Court File No. CV-24-00730212-00CL

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 A PLAN OF COMPROMISE OR ARRANGEMENT OF **CHESSWOOD GROUP LIMITED, CASE FUNDING INC., CHESSWOOD HOLDINGS LTD., CHESSWOOD US ACQUISITIONCO LTD., PAWNEE LEASING CORPORATION, LEASE-WIN LIMITED, WINDSET CAPITAL CORPORATION, TANDEM FINANCE, INC., CHESSWOOD CAPITAL MANAGEMENT INC., CHESSWOOD CAPITAL MANAGEMENT USA INC., RIFCO NATIONAL AUTO FINANCE CORPORATION, RIFCO INC., WAYPOINT INVESTMENT PARTNERS INC. and 1000390232 ONTARIO INC.**

FACTUM OF THE MONITOR
(Approval and Vesting Order and Stay Extension Order)

January 26, 2025

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PART I - NATURE OF THE MOTION

1. On October 29, 2024, this court made an order (the "**Initial Order**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "**CCAA**") in respect of the CCAA Parties.[1] The Initial Order resulted from an application brought by Royal Bank of Canada, in its capacity as administrative agent and as collateral agent (in such capacity, the "**Agent**") to the lenders under a second amended and restated credit agreement dated as of January 14, 2022, as amended (the "**Existing Credit Agreement**").

2. Pursuant to the Initial Order, FTI Consulting Canada Inc. was appointed as monitor of the CCAA Parties (in such capacity, the "**Monitor**") and granted expanded powers to conduct and control the financial affairs and operations of the CCAA Parties. On November 7, 2024, the court granted additional relief in an amended and restated Initial Order (the "**ARIO**"), including extending the Stay Period (as defined therein) until January 31, 2025.

3. On January 23, 2025, Rifco Inc., the parent company of Rifco National Auto Finance Corporation ("**Rifco**", and together with Rifco Inc., the "**Vendors**") and Vault Auto Finance Corporation ("**Vault**") entered into an asset purchase agreement (the "**Rifco APA**") pursuant to which Vault would acquire the Purchased Assets (as defined in the Rifco APA), subject and pursuant to an approval and vesting order.

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[1] The "**CCAA Parties**" are comprised of Chesswood Group Limited ("**Chesswood**"), Case Funding Inc., Chesswood Holdings Ltd., Chesswood US Acquisitionco Ltd., Pawnee Leasing Corporation (**"Pawnee**"), Lease-Win Limited, Windset Capital Corporation, Tandem Finance, Inc., Chesswood Capital Management Inc., Chesswood Capital Management USA Inc., Rifco National Auto Finance Corporation, Rifco Inc., Waypoint Investment Partners Inc., and 1000390232 Ontario Inc.

4. The Monitor now seeks:

(a) an order (the "**Approval and Vesting Order**") approving an asset sale by the Vendors to Vault (or an affiliate of Vault) pursuant to the Rifco APA (the "**Proposed Rifco Transaction**"); and

(b) an order (the "**Stay Extension Order**") extending the Stay Period until and including March 31, 2025.

5. The Proposed Rifco Transaction should be approved. Extensive marketing efforts undertaken both prior to and during these CCAA proceedings establish that the best (and only) option to continue the Vendors' business as a going concern, to the benefit of all stakeholders, is the Proposed Rifco Transaction. Granting the proposed Approval and Vesting Order on a timely basis would protect the Vendors' declining value from sustaining continued daily losses, while allowing for a going concern solution to Rifco's current liquidity issues.

6. Extending the Stay Period is appropriate. The CCAA Parties, under the supervision of the Monitor, have acted in good faith and with due diligence throughout these proceedings. The extended Stay Period is necessary and reasonable to ensure the CCAA Parties' ongoing stability as the Monitor works to close the Proposed Rifco Transaction (if approved) and continues to advance a sale and investment solicitation process (the "**SISP**") approved by the Court on December 19, 2024 with respect to the assets and business of the remaining CCAA Parties.

