to recognize the Chapter 11 Cases as a "foreign main proceeding" and RL Management as a "foreign representative pursuant to the CCAA."<sup>39</sup>

45. In summary, RL Group is a highly integrated corporate group managed out of the US. RL Canada and the other Canadian Debtors are incorporated and headquartered in the United States and rely on centralized management from RL Group's US offices.

46. Accordingly, this Court should recognize that the Chapter 11 Cases are "foreign main proceedings".

## **B. THE RELIEF SOUGHT SHOULD BE GRANTED**

### ***(i) The stay of proceedings is necessary and appropriate***

47. Section 48(1) of the CCAA requires the Court to grant mandatory relief once a proceeding is found to be a foreign main proceeding, including:

- 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, unless otherwise ordered by the court, the commencement of any action, suit or proceeding against the debtor company; and

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<sup>38</sup> Tibus Affidavit at para. 94.

<sup>39</sup> Tibus Affidavit at para. 67.

- 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.<sup>40</sup>

48. The Initial Recognition Order sought by the Foreign Representative is based on the Court's Model CCAA Initial Recognition Order (Foreign Main Proceeding) and provides for all the relief required by section 48 of the CCAA. Similarly, the proposed Supplemental Order is based on the Court's Model CCAA Supplemental Order (Foreign Main Proceeding) and provides for a broader stay of proceedings, similar to that provided to CCAA debtors in plenary proceedings, in respect of the Canadian Debtors and their directors and officers in Canada.<sup>41</sup>

49. The requested stay of proceedings is appropriate to give effect in Canada to the stay of proceedings granted by the US Court and to preserve and protect the value of the Canadian Business while the Debtors pursue a sale of the business as a going concern in the Chapter 11 Cases.

*(ii) Recognition of the First Day Orders is necessary and appropriate*

50. In addition to the mandatory relief provided for in section 48, section 49 of the CCAA grants this Court broad discretion to make any order necessary for the protection of the debtor company's property or the interests of a creditor or creditors.<sup>42</sup>

51. If an order recognizing a foreign proceeding is made, the Canadian court is required to cooperate, to the maximum extent possible, with the foreign representative and the foreign court

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<sup>40</sup> CCAA, s. 48(1).

<sup>41</sup> Supplementary Application Record dated May 24, 2024, Tab 4 and Tab 6.

<sup>42</sup> CCAA, ss. 49 and 50; *Purdue Pharma L.P., Re*, [2019 ONSC 7042](#) [*Purdue*] at para. 22.

in the foreign proceeding.<sup>43</sup> The principles of comity, cooperation and accommodation with foreign courts guide the CCAA courts in the exercise of their discretion in cross-border insolvency cases.<sup>44</sup>

52. Comity mandates that the Canadian court should recognize and enforce the judicial acts of other jurisdictions, provided that those other jurisdictions have assumed jurisdiction on a basis consistent with principles of order, predictability and fairness.<sup>45</sup>

53. To that end, the Foreign Representative is seeking, within the Supplemental Order, recognition of certain First Day Orders which are administrative and procedural in nature, as well as the Interim DIP Order.

**a. The Administrative and Procedural Orders should be recognized**

54. The administrative and procedural orders are comprised of the following First Day Orders: (i) The Foreign Representative Order, (ii) The Wages and Benefits Order, (iii) The Insurance Order, (iv) The Customer Program Order, (v) The Cash Management Order, (vi) The Tax Order, (vii) The Utilities Order, and (viii) The OCB Payment Order.

55. The recognition of the administrative orders will further evidence and enable RL Canada, in particular, to make timely permitted payments and remittances and will protect and preserve the value of the Canadian Business.

56. The Foreign Representative submits that consistent with the factors set out in *Hollander Sleep Products, LLC (Re)*, it is appropriate for this Court to recognize the First Day Orders because:

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<sup>43</sup> CCAA, s. 52(1).

<sup>44</sup> *Purdue* at para. 21; *Morguard Investments Ltd. v. De Savoye*, [1990 CanLII 29, 76 D.L.R. \(4th\) 256](#) (SCC).

