

**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 LTL MANAGEMENT LLC

APPLICATION OF LTL MANAGEMENT LLC
UNDER SECTION 46 OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT

FACTUM OF THE FOREIGN REPRESENTATIVE
(Extension of the Canadian Stay)

February 24, 2022

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PART I – OVERVIEW AND FACTS

1. The facts pertaining to this motion are set out in detail in the Affidavit of John. K. Kim sworn February 23, 2022 (the “**February Kim Affidavit**”) and are not repeated herein. Capitalized terms not otherwise defined herein have the meaning ascribed to them in the February Kim Affidavit.

PART II – ISSUES AND THE LAW

2. The sole issue addressed by this factum is whether this Court should grant a short-term extension of the Canadian Stay to March 8, 2022.

3. For the reasons that follow, the Foreign Representative submits that this question should be answered in the affirmative and that it is appropriate to grant the relief requested on this Motion.

(i) *This Court has the jurisdiction to grant the requested relief*

4. This Court has the jurisdiction to grant the relief requested on this Motion. Pursuant to section 49 if an order recognizing a foreign proceeding is made, the court may, on application by the foreign representative, make any order it considers appropriate, if the court is satisfied that it is necessary for the protection of the debtor company's property or interests or the interests of a creditor or creditors.¹

5. Additionally, section 50 of the CCAA provides that orders made under Part IV of the CCAA, including pursuant to section 49, may be made on any terms and conditions that the court considers appropriate in the circumstances.²

6. CCAA courts have relied on sections 49 and 50 to grant a wide variety of appropriate relief to foreign debtors in ancillary recognition proceedings in Canada.

7. The Court is not restricted under section 49 in its ability to grant any type of relief to a debtor company that is available under Canadian law and that may be appropriate in the circumstances of the case.³ Canadian courts have previously relied on section 49 to grant both autonomous relief and ancillary relief in Canada to foreign debtors in the context of recognition proceedings. Such relief includes a stay of proceedings in favour of related parties in the context of complex, mass-tort litigation⁴, and extension of a stay of proceedings to partnership operations

¹ CCAA, s.49, Schedule "B" to this Factum.

² CCAA, s. 50, Schedule "B" to this Factum.

³ The Honourable Mr. Justice Lloyd W. Houlden, Mr. Justice Geoffrey B. Morawetz, Dr. Janis P. Sarra, *Bankruptcy and Insolvency Law of Canada*, 4th Edition, §24:16.

⁴ [*Purdue Pharma L.P., Re*, 2019 ONSC 7042.](#)

integral and closely related to the debtor companies' operations.⁵ In fact, the Model Supplemental Recognition Order itself contemplates a host of relief in addition to the recognition of foreign orders, including the granting of an Administration Charge and a DIP Charge, if appropriate.

(ii) *This Court should grant the requested relief to preserve the status quo*

8. As described in the February Kim Affidavit, the Canadian Stay will expire on February 28, 2022. At this time, no order has been issued in respect of the Dismissal and Injunction Hearing and the Foreign Representative does not know if any order will be issued prior to February 28, 2022.⁶

9. The Foreign Representative has reserved time before this Court on March 7, 2022 in order to seek recognition of the Extended Injunction (should it be granted) or any other appropriate relief arising from the Dismissal and Injunction Hearing.⁷

10. At the December 17, 2021 hearing for, among other things, recognition and enforcement of the US Preliminary Injunction in Canada, Justice Pattillo found that such recognition and enforcement and, correspondingly, the Canadian Stay, were consistent with the principles of comity and fair and reasonable in the circumstances, and granted the Supplemental Recognition Order.⁸

11. The short-term extension of the Canadian Stay is intended to preserve the status quo and maintain the current protections in place for the Debtor in Canada until March 7, 2022 (with a one

⁵ [Payless Holdings LLC \(Re\), 2017 ONSC 2242](#) at paras 33-37.

⁶ February Kim Affidavit, para 27.

⁷ February Kim Affidavit, para 28.