PART II - THE FACTS

A. Background

7. The CCAA Parties' business is a financial services company that provides loans to small businesses and consumers across Canada and the United States, focusing on equipment, vehicle,

and legal financing, and specializing in providing loans to a wide range of credit profiles.[2] Rifco, in particular, historically provided financing for new and used consumer vehicles. Prior to the commencement of these CCAA proceedings, Rifco would originate loans and leases, sell some to third parties in connection with securitization programs (the "**Securitization Parties**"), and then act as a servicer of the loans and leases it sold and those it continued to own. Rifco ceased originating loans in the summer of 2024 and, in some cases, has been replaced as servicer of the securitized loans of certain of the Securitization Parties.[3]

8. For an extended period prior to the commencement of these CCAA proceedings, the CCAA Parties and their representatives were engaged in a number of strategic initiatives and discussions with various (third party) potential investors and purchasers in pursuit of a sale or investment in one or more CCAA Parties.[4] Among other things, this involved contacting 187 parties with respect to a sale of the business of Chesswood Group Limited and its subsidiaries, including the Vendors. This process resulted in the successful sale on August 9, 2024 of Chesswood's 51% interest in Vault Credit Corporation, Vault Home Credit Corporation, and CHW/Vault Holdco Corp. (together, the "**Sold Vault Entities**"), which represented the entirety of the Chesswood group's Canadian equipment leasing and consumer financing business segment. No transaction was identified to sell or invest in the Vendors.[5]

9. The CCAA Parties ultimately suffered an impending liquidity crisis caused by their inability to pay their senior debt obligations as they became due and several other continuing

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[2] Third Report of FTI Consulting Canada Inc., as Monitor dated January 23, 2025 (the "**Third Report**") at para. 8.
[3] Third Report at para. 17.
[4] Third Report at para. 18.
[5] Third Report at para. 19.

defaults under the Existing Credit Agreement, such that new borrowings under the Existing Credit Agreement were no longer permitted.[6]

10. The Initial Order was accordingly granted on October 29, 2024 on an application by the Agent.[7] The Initial Order authorized Chesswood to borrow under a DIP financing principal terms sheet dated October 29, 2024 (the "**DIP Term Sheet**") between the CCAA Parties, the Agent, and the lenders party thereto (the "**DIP Lenders**"), who were also the lenders under the Existing Credit Agreement.[8]

11. On October 30, 2024, the Monitor, in its capacity as foreign representative, commenced proceedings under chapter 15 of title 11 of the United States Code for each of the CCAA Parties with the U.S. Bankruptcy Court for the district of Delaware (the "**U.S. Court**"). The next day, the U.S. Court recognized the CCAA proceedings as a foreign main proceeding and gave effect to the Initial Order in the U.S.[9]

12. On November 7, 2024, the court issued the ARIO, which, among other things, (i) extended the period of the court-ordered stay of proceedings in respect of the CCAA Parties under the CCAA until January 31, 2025, and (ii) increased the permitted DIP Borrowings (as defined in the ARIO).[10]

13. On November 25, 2024, the U.S. Court subsequently entered a final order recognizing the CCAA proceedings as a foreign main proceeding and giving effect to the Initial Order and ARIO in the U.S.[11]

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[6] Third Report at para. 8.
[7] Third Report at para. 1.
[8] Initial Order at para. 38; Affidavit of Wenwei (Wendy) Chen sworn October 28, 2024 at paras. 1, 118-119.
[9] Third Report at para. 3.
[10] Third Report at para. 4.
[11] Third Report at para. 5.

B. The previous Rifco Transaction

14. On November 20, 2024, the Monitor received an unsolicited offer (the "**Vault Offer**") from Vault to acquire a 100% equity ownership interest in the Vendors. The Monitor understands that Vault's founder and CEO was a director of Chesswood until July 2024, that Vault is related to the Sold Vault Entities, and that Rifco and the Sold Vault Entities have the same CFO.[12]

15. Following receipt of the Vault Offer, the Monitor, Chesswood, and Vault engaged in numerous discussions regarding a potential transaction, which culminated in the signing of a share purchase agreement on December 13, 2024 (the "**Rifco SPA**"), with the support of the DIP Lenders. The Rifco SPA contemplated a reverse vesting order ("**RVO**") and included a "fiduciary out" that permitted Chesswood and the Monitor to have discussions with interested parties and a termination right in the event of a superior transaction being identified.[13]

16. On December 19, 2024, the court adjourned a motion for the RVO to allow the parties to file additional information for the court's consideration in response to concerns as to the suitability of an RVO in the circumstances.[14]