<sup>45</sup> *Hollander Sleep Products, LLC (Re)*, [2019 ONSC 3238 \[Hollander\]](#) at para. 41.



- a. The U.S. Court has appropriately taken jurisdiction over the Chapter 11 Cases. Comity will be furthered by this Court's recognition of and support for the Chapter 11 Cases already underway in the United States;
- b. Coordination of proceedings in Canada and the United States will ensure equal and fair treatment of all stakeholders, whether they are in the United States or Canada;
- c. Given the close connection between the Canadian Business and the business of the RL Group in the United States, it is reasonable and "sensible" for the US Court to have principal control over the insolvency process. This will produce the most efficient restructuring for the benefit of all stakeholders;
- d. The Debtors must act quickly because of the expeditious timetable established in the DIP Credit Agreement (defined below) for their restructuring. It is imperative that there be a centralized and co-ordinated process for these insolvency proceedings to maximize the prospect of a successful restructuring and preserve value for stakeholders; and
- e. The Canadian Business and US operations of Red Lobster are highly intertwined.<sup>46</sup>

**b. The Interim DIP Order should be recognized and the DIP Charge granted**

57. In addition to satisfying the factors from *Hollander* set out above, recognition of the Interim DIP Order and granting of the related DIP Charge will fulfil a condition under the DIP Credit Agreement and facilitate the financing requirement to implement a successful restructuring and going-concern solution, including for the Canadian Business.

58. The Debtors are facing a liquidity crisis and require DIP financing to fund their operations while pursuing a restructuring. Accordingly, immediately prior to commencing the Chapter 11

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<sup>46</sup> *Hollander* at para. 43.

Cases, the Debtors (i) finalized a DIP financing facility (the “**DIP Facility**”) governed by a Secured Superpriority DIP Financing Agreement (the “**DIP Credit Agreement**”) by and among RL Management and each of its subsidiaries listed as a borrower or guarantor thereto, including RL Canada and RL Hospitality, and the lenders from time to time party thereto (the “**DIP Lenders**”) as represented by Fortress as Administrative Agent and Collateral Agent.<sup>47</sup>

59. Under the terms of the DIP Credit Agreement, RL Management is the borrower and RL Canada and RL Hospitality are guarantors.

60. The DIP Credit Agreement provides for an extension of credit not to exceed the principal amount of \$275,000,000, which amount is comprised of: (i) \$100,000,000 of new money that the Debtors require for the continued operation of their business during the pendency of the Chapter 11 Cases (the “**New Money Advances**”), plus (ii) \$175,000,000 of roll-up of Prepetition Term Loan Obligations.<sup>48</sup>

61. The first \$40,000,000 of the new money being advanced to the Debtors under the DIP Credit Agreement was made available upon entry of the Interim DIP Order. The second \$60,000,000 of new money shall be made available upon entry of a final order providing the authorizations included in the Interim DIP Order on a final basis (the “**Final DIP Order**”). \$70,000,000 of Prepetition Term Loan Obligations (as defined in the Interim DIP Order) were deemed funded under the DIP Facility upon entry of the Interim DIP Order and upon each draw on the DIP Facility prior to entry of the Final DIP Order. A further \$105,000,000 of Prepetition Term Loan Obligations shall be deemed funded upon entry of the Final DIP Order and upon funding of the remaining amounts under the DIP Facility.<sup>49</sup>

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<sup>47</sup> Tibus Affidavit at para. 87.

<sup>48</sup> Tibus Affidavit at para. 89.

<sup>49</sup> Tibus Affidavit at para. 89.

62. It is a requirement of the DIP Credit Agreement that the Interim DIP Order be recognized by the Court within seven business days of its granting.<sup>50</sup>

63. Canadian courts have observed that in a plenary CCAA proceeding a roll-up or partial roll-up of this nature, would not be permitted by operation of Section 11.2 which provides in pertinent part that: “The security or charge may not secure an obligation that exists before the order is made.”<sup>51</sup>

64. Canadian courts have, however, recognized orders approving DIP facilities, by the US court in a foreign proceeding, that includes a roll-up provision. In doing so, courts have emphasized the importance of comity in foreign recognition proceedings. In the leading case, *Hartford Computer Hardware Inc., Re*, Justice Morawetz (as he was then) observed:

The Information Officer and Chapter 11 Debtors recognize that in CCAA proceedings, a partial “roll-up” provision would not be permissible as a result of section 11.2 of the CCAA, which expressly provides that a DIP charge may not secure an obligation that exists before the Initial Order is made.

