



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00730212-00CL

DATE: June 9, 2025

NO. ON LIST: 3

TITLE OF PROCEEDING: RBC v. CHESSWOOD GROUP LTD. et al

BEFORE: JUSTICE KIMMEL

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

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ENDORSEMENT OF JUSTICE KIMMEL:

- [1] The court-appointed Monitor, FTI Consulting Canada Inc., seeks: (a) an order (the "Waypoint AVO") approving a share sale by the Waypoint Vendor to Axis pursuant to the

Waypoint SPA ((the "Proposed Waypoint Transaction"); and (b) an order (the "Stay Extension Order") extending the Stay Period (as defined in the ARIO) until and including October 3, 2025.

- [2] Capitalized terms not otherwise defined in this endorsement shall have the meanings ascribed to them in the Monitor's factum filed in support of this motion.
- [3] Waypoint Investment Partners Inc. ("Waypoint") is an Ontario corporation headquartered in Toronto that is a wholly-owned subsidiary of Chesswood Capital Management Inc. (the "Waypoint Vendor").
- [4] Waypoint was marketed broadly as part of a pre-filing sale process undertaken by RBC Capital Markets ("RBCCM") in respect of the Chesswood Group during 2024, in which RBCCM contacted 187 parties and as a result of which 26 non-disclosure agreements were signed. On July 25, 2024, a non-binding letter of intent to purchase Waypoint was submitted, though no transaction involving the sale of, or investment in, Waypoint was ultimately completed.
- [5] On December 19, 2024, this Court issued an order approving a sale and investment solicitation process (the "SISP") in respect of the CCAA Parties (other than the Rifco Entities). The Monitor contacted 198 parties that may have had an interest in the Chesswood Group's business, including Waypoint. Although three parties expressed interest in Waypoint and signed NDAs, ultimately, the Monitor did not receive any offers in respect of Waypoint from any party through the SISP.
- [6] Following the completion of the SISP, which did not culminate in a transaction involving Waypoint or its assets, the Monitor considered various alternatives with respect to Waypoint, including the costs, requirements and implications of surrendering the Waypoint Registrations and ceasing Waypoint's operations.
- [7] In assessing the process and cost for winding up Waypoint and ceasing operations given the lack of interest from potential purchasers, the Monitor was advised that the Ontario Securities Commission ("OSC") will require Waypoint to complete an application to surrender the Waypoint Registrations to bring an end to its obligations thereunder, including various ongoing reporting requirements. This process may require significant time and cost, particularly given Waypoint's continued, unresolved working capital deficiency that had been reported to the OSC on November 18, 2024, which Waypoint does not have the liquidity to satisfy.
- [8] While this assessment was underway, Axis Holdings Inc. ("Axis") approached the Monitor with a proposal to acquire Waypoint for nominal consideration. Axis is a holding corporation controlled by Max Torokvei ("Torokvei"), Waypoint's Chief Executive Officer

and Portfolio Manager, and by his family members or persons related to him. Torokvei is the Vice President of Axis.

[9] The Waypoint SPA was signed on June 6, 2025, but remains subject to the approval of the court and the OSC. Pursuant to the Waypoint SPA, if approved:

- a. Axis will acquire all of the issued and outstanding shares in the capital of Waypoint for a purchase price of C\$1.00;
- b. Waypoint will retain all liabilities other than the following liabilities, the contractual release of which by the CCAA Parties, the Pre-Filing Lenders and the DIP Lenders is a condition to closing:
 - i. intercompany liabilities owing to other CCAA Parties (including the Intercompany Loans),
 - ii. liabilities under the DIP Term Sheet, and
 - iii. liabilities under the Existing Credit Agreement;
- c. the completion of the Proposed Waypoint Transaction is conditioned upon the absence of any objection or the receipt of approval or consent, as applicable, from the OSC pursuant to National Instrument 31-103 - Registration Requirements, Exemptions and Ongoing Registrant Obligations with respect to Axis's acquisition of control of Waypoint; and
- d. the outside date for closing is August 1, 2025 (unless otherwise agreed by the parties).

[10] Waypoint previously managed four funds (the "Funds"). As the Funds have been wound down, and all segregated client accounts (other than the MT Accounts) have been or will imminently be transferred to another investment manager, Waypoint's has assets of *de minimis* value. They include the Waypoint Registrations, and books and records and intellectual property relating to the Waypoint business. Waypoint has *de minimis* cash on hand and does not have any other liquid assets, and is not generating any income.