C. The Proposed Rifco Transaction

17. Following the adjournment, the Monitor worked with the Vendors and Vault to develop an asset acquisition structure that could be used to facilitate the acquisition of the Vendors' business while addressing the reasons that had previously informed the request for the RVO.[15] These

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[12] Third Report at para. 21.
[13] Third Report at para. 22.
[14] Third Report at para. 23.
[15] Third Report at para. 24.

discussions culminated in the signing of an asset purchase agreement between the Vendors and Vault on January 23, 2025 (the "**Rifco APA**"), with the support of the DIP Lenders.[16]

18. Pursuant to the Rifco APA, if approved:[17]

(a) Vault will acquire all assets, properties, undertakings, and rights owned by the Vendors that are not Excluded Assets for a Purchase Price of C$12,500,000, less the aggregate amount of the Vendors' cash paid to the DIP Agent as a mandatory repayment under the DIP Term Sheet (which is anticipated to be C$0), and plus the value of the Accrued Liabilities;[18]

(b) Vault is required to pay a deposit of C$250,000;

(c) Vault will make an offer of employment, effective as of the Closing Date, to what is expected to be all or substantially all of the Vendors' employees;

(d) as a condition of Closing, the Vendors shall have obtained consent and waiver agreements with certain of the Securitization Parties; and

(e) under the terms of a "fiduciary out," the Monitor may engage in negotiations with certain third parties for an alternative proposal, and, if received prior to closing and the Monitor determines (with the consent of the DIP Lenders) that it constitutes a superior proposal, the Vendors may terminate the Rifco APA and enter into a new agreement, subject to paying Vault an expense reimbursement of C$250,000 (the "**Expense Reimbursement**").

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[16] Third Report at para. 25.

[17] The key terms of the Rifco APA are summarized in detail in the Third Report at paras. 26-27. Capitalized terms not otherwise defined are as defined in the Rifco APA.

[18] It is anticipated that all of the cash proceeds from the Proposed Rifco Transaction will be used to make a mandatory repayment to the DIP Agent: Third Report at para. 27.

PART III - THE ISSUES

19. The issues to be considered on this motion are whether:

    (a) the proposed Approval and Vesting Order should be granted; and

    (b) the proposed Stay Extension Order should be granted.

PART IV - THE LAW

A. The proposed Approval and Vesting Order should be granted

20. Pursuant to subsection 36(1) of the CCAA, the court may authorize a debtor company to sell or otherwise dispose of assets outside the ordinary course of business. In addition to establishing certain requirements for sale approval, subsection 36(3) sets out a list of factors to guide the court's decision:

> **Factors to be considered**
>
> **36(3)** In deciding whether to grant the authorization, the court is to consider, among other things,
>
> (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
>
> (b) whether the monitor approved the process leading to the proposed sale or disposition;
>
> (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
>
> (d) the extent to which the creditors were consulted;
>
> (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
>
> (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

21. These factors overlap to a significant extent with the *Soundair* factors that were applied in approving sale transactions prior to the amendments introducing section 36. Under the *Soundair*

test, it was necessary to consider: (i) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently; (ii) the interests of all parties; (iii) the integrity and efficacy of the process for obtaining offers; and (iv) whether there was any unfairness in the working out of the process.[19]

22. The factors listed in subsection 36(3) are not exhaustive.[20] In deciding whether to approve a sale, courts consider the appropriateness of the sale as against the CCAA's overall remedial purpose, namely avoiding the social and economic losses resulting from the liquidation of an insolvent company.[21] Where the section 36 factors and the *Soundair* principles have been met, 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."[22]

23. Taking into account the factors listed in subsection 36(3) of the CCAA and other statutory requirements, this court should approve the Proposed Rifco Transaction and grant the proposed Approval and Vesting Order. The Monitor believes that the Proposed Rifco Transaction is in the best interests of all stakeholders. Further, approving the Proposed Rifco Transaction without delay is critical to protect the Vendors' value from further decline as they continue to suffer daily operating losses.[23]

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19 *Pride Group Holdings Inc. et al.*, 2024 ONSC 5908 at paras. 10-14 [*Pride*], citing *Royal Bank v. Soundair Corp.* (1991), 4 O.R. (3d) 1 (C.A.) [*Soundair*].
20 *Pride* at para. 10.
21 *Pride* at para. 13.
22 *Pride* at para. 14. See also *BBB Canada Inc.*, 2023 ONSC 2308 at para. 13.
23 Third Report at paras. 36-38.

