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., 942328 ALBERTA INC., 908696 ALBERTA INC., WAYPOINT INVESTMENT PARTNERS INC. and 1000390232 ONTARIO INC.**

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

March 5, 2025

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PART I - NATURE OF THE MOTION

1. On October 29, 2024, this Court made an order (the "**Initial Order**") (as amended and restated, the "**ARIO**") 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 "**Pre-Filing Agent**") to the lenders (the "**Pre-Filing 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.

3. On December 19, 2024, this Court issued an order (the "**SISP Approval Order**") approving a sale and investment solicitation process (the "**SISP**"), including bidding procedures thereunder (the "**Bidding Procedures**") in respect of the CCAA Parties (other than the Rifco Entities).

4. On January 29, 2025, this Court issued an order extending the period of the Court-ordered stay of proceedings in respect of the CCAA Parties under the CCAA until March 31, 2025.

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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. ("**Tandem**"), Chesswood Capital Management Inc., Chesswood Capital Management USA Inc., 942328 Alberta Inc. (formerly Rifco National Auto Finance Corporation) ("**Rifco**"), 908696 Alberta Inc. (formerly Rifco Inc., and together with Rifco, the "**Rifco Entities**"), Waypoint Investment Partners Inc., and 1000390232 Ontario Inc.

5. The extensive SISP generated multiple bids for certain of the CCAA Parties' assets and business. After negotiating amendments and clarifications to these, the Monitor ultimately selected a bid from North Mill Equipment Finance, LLC ("**North Mill**") in respect of Pawnee and Tandem (together, the "**Purchased Companies**") as the highest and best bid. Chesswood U.S. Acquisitionco Ltd. (the "**Pawnee Vendor**") and North Mill entered into a share purchase agreement dated February 28, 2025 (the "**Pawnee SPA**").

6. The Monitor now seeks:

(a) an approval and reverse vesting order (the "**Pawnee RVO**"), among other things: (i) approving the Pawnee SPA and the sale by the Pawnee Vendor of all of the issued and outstanding shares (the "**Purchased Shares**") in the capital of the Purchased Companies to North Mill through a reverse vesting transaction (the "**Proposed Pawnee Transaction**"); (ii) removing the Purchased Companies from these CCAA proceedings; (iii) transferring the Excluded Assets, Excluded Contracts and Excluded Liabilities (each as defined in the Pawnee SPA) to a newly incorporated affiliate of the Pawnee Vendor ("**ResidualCo.**") and adding ResidualCo. as a party subject to these CCAA proceedings; (iv) approving the Releases (as defined below) relating to the Pawnee SPA and the Proposed Pawnee Transaction; and (v) sealing Confidential Appendix "B-2" (the "**Confidential Appendix**") to the Fourth Report (as defined below), which contains an unredacted copy of the Pawnee SPA; and

(b) an order (the "**Stay Extension Order**") extending the Stay Period (as defined in the ARIO) until and including May 2, 2025.

7. The Proposed Pawnee Transaction should be approved. The extensive marketing efforts undertaken in accordance with the Court-approved SISP demonstrate that reasonable efforts have been made to canvass the market and there has been no unfairness in the process. Following these efforts, the Monitor has determined, in its business judgment, that the Proposed Pawnee Transaction is the best option in the circumstances to maximize value for all stakeholders.

8. By their nature, the Purchased Companies must be acquired by North Mill by means of a reverse vesting order ("**RVO**") structure to retain the value of their assets. Consistent with decisions in which an RVO has been granted to avoid the difficulties that would arise if a purchaser were required to transfer permits, licences, contracts and/or intellectual property (and a corresponding loss of value), a reverse vesting structure is necessary here to avoid a lengthy and costly title transfer process that would create considerable economic prejudice and jeopardize the entire deal. No stakeholder is worse off under an RVO structure than they would have been under any other viable alternative.

9. 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 Pawnee Transaction, if approved, and continues to advance the CCAA proceedings.