⁸ [Re LTL Management LLC, 2021 ONSC 8357](#) at para 23.

day cushion), while providing Canadian stakeholders with an opportunity to properly digest, evaluate and consider any relief granted in the Dismissal and Injunction Hearing.⁹ The alternative available to the Foreign Representative would be to rush into Court, likely on the same day the decision is rendered in the Chapter 11 Case, to seek recognition of the Extended Injunction before the Canadian Stay expires.

12. In requesting this relief, the Foreign Representative is attempting to avoid unnecessarily short-service of any stakeholders, while still maintaining vital protections in Canada. The Foreign Representative submits that the extension of the Canadian Stay from February 28, 2022 to March 8, 2022 will not prejudice any Canadian stakeholder, as the talc litigation in Canada will simply remain paused for a slightly longer duration if the Debtor is not successful in obtaining the Extended Injunction.

13. In addition, the Foreign Representative provided Canadian stakeholders with advance notice of both the hearing on February 25, 2022 and the requested short-term extension of the Canadian Stay:

(A) On January 31, 2022, counsel to the Foreign Representative wrote to Canadian stakeholders to advise that time had been reserved before this Court on February 25 to seek recognition of the Extended Injunction (should it be granted) and any other relief for which recognition was deemed necessary or appropriate.¹⁰

⁹ February Kim Affidavit, paras 29-30.

¹⁰ February Kim Affidavit at para 26.

(B) On February 22, 2022, following the conclusion of the Dismissal and Injunction Hearing, the Foreign Representative again wrote to Canadian stakeholders to advise of the requested short-term extension of the Canadian Stay.¹¹

14. Canadian stakeholders have, additionally, been kept informed of the status of the Chapter 11 Case, the Bridge Order and the Dismissal and Injunction Hearing.¹² Canadian stakeholders were also provided with ample information regarding the US Preliminary Injunction in the Affidavit of John K. Kim sworn December 16, 2021.

15. The Foreign Representative intends to file further materials as soon as possible following the issuance of the decision of the New Jersey Bankruptcy Court setting out the background and outcome to the Dismissal and Injunction Hearing in greater detail. In addition, the Foreign Representative understands that the Information Officer intends to file a comprehensive report to further assist this Court in evaluating any relief sought by the Foreign Representative on March 7, 2022.¹³

16. The Information Officer supports the requested short-term extension of the Canadian Stay.¹⁴

17. On March 7, 2022, all stakeholders will have an opportunity to voice any concerns regarding an Extended Injunction, or any other relief that may be sought by the Foreign Representative, with the benefit of time and a full record on which to consider such issues. The

¹¹ February Kim Affidavit at para 31.

¹² February Kim Affidavit at para 22.

¹³ February Kim Affidavit at para 32.

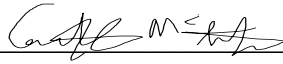
¹⁴ First Report of the Information Officer dated February 24, 2022 at para 14.

Foreign Representative submits that the relief requested is therefore fair, reasonable and appropriate in the circumstances.

PART IV – RELIEF REQUESTED

18. The Foreign Representative requests that the Court grant the Order Extending the Canadian Stay in the form included at Tab 3 of the Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 24th day of February, 2022.



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SCHEDULE “A”

LIST OF AUTHORITIES

<u>Cases</u>	
1.	<i>Purdue Pharma L.P., Re</i>, 2019 ONSC 7042
2.	<i>Payless Holdings LLC (Re)</i>, 2017 ONSC 2242
3.	<i>Re LTL Management LLC</i>, 2021 ONSC 8357

SCHEDULE “B”

TEXT OF RELEVANT STATUTES AND REGULATIONS

Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36

Other orders

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

(a) if the foreign proceeding is a foreign non-main proceeding, referred to in subsection 48(1);

(b) respecting the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor company’s property, business and financial affairs, debts, liabilities and obligations; and

(c) authorizing the foreign representative to monitor the debtor company’s business and financial affairs in Canada for the purpose of reorganization.

Restriction

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

Application of this and other Acts

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

Terms and conditions of orders

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

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Proceeding Commenced at Toronto

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capacity as Foreign Representative