(a) The process was reasonable

24. Whether the process for achieving a sale transaction under the CCAA is fair and reasonable must be examined contextually, in light of the particular circumstances existing at the time.[24] Assessing the reasonableness of a sale process does not require the court to examine in minute detail all of the circumstances leading up to the acceptance of a particular offer.[25]

25. While the Proposed Rifco Transaction was the result of an unsolicited offer, courts have indicated that a transaction need not arise from a court-approved process to meet the test for sale approval under section 36 of the CCAA.[26] The process leading to the Rifco APA was reasonable in the circumstances and demonstrates that the CCAA Parties, and later the Monitor, made sufficient efforts to obtain the best price and did not act improvidently.

26. The Vendors' businesses were marketed to third parties for a potential acquisition both prior to and during these CCAA proceedings.[27] Following on a sale process for a portion of the Chesswood group's business (Pawnee) in late 2022 conducted by RBC Capital Markets ("**RBCCM**"), during the first quarter of 2024, Chesswood engaged RBCCM to conduct a sale process for the entire business of Chesswood and its subsidiaries, including the Vendors. Through that process, RBCCM contacted 187 parties, 26 of which signed non-disclosure agreements

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[24] See *White Birch Paper Holding Co. (Re)*, 2010 QCCS 4915 at para. 49, leave to appeal ref'd 2010 QCCA 1950: "The Court has to look at the transaction as a whole and essentially decide whether or not the sale is appropriate, fair and reasonable. In other words, the Court could grant the process for reasons others than those mentioned in Section 36 CCAA or refuse to grant it for reasons which are not mentioned in Section 36 CCAA." See also *Sanjel Corporation (Re)*, 2016 ABQB 257 at paras. 77, 80.

[25] *Soundair* at paras. 48-49.

[26] See, for example, "pre-pack" proceedings, where courts have approved a sale arising from a SISP conducted before the CCAA process began: *Mountain Equipment Co-Operative (Re)*, 2020 BCSC 1586 at paras. 98-100, 160, 168; *Sanjel* at paras. 69-80, 112-113. See also *Target Canada Co. (Re)*, 2015 ONSC 1487, where a transaction arising from an unsolicited bid for assets currently under a SISP was approved.

[27] Third Report at para. 29.

("**NDAs**"), and six offers were received.[28] Ultimately, the CCAA Parties were only successful in completing a sale of the Sold Vault Entities.

27. The Monitor continued these efforts after the Initial Order was granted. Following the filing date, five parties contacted the Monitor to inquire about the Vendors' business and the Monitor contacted three additional parties that may have been interested. Of those eight parties, none of which are related to the Vendors, five signed NDAs to gain access to a data room and evaluate a potential acquisition of the Vendors or their business.[29]

28. Despite these efforts, no binding or executable offers have been received besides the Vault Offer (*i.e.*, the Rifco SPA) and the Rifco APA, nor have any discussions to date identified any proposals that are superior to the Proposed Rifco Transaction. Furthermore, notwithstanding the "fiduciary out" provided for in the Rifco SPA and the Rifco APA, no potential bidder or alternative transaction involving the Vendors or their business has emerged, even though interested third parties could access the Rifco SPA and the Rifco APA and information on the Vendors via a virtual data room.[30]

29. There is no suggestion of any unfairness in the working out of this process. To the contrary, interested parties were presented with various opportunities to purchase the Vendors or their business, over an extended period of time, and many engaged further with the process. While the Monitor did not direct the pre-filing process, it was involved with subsequent efforts, and is satisfied that these marketing attempts demonstrate the improbability of receiving a better offer.[31]

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[28] Third Report at paras. 18-19.
[29] Third Report at para. 20.
[30] Third Report at para. 29.
[31] Third Report at para. 35.