[...]

A significant factor to take into account is that the DIP Facility was granted by the US Court. In these circumstances, I see no basis for this court to second guess the decision of the US Court.<sup>52</sup> [emphasis added]

65. Following the reasoning in *Hartford Computer*, in *Hollander*, Justice Hainey confirmed that “there is no impediment to granting approval of interim DIP financing including a full roll-up provision in foreign recognition proceedings under Part IV of the CCAA”. [emphasis added].

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<sup>50</sup> Tibus Affidavit at para. 91.

<sup>51</sup> CCAA, s. 11.2.

<sup>52</sup> *Hartford Computer Hardware Inc., Re*, 2012 ONSC 964 [***Hartford Computer***] at paras. 10 and 14.

After reviewing *Hartford Computer* and considering the roll-up provisions in the DIP financing, His Honour concluded:

For the same reasons [as found in *Hartford Computers*] I am satisfied that the DIP Order should be approved. The U.S. Court granted the DIP Order because it was necessary for the protection of Hollander's property and the for the interests of creditors in Canada and the U.S.<sup>53</sup>

66. Identical conclusions with respect to the recognition of US DIP orders approving roll-up DIPs were reached in *Xinergy Ltd, Re* and *Instant Brands Acquisition Holdings Inc. et al* by Justices Newbould and Osborne, respectively.<sup>54</sup> As the cases make clear, the test for recognition of such DIP orders is not whether an identical order could made in a plenary CCAA case, but, rather would doing so be contrary to public policy. In *Hartford Computer*, Justice Morawetz makes the following comment regarding Section 61(2) of the CCAA, which allows Canadian courts to decline to recognize foreign orders when doing so would be contrary to Canadian public policy:

The public policy exception has its origins in the UNCITRAL Model Law on Cross-Border Insolvency. Article 6 of the Model Law provides: "Nothing in this Law prevents the court from refusing to take an action governed by this Law if the action would be manifestly contrary to the public policy of this State". It is also important to note that the Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency (paragraphs 86-89) makes specific reference to the fact that the public policy exceptions should be interpreted restrictively. [emphasis added]

I am in agreement with the commentary in the Guide to Enactment to the effect that s. 61(2) should be interpreted restrictively. The Final DIP Facility Order does not, in my view, raise any public policies issues.<sup>55</sup> [emphasis added]

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<sup>53</sup> *Hollander* at paras. 46-48.

<sup>54</sup> *Xinergy Ltd., Re.*, [2015 ONSC 2692](#) at para. 23; *Instant Brands Acquisition Holdings Inc. et al.* [2023 ONSC 4252](#) at para. 21.

<sup>55</sup> *Hartford Computer* at paras. 17-18.

67. The Foreign Representative submits that the recognition of the Interim DIP Order furthers the objectives of the CCAA, does not materially prejudice Canadian creditors and is not contrary to Canadian public policy, including for the following reasons:

- a. The Debtors require critical funding in order to avoid liquidation and pursue a going concern solution for their business, including the Canadian Business.
- b. Although not a borrower under the DIP Facility, RL Canada is deeply integrated into the larger corporate group relying on back office and other forms of critical support from RL Management and other Debtors. Thus, the funding directly benefits RL Canada and its stakeholders in Canada including suppliers, customers, landlords, taxing authorities and the broader economic community.
- c. The DIP Facility is the only basis upon which the Prepetition Term Loan Lenders were willing to make further loans to the Debtors and recognition of the Interim DIP Order by this Court is a requirement under the DIP Credit Agreement.<sup>56</sup>
- d. The Interim DIP Order approves funding on an interim basis only, with restrictions on initial funding and amounts that are permitted to be rolled up.<sup>57</sup>
- e. The Interim DIP Order provides for a “challenge period” which expires on the earlier of (i) 60 calendar days after the Petition Date, and (ii) the date established by the US court for submission of qualified bids to purchase the Debtors’ assets, thus there is an existing mechanism that allows parties in interest to raise concerns regarding the DIP Facility, including with respect to the roll-up provisions.<sup>58</sup>

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<sup>56</sup> Tibus Affidavit at para. 61.