[11] Waypoint's limited assets and are exceeded by the retained liabilities (even before factoring in avoiding the costs associated with surrendering the Waypoint Registrations and completing other matters within the CCAA proceedings). Accordingly, the Monitor is of the view that the nominal purchase price is fair and reasonable. Furthermore, the acquisition would serve to have certain liabilities retained post-closing that would otherwise not receive recovery in the context of a wind down within the CCAA proceedings, while allowing the estate to avoid the costs of same.

- [12] The only parties with an economic interest in the proceeds are the Pre-Filing Lenders, who support the Monitor's motion for the proposed Waypoint AVO and consent to the Proposed Waypoint Transaction, the closing of which is conditioned upon, among other things, the Pre-Filing Lenders releasing Waypoint from all obligations under the Existing Credit Agreement. They have agreed to do this. The court is only being asked to release the Monitor and its counsel in connection with this particular transaction adopting the standard release language that is regularly approved by this court in these types of circumstances.
- [13] As required under s. 36(2) of the CCAA, all secured creditors who are likely to be affected by the Proposed Waypoint Transaction have been notified and provided their consent.
- [14] The additional requirements under s. 36(4) of the CCAA for related party transactions have been met (as summarized in paragraphs 42-43 of the Monitor's factum). On this basis, I am satisfied overall that sufficient safeguards were adopted to ensure that this related party transaction is in the best interests of all stakeholders and that the risks associated with it have been mitigated to the extent possible: see *Target Canada Co (Re)*, 2015 ONSC 2066, at para. 15.
- [15] Recognizing that this is a related party transaction and that Waypoint is subject to regulation by the OSC, the relief sought on this motion also includes a court ordered exemption from the requirements of Multi-Lateral Instrument 61-101 Protection of Minority Shareholders in Special Transactions relating to the requirement for a majority of "minority" shareholder approval for a related party transaction in certain circumstances and the requirement for a formal valuation for a related party transaction in certain circumstances. This relief was granted in the court approval of a prior transaction in this proceeding (Order of Osborne J. dated January 29, 2025) and is appropriate in the circumstances given that there will be nothing left for shareholders under any foreseeable scenario.
- [16] The court was directed to s. 11 of the CCAA for the jurisdiction to grant this relief from securities laws. I consider it an appropriate exercise of the court's discretion in the circumstances of this case, and also take some comfort in the fact that the Waypoint Transaction remains subject to OSC approval, albeit in relation to National Instrument 31-103.
- [17] The requirements of s. 36(7) of the CCAA have also been satisfied (regarding the satisfaction of payments to employees and former employees that would have been required under a plan), for the reasons summarized in paragraph 44 of the Monitor's factum. The only two employee of Waypoint will be paid in the ordinary course until the closing of the Proposed Waypoint Transaction.
- [18] For the above and all of the other reasons detailed in the Monitor's Sixth Report dated June 2, 2025 and factum filed on this motion, I am satisfied that the s. 36 CCAA factors and the *Soundair* principles have been met. In such circumstances, the court "should

uphold the business judgment of the Monitor as to the result of the sales process and should not lightly interfere" with the exercise of this judgment "so long as the sale process was fair, reasonable, transparent and efficient": *Pride Group Holdings Inc. et al.*, 2024 ONSC 5908, at paras. 10-14, citing *Royal Bank v. Soundair Corp.* (1991), 4 O.R. (3d) 1, 1991 CanLII 2727 (C.A.); See also *BBB Canada Inc.*, 2023 ONSC 2308, at para. 13. The court accepts the Monitor's recommendation of the Waypoint AVO and Proposed Waypoint Transaction and they are approved.

[19] Turning now to the Stay Extension Order, the requirements of s. 11.02(2) and (3) have been satisfied with respect to the proposed further extension of the Stay Period (for the reasons summarized in paragraphs 44-47 of the Monitor's factum. This stay extension is supported by the cash flow forecasts appended to the Monitor's Sixth Report. The circumstances are such that the order is appropriate, and the Applicant has acted and continues to act in good faith and with due diligence. The additional time will provide the parties with the necessary stability and breathing room to close the Waypoint Transaction and monetize any remaining assets.

[20] I have signed both orders and they are effective immediately without the necessity of issuing and entering.

A handwritten signature in black ink that reads "Kimmel J." with a stylized flourish at the end.

KIMMEL J.