The Monitor has also consulted with the senior creditors, namely the DIP Lenders, in connection with the Proposed Rifco Transaction. The DIP Lenders support its approval.[32]

(b) The Purchase Price is fair and reasonable

30. In considering whether the consideration is fair and reasonable, courts look to whether the Monitor has made a sufficient effort to obtain the best price and has not acted improvidently.[33]

31. The Monitor believes that the Purchase Price under the Rifco APA is fair and reasonable in the circumstances and represents greater recovery than could be achieved in a bankruptcy.[34] The CCAA Parties, with the assistance of RBCCM and the Monitor, have extensively tested the market before and after the commencement of these proceedings. This process did not result in any other, let alone superior, binding or executable offers.[35] Given these unsuccessful marketing efforts and the Vendors' rapidly eroding value, the Monitor considers it unlikely that an alternative purchaser would be willing to provide a transaction in a timely fashion on terms that are more favourable than those contemplated by the Rifco APA. In the Monitor's view, the Rifco APA represents the best (and only) current available option and provides for the continuation of the Vendors' business as a going concern.[36]

32. The Proposed Rifco Transaction also preserves the Vendors' ability to accept a higher price in the event that a better offer is made. If a superior proposal were to arise prior to the Proposed Rifco Transaction's closing, the "fiduciary out" provision permits the Vendors to pursue it and terminate the Rifco SPA (subject to paying the Expense Reimbursement).[37] This provision is

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32 Third Report at para. 33.
33 See *Pride* at para. 12; *Edward Collins Contracting Limited (Re)*, 2023 NLSC 139 at para. 68 [*Edward Collins*].
34 Third Report at para. 39.
35 Third Report at para. 29.
36 Third Report at para. 35.
37 Third Report at paras. 26(o), 30. The Monitor considers that the Expense Reimbursement is reasonable and in the low end of the range of reimbursements seen in similar commercial transactions: Third Report at para. 32.

intended to achieve the best transaction possible in the circumstances for the benefit of all stakeholders.[38]

(c) The Proposed Rifco Transaction is in the best interests of stakeholders

33. By providing a fair and reasonable purchase price and preventing a further decline in the Vendors' value, the Proposed Rifco Transaction preserves the most value for all stakeholders.[39] The DIP Lenders support the Monitor's motion for the proposed Approval and Vesting Order on the basis of the consideration contemplated under the Rifco APA.[40] Further, the Rifco APA provides for the continuation of the Vendors' business as a going concern to the benefit of all stakeholders, including up to approximately 85 employees transferred to Vault as contemplated by the Rifco APA.[41]

(d) The Proposed Rifco Transaction complies with other statutory requirements

34. The other statutory requirements for obtaining relief under section 36 of the CCAA have been satisfied.

35. As required by subsection 36(2) of the CCAA, all secured creditors who are likely to be affected by the Proposed Rifco Transaction have been notified.

36. Subsection 36(4) imposes additional criteria that apply where the proposed sale is to a person who is related to the debtor company. The court must be satisfied that (a) good faith efforts were made to sell the assets to persons who are not related to the company; and (b) the consideration to be received is superior to the consideration that would be received under any other

[38] Third Report at para. 31.
[39] Third Report at paras. 38-39.
[40] Third Report at paras. 33-34.
[41] Third Report at paras. 26(k), 35.

offer made in accordance with the process leading to the proposed sale.[42] This provision requires that the court be "satisfied, overall, that sufficient safeguards were adopted to ensure that a related party transaction is in the best interests of the stakeholders of the Applicants and that the risk to the estate associated with a related party transaction have been mitigated."[43]

37. Insofar as the Vendors and Vault are "related persons" for purposes of subsection 36(4), the Proposed Rifco Transaction satisfies these criteria. Good faith efforts were made to identify potential sale or investment transactions with numerous parties that were not related to the Vendors.[44] The CCAA Parties and their representatives engaged in pre-filing discussions with various potential third-party investors and purchasers.[45] After the Initial Order was granted, additional parties who were unrelated to the Vendors gained access to a data room to evaluate a potential acquisition of the Vendors or their business.[46] Despite these attempts to secure an offer, "there was no other bid, arm's length or otherwise," so Vault's bid is "inherently superior."[47] Even so, the "fiduciary out" provision in the Rifco APA preserves the Vendors' ability to pursue a superior offer from an unrelated party, should one emerge.[48] By way of these measures, any risks associated with related-party transactions have been mitigated.