PART II - THE FACTS

A. Background

10. The CCAA Parties' business provides loans to small businesses and consumers across Canada and the United States, focusing on equipment, vehicle, and legal financing.[2] Following efforts to sell their businesses, the CCAA Parties ultimately suffered an impending liquidity crisis caused by several continuing defaults under the Existing Credit Agreement.[3]

11. This Court accordingly granted the Initial Order on October 29, 2024 on an application by the Pre-Filing Agent.[4] The Initial Order also approved a term sheet dated October 28, 2024 (the "**DIP Term Sheet**") between Chesswood, as borrower, the other entities in the Chesswood Group, as guarantors, Royal Bank of Canada, as administrative and collateral agent (the "**DIP Agent**"), and the lenders thereunder (the "**DIP Lenders**").[5]

12. On November 7, 2024, this Court issued the ARIO, which: (i) extended the Stay Period until January 31, 2025; and (ii) increased the permitted DIP Borrowings (as defined in the ARIO).[6]

13. On December 19, 2024, this Court issued the SISP Approval Order in respect of the CCAA Parties, other than the Rifco Entities.[7]

14. On January 29, 2025, this Court issued an order extending the Stay Period until March 31, 2025.[8]

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[2] The background to these proceedings is set out more fully in the Fourth Report of FTI Consulting Canada Inc., as Monitor dated February 28, 2025 (the "**Fourth Report**") at paras. 1-10, 31-32.
[3] Fourth Report at paras. 10, 31-32.
[4] Fourth Report at para. 1.
[5] Fourth Report at para. 2.
[6] Fourth Report at para. 4.
[7] Fourth Report at para. 6. The Rifco Entities were later sold separately in an asset sale approved by this Court on January 29, 2025: Fourth Report at para. 9.
[8] Fourth Report at para. 8.

B. The Pawnee business

15. Pawnee and Tandem are both subsidiaries of the Pawnee Vendor. Pawnee is, and Tandem was, in the business of equipment financing in the United States across a wide range of credit profiles. Pawnee absorbed Tandem's loan servicing operations after it ceased origination activity.[9]

16. Pawnee and special purpose securitization vehicles that are not subject to these proceedings (the "**SPVs**")[10] are party to a number of structured financing, securitization and servicing agreements (collectively, the "**Securitization Agreements**" and the transactions represented thereby, the "**Securitizations**") with various lenders or trustees acting on behalf of investors (the "**Securitization Funders**").[11]

17. Pawnee originated equipment loans and leases. Pursuant to the Securitization Agreements, Pawnee sold certain pools of equipment leases and loans, along with the related receivables, to the related SPVs. The SPVs subsequently pledged these pools of equipment leases and loans, directly or indirectly, to the related Securitization Funders. The Securitization Funders provided to the related SPV financing that is directly or indirectly secured by these pools. The equipment leases and loans originated by Pawnee are referred to below as the "**Sold Originated Assets**" if they have been sold and pledged pursuant to these arrangements, or as the "**Retained Originated Assets**" if they have not been sold.[12]

18. Legal title for equipment related to the Sold Originated Assets and Retained Originated Assets is held either (i) in the name of a titling trust or (ii) in the name of Pawnee. As of

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[9] Fourth Report at para. 26.

[10] The SPVs include Pawnee Receivable Fund III LLC, PLC Equipment Finance Fund LLC, Pawnee Equipment Receivables (Series 2020-1) LLC, Pawnee Equipment Receivables (Series 2021-1) LLC, and Pawnee Equipment Receivables (Series 2022-1) LLC: Fourth Report at para. 27.

[11] Fourth Report at para. 27.

[12] Fourth Report at para. 27.

February 13, 2025, Pawnee held title to 5,156 Sold Originated Assets and 461 Retained Originated Assets.[13]

19. Sold Originated Assets to which Pawnee holds registered legal title are subject to a Vehicle Trust Agreement or a Vehicle Lienholder Nominee Agreement, pursuant to which Pawnee holds such title for the benefit of the applicable Securitization Funders. Pawnee's economic interest in the Sold Originated Assets is based on servicing agreements (*i.e.*, it receives compensation for servicing the Sold Originated Assets) and potential rights to residual payments where amounts received under the applicable Sold Originated Asset exceed the amounts due to the Securitization Funders under the Securitization Agreements. The Securitizations restrict the re-titling of titles while the Securitization Funders are still owed repayments of their original financing. Re-titling titles in violation of these restrictions could have negative repercussions on the Securitizations, including depriving the Securitization Funders of the collateral securing their financing and causing a default under the Securitizations.[14]

20. Pawnee holds all economic interests in the Retained Originated Assets (*i.e.*, the right to all payments under the applicable leases and loans, along with the underlying equipment), which represent most of the value of Pawnee's assets and business. These assets are held across 49 states and, in the case of equipment, are registered in the applicable titles registry in those 49 states.[15]

C. The Proposed Pawnee Transaction

21. As described in further detail below, the CCAA Parties, and, later, the Monitor were engaged in extensive pre- and post-filing efforts to sell Pawnee or its business. After the Monitor