<sup>57</sup> Tibus Affidavit at paras. 88-89.

<sup>58</sup> Tibus Affidavit, Exhibit “V”.

- f. As confirmed by the opinion of independent counsel regarding the security registered pursuant to the Prepetition Term Loan Credit Agreement, the DIP Facility, to the extent that it constitutes a roll-up, is supported by the same asset base as was the Prepetition Term Loan Obligations and, accordingly, creditors of RL Canada are not materially prejudiced or put in a relatively worse off position than they already are by granting of the requested relief.<sup>59</sup>
- g. Importantly, the proposed Supplemental Order provides that, unlike the balance of the Canadian Debtors' property in Canada, the Unencumbered Property will not secure all obligations under the DIP Facility, but such Unencumbered Property, will only secure the New Money Advances under the DIP Facility. Thus, the collateral position of unsecured creditors remains unchanged, with respect to the roll-up aspects of the DIP Facility.
- h. There is a significant new money component to the DIP Facility, in the amount of \$100,000,000. This component is not marginal or incremental. Rather, it is substantial and meaningful and is critical to facilitating a going concern solution for the Canadian Business.

68. The Foreign Representative submits that the reasonableness of the requested relief is all the more apparent when contrasted with the facts before this Court in *Re Payless Holdings LLC*, also a proceeding under Part IV of the CCAA.<sup>60</sup> In *Payless*, this Court declined to recognize a US order which approved a DIP facility containing roll-up features and to order a related DIP charge.

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<sup>59</sup> Pre-Filing Report of Proposed Information Officer dated May 27, 2024 at paras. 28-32.

<sup>60</sup> *Payless* at paras. 5-18.

Recognition of the US order was opposed by Canadian landlords who contended that they were uniquely prejudiced by its terms.

69. The Court's decision in *Payless* is distinguishable from this case, including because in *Payless*, (a) the Canadian debtor companies were not insolvent, were not borrowers or guarantors under the prepetition facility and had never previously granted security, and (b) there was evidence of material prejudice to Canadian creditors, and certain Canadian creditor groups (i.e. landlords) opposed the recognition of the DIP order because they were disadvantaged.<sup>61</sup>

70. In this case, especially given the conclusion reached by the opinion of independent counsel to the proposed Information Officer regarding the security granted to the Prepetition Term Loan Agent, no such material prejudice or unequal treatment exists with respect to the creditors of RL Canada or the other Canadian Debtors.

71. Accordingly, the Foreign Representative submits that the Interim DIP Order should be recognized by this Court and the liens granted in the Interim DIP Order should be further evidenced by the DIP Charge.

*(iii) The Administration Charge the D&O Charge should be granted*

**a. The Administration Charge should be granted**

72. The proposed Supplemental Order provides that Blake, Cassels & Graydon LLP, as Canadian counsel to the Canadian Debtors, the Information Officer, and counsel to the Information Officer will be granted a charge in the maximum amount of CDN \$1 million (the "**Administration Charge**") over the assets and property of the Canadian Debtors, wherever located, in Canada (the "**Canadian Debtors' Collateral**") to secure the fees and disbursements of such professionals incurred in respect of these recognition proceedings. For greater certainty, the proposed

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<sup>61</sup> *Payless* at paras. 35, 36, 39, 40-43 and 48.

Administration Charge does not extend to the assets or property of any of the Debtors that are not Canadian Debtors and covers only the Canadian Debtors' property in Canada. The Administration Charge is proposed to rank in priority to all other encumbrances in respect of the Canadian Debtors.