38. Finally, subsection 36(7) of the CCAA provides that relief under section 36 cannot be granted unless the court is "satisfied that the company can and will make the payments that would have been required under [paragraph 6(5)(a)] if the court had sanctioned the compromise or arrangement."[49] Paragraph 6(5)(a) refers to amounts owing by a debtor company to its employees

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[42] CCAA, s. 36(4).
[43] *Target Canada Co. (Re)*, 2015 ONSC 2066 at para. 15.
[44] Third Report at para. 40.
[45] Third Report at para. 18.
[46] Third Report at para. 20.
[47] See *Edward Collins* at para. 76; Third Report at paras. 39-40.
[48] Third Report at para. 40.
[49] Paragraph 6(6)(a) concerns payments in respect of a prescribed pension plan, which it not in issue in this case.

and former employees for unpaid wages that they would have been entitled to receive under the *Bankruptcy and Insolvency Act*, and amounts owing for post-filing services to the debtor company. Given that the employees of Rifco have been and will continue to be paid salaries and wages in the ordinary course until the closing of the Rifco APA (or their termination), the requirements of section 36(7) of the CCAA are satisfied on this motion.[50]

B. The Stay Extension Order should be granted

39. This court is authorized to extend a CCAA stay pursuant to section 11.02(2) of the CCAA, provided that the two considerations outlined in subsection 11.02(3) are satisfied. These are: (a) circumstances exist that make the order appropriate; and (b) the applicant has acted, and is acting, in good faith and with due diligence. Both of the subsection 11.02(3) factors are satisfied.

40. The current Stay Period will expire on January 31, 2025. The Monitor is seeking an extension of the Stay Period up to and including March 31, 2025. The stay extension is appropriate and necessary in the circumstances to provide the CCAA Parties with the necessary stability and breathing room as they work with the Monitor to close the Proposed Rifco Transaction and advance the SISP.[51]

41. The CCAA Parties, under the supervision of the Monitor, have acted in good faith and with due diligence since the commencement of the CCAA proceedings. The Monitor forecasts that the CCAA Parties will have sufficient liquidity to continue operating in the ordinary course of business

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[50] Third Report at para. 35, note 4.

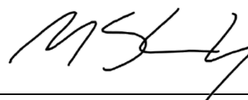
[51] Third Report at paras. 48, 50.

during the requested extension of the Stay Period.[52] The Monitor believes that no creditor of the CCAA Parties would be materially prejudiced by the extension of the Stay Period. [53]

PART V - RELIEF REQUESTED

42. The Monitor requests that this court grant the proposed Approval and Vesting Order and extend the Stay Period until March 31, 2025.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26th day of January, 2025.



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[52] Third Report at para. 49. An updated cash flow forecast for the period ending April 4, 2025 is attached as Appendix "A" to the Third Report.

[53] Third Report at para. 50.

SCHEDULE "A"

LIST OF AUTHORITIES

1. *BBB Canada Inc.*, 2023 ONSC 2308
2. *Edward Collins Contracting Limited (Re)*, 2023 NLSC 139
3. *Mountain Equipment Co-Operative (Re)*, 2020 BCSC 1586
4. *Pride Group Holdings Inc. et al.*, 2024 ONSC 5908
5. *Royal Bank v. Soundair Corp*. (1991), 4 O.R. (3d) 1 (C.A.)
6. *Sanjel Corporation (Re)*, 2016 ABQB 257
7. *Target Canada Co. (Re)*, 2015 ONSC 1487
8. *Target Canada Co. (Re)*, 2015 ONSC 2066
9. *White Birch Paper Holding Co. (Re)*, 2010 QCCS 4915, leave to appeal ref'd 2010 QCCA 1950

I certify that I am satisfied as to the authenticity of every authority.

Date January 26, 2025

Signature

SCHEDULE "B"
TEXT OF STATUTES, REGULATIONS & BY-LAWS

Companies' Creditors Arrangement Act **(R.S.C., 1985, c. C-36)**

Restriction — employees, etc.

6(5) The court may sanction a compromise or an arrangement only if

(a) the compromise or arrangement provides for payment to the employees and former employees of the company, immediately after the court's sanction, of

(i) amounts at least equal to the amounts that they would have been qualified to receive under paragraph 136(1)(d) of the *Bankruptcy and Insolvency Act* if the company had become bankrupt on the day on which proceedings commenced under this Act, and

(ii) wages, salaries, commissions or compensation for services rendered after proceedings commence under this Act and before the court sanctions the compromise or arrangement, together with, in the case of travelling salespersons, disbursements properly incurred by them in and about the company's business during the same period; and

(b) the court is satisfied that the company can and will make the payments as required under paragraph (a).