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[13] Fourth Report at para. 28.
[14] Fourth Report at para. 29.
[15] Fourth Report at para. 30.

identified North Mill's bid as the highest and best generated by the Court-approved SISP, the Pawnee Vendor and North Mill entered into the Pawnee SPA.[16]

22. Pursuant to the Pawnee SPA and proposed Pawnee RVO:[17]

(a) North Mill would acquire the Purchased Shares through a reverse vesting structure in accordance with the proposed Pawnee RVO, with the aggregate cash proceeds to be distributed to the DIP Agent, for and on behalf of the DIP Lenders, and, as applicable, the Pre-Filing Agent, for and on behalf of the Pre-Filing Lenders as a mandatory repayment in accordance with, and subject to the terms (including with respect to reserves) of the DIP Term Sheet and the Existing Credit Agreement, as applicable;[18] and

(b) certain assets and liabilities would be retained in the Purchased Companies, while others would be transferred to ResidualCo. under the proposed Pawnee RVO.[19]

23. The Monitor served this motion on contractual counterparties of the Purchased Companies whose contracts may contain change of control or assignment provisions, in addition to the service list in these CCAA proceedings.[20]

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16 Fourth Report at paras. 12, 34.

17 The key terms of the Pawnee SPA are summarized in detail in the Fourth Report at paras. 36-38. Capitalized terms not otherwise defined are as defined in the Pawnee SPA.

18 The purchase price payable by North Mill to the Pawnee Vendor for the Purchased Shares has been redacted from the Pawnee SPA attached as Appendix "B-1" to the Fourth Report. The Confidential Appendix, which contains an unredacted Pawnee SPA, is the subject of the sealing request discussed below.

19 Draft Approval and Reverse Vesting Order (the "**Draft Pawnee RVO**") at para. 5(b), Tab 3 to the Motion Record of the Monitor (Approval and Reverse Vesting Order and Stay Extension Order) dated February 28, 2025.

20 Fourth Report at para. 50.

24. The Monitor is also currently finalizing the terms of a Back-Up Bid (as defined in the Bidding Procedures). While still under negotiation, the Back-Up Bid currently provides for less consideration, contains a due diligence condition, and still contemplates an RVO structure.[21]

PART III - THE ISSUES

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

(a) the proposed Pawnee RVO should be granted; and

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

PART IV - THE LAW

A. The proposed Pawnee RVO should be granted

(a) The Proposed Pawnee Transaction should be approved

26. In transactions effected by way of RVO: (a) the purchaser becomes the sole shareholder of the debtor company; (b) the debtor company retains the desired assets; and (c) the liabilities not desired by the purchaser are vested out and transferred, together with any excluded assets, to a newly incorporated entity (here, ResidualCo.). The unwanted assets and liabilities vested in the separate entity are often then addressed through a bankruptcy or similar process.[22]

27. CCAA courts have confirmed their jurisdiction to approve an RVO by virtue of section 11 of the CCAA, which gives a CCAA court the authority to make any order that it considers

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[21] Fourth Report at paras. 35, 43.

[22] *Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al.*, 2022 ONSC 6354 at para. 27 [*Just Energy*], citing *Arrangement relatif à Blackrock Metals Inc.*, 2022 QCCS 2828 at para. 85 [*Blackrock Metals*], leave to appeal ref'd 2022 QCCA 1073, leave to appeal ref'd 2023 CanLII 36969 (SCC).

appropriate in the circumstances.[23] Although CCAA courts have said that RVOs should not be the "norm," RVOs have been recognized as appropriate when the circumstances justify their use.[24]

28. In deciding whether to grant an RVO, courts have considered the factors in section 36 of the CCAA,[25] which addresses court approval of an asset sale outside the ordinary course of business. These include: (a) whether the process leading to the proposed disposition was reasonable in the circumstances; (b) whether the monitor approved the process leading to the proposed disposition; (c) whether the monitor filed with the court a report stating that in their opinion the disposition would be more beneficial to the creditors than a disposition under a bankruptcy; (d) the extent to which the creditors were consulted; (e) the effects of the proposed 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.