73. 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.<sup>62</sup>

74. RL Management submits that the amount of the 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 the Debtors and the Information Officer and its counsel.<sup>63</sup> The proposed Information Officer assisted in determining the quantum of the Administration Charge.<sup>64</sup>

**b. The D&O Charge should be granted**

75. The proposed Supplemental Order also provides for a charge on the Canadian Debtors' Collateral in favour of the Canadian Debtors' directors and officers in the maximum amount of CDN \$3.4 million (the "**D&O Charge**").

76. The D&O Charge would be subordinate to the proposed Administration Charge and DIP Charge but rank in priority to all other encumbrances.<sup>65</sup>

77. In light of the potential liabilities, the potential insufficiency of available insurance, and the need for the continued service of the director and officers of the Canadian Debtors in these proceedings, the Foreign Representative submits that the D&O Charge is reasonable and

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<sup>62</sup> In the Matter of Hornblower Cruises and Events Canada Ltd., [Order of Chief Justice Morawetz, dated February 27, 2024](#) at para. 19; In the Matter of YRC Freight Canada Company, [Order of Chief Justice Morawetz, dated August 29, 2023](#) at para. 19; In the Matter of Paladin Labs Canadian Holdings Inc, [Order of Chief Justice Morawetz, dated August 19, 2022](#) at para. 19.

<sup>63</sup> Tibus Affidavit at para. 100.

<sup>64</sup> Pre-Filing Report of Proposed Information Officer dated May 27, 2024 at para. 58.

<sup>65</sup> Tibus Affidavit at para. 107.



appropriate.<sup>66</sup> The proposed Information Officer assisted in determining the quantum of the D&O Charge.<sup>67</sup>

*(iv) The Information Officer should be appointed*

78. FTI has consented to act as Information Officer and is not conflicted from acting in such capacity.<sup>68</sup>

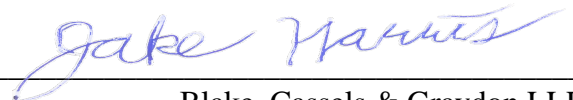
79. Although the CCAA does not require that an information officer be appointed, a practice has developed whereby the court appoints an information officer (typically a financial advisory firm that is a licensed insolvency trustee) pursuant to its discretionary powers to assist the court and keep the court apprised of the status of the foreign proceedings.<sup>69</sup>

80. In this case, the Foreign Representative requests the appointment of the Information Officer to ensure that this Court is kept apprised of the status of the Chapter 11 Cases by an independent third-party licensed insolvency professional and to assist in providing information to and responding to inquiries from interested parties in Canada.

**PART V – RELIEF REQUESTED**

81. The Foreign Representative requests that the Court grant the Initial Recognition Order and the Supplemental Order in the form included at Tabs 3 and 5 respectively of the Supplementary Application Record. The proposed Information Officer supports the requested relief.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 27<sup>th</sup> day of May, 2024.



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Blake, Cassels & Graydon LLP  
Lawyers for the Foreign Representative

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<sup>66</sup> Tibus Affidavit at para. 108.

<sup>67</sup> Pre-Filing Report of Proposed Information Officer dated May 27, 2024 at para. 63.

<sup>68</sup> Tibus Affidavit, Exhibit "W".

<sup>69</sup> *Tucker v. Aero Inventory (UK) Ltd.*, [2009 CanLii 63138](#) (Ont. Sup. Ct.) at para. 20; *Hornblower* at para. 42.