Restriction — pension plan

(6) If the company participates in a prescribed pension plan for the benefit of its employees, the court may sanction a compromise or an arrangement in respect of the company only if

(a) the compromise or arrangement provides for payment of the following amounts that are unpaid to the fund established for the purpose of the pension plan:

(i) an amount equal to the sum of all amounts that were deducted from the employees' remuneration for payment to the fund,

(ii) if the prescribed pension plan is regulated by an Act of Parliament,

(A) an amount equal to the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, that was required to be paid by the employer to the fund, and

(A.1) an amount equal to the sum of all special payments, determined in accordance with section 9 of the *Pension Benefits Standards Regulations, 1985*, that were required to be paid by the employer to the fund referred to in sections 81.5 and 81.6 of the

Bankruptcy and Insolvency Act to liquidate an unfunded liability or a solvency deficiency,

(A.2) any amount required to liquidate any other unfunded liability or solvency deficiency of the fund as determined on the day on which proceedings commence under this Act,

(B) an amount equal to the sum of all amounts that were required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the *Pension Benefits Standards Act, 1985*,

(C) an amount equal to the sum of all amounts that were required to be paid by the employer to the administrator of a pooled registered pension plan, as defined in subsection 2(1) of the *Pooled Registered Pension Plans Act*, and

(iii) in the case of any other prescribed pension plan,

(A) an amount equal to the amount that would be the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, that the employer would be required to pay to the fund if the prescribed plan were regulated by an Act of Parliament, and

(A.1) an amount equal to the sum of all special payments, determined in accordance with section 9 of the *Pension Benefits Standards Regulations, 1985*, that would have been required to be paid by the employer to the fund referred to in sections 81.5 and 81.6 of the *Bankruptcy and Insolvency Act* to liquidate an unfunded liability or a solvency deficiency if the prescribed plan were regulated by an Act of Parliament,

(A.2) any amount required to liquidate any other unfunded liability or solvency deficiency of the fund as determined on the day on which proceedings commence under this Act,

(B) an amount equal to the sum of all amounts that would have been required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the *Pension Benefits Standards Act, 1985*, if the prescribed plan were regulated by an Act of Parliament,

(C) an amount equal to the sum of all amounts that would have been required to be paid by the employer in respect of a prescribed plan, if it were regulated by the *Pooled Registered Pension Plans Act*; and

(b) the court is satisfied that the company can and will make the payments as required under paragraph (a).

[…]

Stays, etc. — initial application

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.

Stays, etc. — other than initial application

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(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.

Burden of proof on application

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Restriction

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

Restriction on disposition of business assets

36 (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to creditors

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

- **(a)** whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- **(b)** whether the monitor approved the process leading to the proposed sale or disposition;
- **(c)** whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- **(d)** the extent to which the creditors were consulted;
- **(e)** the effects of the proposed sale or disposition on the creditors and other interested parties; and
- **(f)** whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Additional factors — related persons

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

- **(a)** good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and

(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

Related persons

(5) For the purpose of subsection (4), a person who is related to the company includes

(a) a director or officer of the company;

(b) a person who has or has had, directly or indirectly, control in fact of the company; and

(c) a person who is related to a person described in paragraph (a) or (b).

Assets may be disposed of free and clear

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

Restriction — employers

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(5)(a) and (6)(a) if the court had sanctioned the compromise or arrangement.

Restriction — intellectual property

(8) If, on the day on which an order is made under this Act in respect of the company, the company is a party to an agreement that grants to another party a right to use intellectual property that is included in a sale or disposition authorized under subsection (6), that sale or disposition does not affect that other party's right to use the intellectual property — including the other party's right to enforce an exclusive use — during the term of the agreement, including any period for which the other party extends the agreement as of right, as long as the other party continues to perform its obligations under the agreement in relation to the use of the intellectual property.

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

Court File No: **CV-24-00730212-00CL**

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF CHESSWOOD GROUP LIMITED, et al.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

FACTUM OF THE MONITOR
(Approval and Vesting Order and Stay Extension Order)

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