29. These factors largely correspond to the *Soundair* criteria for approving an asset sale, which remain relevant in evaluating an RVO. These principles are: (i) whether sufficient effort had been made to obtain the best price and that the debtor had 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.[26]

30. In the RVO context, the court asks additional questions, namely: (a) why the RVO is necessary; (b) whether the RVO structure produces an economic result at least as favourable as any other viable alternative; (c) whether any stakeholder is worse off under the RVO structure than

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23 *Just Energy* at para. 29; *Harte Gold Corp (Re)*, 2022 ONSC 653 [*Harte Gold*] at paras. 36-37.
24 *Blackrock Metals* at paras. 86, 96, 99; *Harte Gold* at para. 38.
25 *Just Energy* at para. 31; *Acerus Pharmaceuticals Corporation (Re)*, 2023 ONSC 3314 at para. 10 [*Acerus*].
26 *Just Energy* at para. 32, citing *Harte Gold* and *Royal Bank of Canada v. Soundair Corp*. (1991), 4 O.R. (3d) 1 (CA).

they would have been under any other viable alternative; and (d) whether the consideration reflects the importance and value of the licenses and permits (or other intangible assets) being preserved under the RVO structure.[27]

(i) *The process was reasonable*

31. The process leading to the Proposed Pawnee Transaction was reasonable in the circumstances and demonstrates that the CCAA Parties and the Monitor made sufficient efforts to obtain the best price and did not act improvidently.

32. Pawnee was the subject of extensive pre- and post-filing sale efforts. RBC Capital Markets conducted a sale process for the business of Pawnee beginning in late 2022. It renewed its efforts in the first quarter of 2024 by conducting a sale process for the business of Chesswood and all its subsidiaries, including Pawnee, during which 187 parties were contacted. Through that process, twenty-six participants signed non-disclosure agreements, and six offers were received.[28]

33. Following the issuance of the Initial Order, the Monitor, with the assistance of the CCAA Parties, conducted an extensive marketing process pursuant to the terms of the Court-approved SISP.[29] The Bidding Procedures enabled the Monitor to canvass the market for a transaction that would maximize value for stakeholders. The Monitor provided 198 potential buyers and investors, as well as additional interested parties, with a summary of the sale or investment opportunity and the process under the SISP, and an invitation to participate in the SISP.[30] Of these, thirty-two signed non-disclosure agreements to gain access to a data room and evaluate a potential acquisition of Pawnee or its business. The Monitor received six offers from those parties, including one from

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27 *Acerus* at para. 12; *Harte Gold* at para. 38.
28 Fourth Report at paras. 31-32.
29 Fourth Report at paras. 18(b), 21.
30 Fourth Report at para. 22.

North Mill.[31] The Monitor subsequently negotiated amendments and clarifications to the bids and ultimately identified the North Mill bid as the highest and best bid.[32]

34. The SISP was conducted in accordance with the SISP Approval Order. This Court's approval of the SISP and its recognition that the SISP was "intended to provide a fair and transparent process to be conducted in a manner so as to give interested parties fair and equal access to participate" is evidence of its fairness, integrity, and efficacy.[33] The Monitor was involved in the development of the SISP and supported its approval. [34] During the SISP itself, the Monitor played a leading role in soliciting offers, negotiating amendments, and selecting the successful bid.[35] The Monitor consulted with senior creditors in connection with the Proposed Pawnee Transaction.[36]

(ii) *The RVO structure is necessary and appropriate*

35. Given the "extraordinary" nature of RVOs, parties seeking court approval of an RVO must address why a reverse vesting structure is "necessary" in the circumstances.[37] In that regard, RVOs have been granted in many cases "to avoid the expense, delay and uncertainty of an asset sale where there are valuable assets, but some that might be difficult or impossible to transfer to a purchaser (such as licences and tax attributes) and where there are unwanted liabilities (rendering a traditional share sale undesirable for a purchaser)."[38]

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[31] Fourth Report at para. 33.
[32] Fourth Report at para. 34.
[33] *Chesswood Group Limited et al. (Re)* (20 December 2024), Toronto CV-24-00730212-00CL (ONSC) (the "**SISP Approval Order Endorsement**") at para. 15.
[34] SISP Approval Order Endorsement at para. 15.
[35] Fourth Report at paras. 33-35.
[36] Fourth Report at paras. 18(m), 46.
[37] *Harte Gold* at para. 38; *Acerus* at para. 12.
[38] *Xplore Inc. (Re)*, 2024 ONSC 5250 at para. 59 (where an RVO was granted as part of an arrangement under the *Canada Business Corporations Act*).