**SCHEDULE “A”**

**LIST OF AUTHORITIES**

<b><u>Cases</u></b>	
1.	<i>Hornblower Cruises and Events Canada Ltd.</i> , <a href="#">2024 ONSC 1209</a>
2.	<i>Payless Holdings LLC (Re)</i> , <a href="#">2017 ONSC 2242</a>
3.	<i>Paladin Labs Canadian Holding Inc.</i> , <a href="#">2022 ONSC 4931</a>
4.	<i>Stelco Inc. Re</i> , <a href="#">48 C.B.R. (4<sup>th</sup>) 299</a> , [2004] O.J. No. 1257 (Ont. S.C.J.)
5.	<i>Lightsquared LP, (Re)</i> , <a href="#">2012 ONSC 2994</a>
6.	<i>Purdue Pharma L.P., Re</i> , <a href="#">2019 ONSC 7042</a>
7.	<i>Morguard Investments Ltd. v. De Savoye</i> , <a href="#">1990 CanLII 29</a> , 76 D.L.R. (4 <sup>th</sup> ) 256 (SCC)
8.	<i>Hollander Sleep Products, LLC (Re)</i> , <a href="#">2019 ONSC 3238</a>
9.	<i>Hartford Computer Hardware Inc., Re</i> , <a href="#">2012 ONSC 964</a>
10.	<i>Instant Brands Acquisition Holdings Inc. et al.</i> <a href="#">2023 ONSC 4252</a>
11.	<i>Xinergy Ltd., Re.</i> , <a href="#">2015 ONSC 2692</a>
12.	In the Matter of Hornblower Cruises and Events Canada Ltd., <a href="#">Order of Chief Justice Morawetz, dated February 27, 2024</a>
13.	In the Matter of YRC Freight Canada Company, <a href="#">Order of Chief Justice Morawetz, dated August 29, 2023</a>
14.	In the Matter of Paladin Labs Canadian Holdings Inc, <a href="#">Order of Chief Justice Morawetz, dated August 19, 2022</a>
15.	<i>Tucker v. Aero Inventory (UK) Ltd.</i> , <a href="#">2009 CanLii 63138</a> (Ont. Sup. Ct.)

## SCHEDULE “B”

### RELEVANT STATUTES AND RULES

#### *Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended*

#### **Jurisdiction of courts**

#### **General power of court**

#### **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.

**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.

#### **Interim financing**

**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.

#### **Priority — secured creditors**

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

#### **Priority — other orders**

(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.

### **Factors to be considered**

- (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
  - (g) the monitor's report referred to in paragraph 23(1)(b), if any.

### **Additional factor — initial application**

(5) When an application is made under subsection (1) at the same time as an initial application referred to in subsection 11.02(1) or during the period referred to in an order made under that subsection, no order shall be made under subsection (1) unless the court is also satisfied that the terms of the loan are limited to what is reasonably necessary for the continued operations of the debtor company in the ordinary course of business during that period.

### **Definitions**

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

**foreign court** means a judicial or other authority competent to control or supervise a foreign proceeding. (*tribunal étranger*)

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

**foreign non-main proceeding** means a foreign proceeding, other than a foreign main proceeding. (*secondaire*)

**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. (*instance étrangère*)

**foreign representative** means a person or body, including one appointed on an interim basis, who is authorized, in a foreign proceeding respect of a debtor company, to

- (a) monitor the debtor company's business and financial affairs for the purpose of reorganization; or
- (b) act as a representative in respect of the foreign proceeding. (*représentant étranger*)

### **Centre of debtor company's main interests**

(2) For the purposes of this Part, in the absence of proof to the contrary, a debtor company's registered office is deemed to be the centre of its main interests.

## **Recognition of Foreign Proceeding**

### **Application for recognition of a foreign proceeding**

- **46 (1)** A foreign representative may apply to the court for recognition of the foreign proceeding in respect of which he or she is a foreign representative.
  - **Documents that must accompany application**
- (2) Subject to subsection (3), the application must be accompanied by
- (a) a certified copy of the instrument, however designated, that commenced the foreign proceeding or a certificate from the foreign court affirming the existence of the foreign proceeding;
  - (b) a certified copy of the instrument, however designated, authorizing the foreign representative to act in that capacity or a certificate from the foreign court affirming the foreign representative's authority to act in that capacity; and
  - (c) a statement identifying all foreign proceedings in respect of the debtor company that are known to the foreign representative.

### **Documents may be considered as proof**

(3) The court may, without further proof, accept the documents referred to in paragraphs (2)(a) and (b) as evidence that the proceeding to which they relate is a foreign proceeding and that the applicant is a foreign representative in respect of the foreign proceeding.

### **Other evidence**

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

### **Translation**

(5) The court may require a translation of any document accompanying the application.