36. RVOs have been most commonly employed in circumstances where: (i) the debtor operated in a highly-regulated environment in which its existing permits, licenses, or other rights would difficult or impossible to transfer to a purchaser under a traditional asset sale and vesting order ("**AVO**"); (ii) the debtor is a party to certain key agreements that would be similarly difficult or impossible to assign to a purchaser; and/or (iii) where maintaining the existing legal entities would preserve certain tax attributes that would otherwise be lost in a traditional vesting order transaction.[39]

37. This is not an exhaustive list. Where necessary and appropriate within the objectives of the CCAA, and consistent with the broad jurisdiction of the CCAA court under s. 11 of the CCAA to make orders that the CCAA court thinks fit, RVOs have been approved to preserve other assets where doing so maximizes value. Examples include: intellectual property that "would be time-consuming and difficult to transfer" under an asset purchase structure;[40] title to video recordings, where it would have been "virtually impossible" to "prove the vendors' title to such a vast quantity of intellectual property" under a traditional asset sale; [41] contracts (in addition to licenses and permits) in place across multiple jurisdictions in Canada and the U.S. where there would be a lengthy and expensive assignment process;[42] and cyber insurance policies, where an AVO would require the purchaser to secure coverage that "may not be readily obtainable, if at all, and even if it is, operational delays" would result.[43]

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[39] *Just Energy* at para. 34.
[40] *Innovere Medical Inc. v. BDC Capital Inc. et al* (13 January 2025), Toronto CV-24-730634-00CL (ONSC) at paras. 8, 22.
[41] *Arrangement relatif à Former Gestion Inc*., 2024 QCCS 3645 at para. 16, leave to appeal ref'd 2024 QCCA 1441.
[42] *Good Natured Products Inc. (Re)*, 2024 BCSC 2126 at para. 84.
[43] *PaySlate Inc. (Re)*, 2023 BCSC 977 at paras. 11-12 (where an RVO was granted in a proposal under the BIA (as defined below)).

38. While a reverse vesting structure must be "necessary" under the *Harte Gold* criteria, it need not be "necessary in the absolute sense."[44] In other words, the debtor is not required to show that valuable assets would be impossible to transfer to a purchaser through a traditional AVO structure. Courts have accordingly issued RVOs where the delay, costs, uncertainty, and risk associated with a transfer of the valuable intangible assets in question through an AVO would jeopardize the ability of the purchaser to operate the business as a going concern upon closing or affect the purchaser's willingness to complete the transaction or pay the purchase price.[45]

39. RVOs have been approved where the court recognizes that there is no viable alternative to the proposed RVO structure to complete a substantially similar transaction.[46] Courts are also cognizant of the necessity of an RVO when the purchaser insists that it will not move forward under any other structure.[47] Lastly, courts recognize that an RVO may be the best vehicles in certain circumstances to maximize the benefit that all stakeholders receive as part of a transaction, all in furtherance of the remedial objectives of the CCAA.[48]

40. A reverse vesting structure is necessary in this case to address, among other things, the fact that the title to the Retained Originated Assets is held in, and by, Pawnee. If the Proposed Pawnee Transaction were carried out by means of an AVO, the purchaser would be required to obtain the transfer of title post-closing. The process for transferring title to the Retained Originated Assets in each of the 49 states in which they are held would take approximately three months, require the

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[44] See *Bank of Montreal v Haro-Thurlow Street Project Limited Partnership*, 2024 BCSC 1722 at para. 33, where the court approved an RVO in a receivership, noting in its reasons that the RVO was "not necessary in the absolute sense, but the structure of an RVO will result in a net benefit to the estate."

[45] See, *e.g.*, *Harte Gold* at para. 71; *Aquilini Development Limited Partnership v Garibaldi at Squamish Limited Partnership*, 2024 BCSC 764 at paras. 94-95 [*Aquilini*]; *Blackrock Metals* at paras. 115-117.

[46] See *Validus Power Corp. et al. and Macquarie Equipment Finance Limited*, 2024 ONSC 250 at para. 47 [*Validus*]; *Just Energy* at paras. 51 and 58; *Aquilini* at para. 96.

[47] See *Validus* at paras. 47-48; *Harte Gold* at para. 73.

[48] See *Quest University Canada (Re)*, 2020 BCSC 1883 at paras. 170-172, leave to appeal ref'd 2020 BCCA 364.

retention of a third-party titling service, and have an estimated cost of US$500,000. Most importantly, North Mill would be unable to securitize and derive the intended economic benefit from the Retained Originated Assets for the period of this delay. As a result, proceeding through a traditional asset sale would significantly delay a buyer's ability to benefit from the Retained Originated Assets, impose a significant administrative burden on the Pawnee Vendor and the Purchased Companies, and add significant costs to the CCAA Parties' estate.[49] Further, a traditional asset sale would not resolve the restrictions on re-titling in the Securitizations. As described further below, the Monitor confirmed the non-viability of any other structure in these circumstances.