### **Order recognizing foreign proceeding**

**47 (1)** If the court is satisfied that the application for the recognition of a foreign proceeding relates to a foreign proceeding and that the applicant is a foreign representative in respect of that foreign proceeding, the court shall make an order recognizing the foreign proceeding.

### **Nature of foreign proceeding to be specified**

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

### **Order relating to recognition of a foreign main proceeding**

**48 (1)** Subject to subsections (2) to (4), on the making of an order recognizing a foreign proceeding that is specified to be a foreign main proceeding, the court shall make an order, subject to any terms and conditions it considers appropriate,

**(a)** staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken against the debtor company under the [Bankruptcy and Insolvency Act](#) or the [Winding-up and Restructuring Act](#);

**(b)** restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the debtor company;

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

**(d)** prohibiting the debtor company from selling or otherwise disposing of, outside the ordinary course of its business, any of the debtor company's property in Canada that relates to the business and prohibiting the debtor company from selling or otherwise disposing of any of its other property in Canada.

### **Scope of order**

**(2)** The order made under subsection (1) must be consistent with any order that may be made under this Act.

### **When subsection (1) does not apply**

**(3)** Subsection (1) does not apply if any proceedings under this Act have been commenced in respect of the debtor company at the time the order recognizing the foreign proceeding is made.

### **Application of this and other Acts**

**(4)** Nothing in subsection (1) precludes the debtor company from commencing or continuing proceedings under this Act, the [Bankruptcy and Insolvency Act](#) or the [Winding-up and Restructuring Act](#) in respect of the debtor company.

### **Other orders**

**49.** (1) If an order recognizing a foreign proceeding is made, the court may, on application by the foreign representative who applied for the order, if the court is satisfied that it is necessary for the protection of the debtor company's property or the interests of a creditor or creditors, make any order that it considers appropriate, including an order

- (a) if the foreign proceeding is a foreign non-main proceeding, referred to in subsection 48(1);
- (b) respecting the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor company's property, business and financial affairs, debts, liabilities and obligations; and
- (c) authorizing the foreign representative to monitor the debtor company's business and financial affairs in Canada for the purpose of reorganization.

### **Restriction**

(2) If any proceedings under this Act have been commenced in respect of the debtor company at the time an order recognizing the foreign proceeding is made, an order made under subsection (1) must be consistent with any order that may be made in any proceedings under this Act.

### **Application of this and other Acts**

(3) The making of an order under paragraph (1)(a) does not preclude the commencement or the continuation of proceedings under this Act, the Bankruptcy and Insolvency Act or the Winding up and Restructuring Act in respect of the debtor company.

### **Court not prevented from applying certain rules**

**61 (1)** Nothing in this Part prevents the court, on the application of a foreign representative or any other interested person, from applying any legal or equitable rules governing the recognition of foreign insolvency orders and assistance to foreign representatives that are not inconsistent with the provisions of this Act.

### **Public policy exception**

(2) Nothing in this Part prevents the court from refusing to do something that would be contrary to public policy.

Court File No.: CV-24-00720567-00CL

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

AND IN THE MATTER OF RED LOBSTER MANAGEMENT LLC, RED LOBSTER HOSPITALITY LLC; and RED LOBSTER CANADA, INC.

APPLICATION OF RED LOBSTER MANAGEMENT LLC UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C-36, AS AMENDED

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

Proceeding Commenced at Toronto

**FACTUM OF THE FOREIGN REPRESENTATIVE**

**BLAKE, CASSELS & GRAYDON LLP**

Barristers and Solicitors  
199 Bay Street  
Suite 4000, Commerce Court West  
Toronto, Ontario M5L 1A9

**Linc Rogers**, LSO#: 43562N

Tel: (416) 863-4168

Email: [linc.rogers@blakes.com](mailto:linc.rogers@blakes.com)

**Caitlin McIntyre**, LSO#: 72306R

Tel: (416) 863-4174

Email: [caitlin.mcintyre@blakes.com](mailto:caitlin.mcintyre@blakes.com)

**Jake Harris**, LSO#: 85481T

Tel: (416) 863-2523

Email: [jake.harris@blakes.com](mailto:jake.harris@blakes.com)

Lawyers for the Foreign Representative