41. The Monitor, aware of the exceptional nature of RVOs, diligently explored possible alternative structures, including an AVO structure whereby Pawnee would: (i) transfer beneficial interest in the Retained Originated Assets to North Mill on closing; and (ii) grant an irrevocable power of attorney with respect to the registered interests in favour of North Mill to provide it with the ability to register all transfers of title into its name post-closing.[50]

42. North Mill and its counsel consulted with two ratings agencies and confirmed that they would not permit the Retained Originated Assets titled in Pawnee's name to be included in the collateral of North Mill's securitization programs absent an RVO even if a power of attorney was in place.[51] North Mill also confirmed that it would not be able to finance the transaction through its warehouse lender if the titling issue is not resolved.[52] Accordingly, North Mill advised that it would only proceed by way of an RVO, as it would address the issue of Pawnee holding title to

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49 Fourth Report at para. 41.
50 Fourth Report at para. 41(b).
51 Fourth Report at para. 41(c).
52 Fourth Report at para. 41(d).

the Retained Originated Assets and thereby enable North Mill to close the Proposed Pawnee Transaction within the timelines set out in the Pawnee SPA and the SISP.

43. The delay and cost associated with a transfer of title that would be required in an AVO structure would be a source of inevitable delay to the monetization of the Retained Originated Assets to the detriment of the CCAA Parties and their stakeholders, and therefore justifies the use of an RVO in these circumstances, just as courts have concluded that reverse vesting structures are necessary to avoid similar difficulties (*i.e.*, delays and cost) in transferring licences or assigning contracts, intellectual property and other assets.[53]

44. The Monitor stated that the Proposed Pawnee Transaction was the best and highest bid identified by the SISP,[54] and it maximizes the value that all stakeholders could receive. The consideration offered by North Mill reflects the importance and value of transferring title on closing to the Retained Originated Assets, which represent the majority of Pawnee's asset value,[55] and the consequent immediate availability of the Retained Originated Assets for inclusion in a securitization program of any purchaser. This benefit could not occur outside of an RVO. Without it, the purchase price offered by North Mill, and the deal itself, is unavailable. As such, the viability of the entire Proposed Pawnee Transaction is fully contingent on the use of a reverse vesting structure.

(iii) *The Proposed Pawnee Transaction is in the best interests of stakeholders*

45. The RVO structure produces an economic result at least as favourable as any other viable alternative. The Proposed Pawnee Transaction represents the best and highest bid identified after

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53 See, *e.g.*, *Acerus* at paras. 13-15; *Harte Gold* at para. 71.
54 Fourth Report at para. 42.
55 Fourth Report at para. 30.

the Monitor's extensive testing of the market during the SISP,[56] demonstrating that the consideration provided under the Pawnee SPA is reasonable and fair. It is significant that the potential Back-Up Bid also contemplates an RVO structure, although it provides for less consideration, is not accompanied by a deposit, and contains a due diligence condition.[57] Further, the Monitor believes that the consideration payable under the Proposed Pawnee Transaction represents a greater recovery than could be achieved in a bankruptcy.[58]

46. No stakeholders are worse off under an RVO structure than they would have been under any other viable alternative, including an AVO. Rather, the Pre-Filing Lenders would suffer a greater loss in any alternative transaction or arrangement.[59] The cash portion of the purchase price payable under the Proposed Pawnee Transaction is significantly less than the outstanding DIP Borrowings together with the secured obligations outstanding under the Existing Credit Agreement (the "**Credit Facility Obligations**"). Based on the outcome of the SISP and the value of the DIP Borrowings and the Credit Facility Obligations, unsecured creditors would not receive any recovery in another transaction structure.[60]

47. Accordingly, in this or any other scenario, all proceeds would ultimately be payable to the DIP Lenders and Pre-Filing Lenders, leaving no recoveries for the subordinate ranking and unsecured claims.[61] Further, the Monitor anticipates that the Pre-Filing Lenders would be able to

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[56] Fourth Report at para. 42.
[57] Fourth Report at para. 43.
[58] Fourth Report at para. 45.
[59] Fourth Report at para. 48.
[60] See, *e.g.*, *Just Energy* at para. 57; Fourth Report at para. 49.
[61] Fourth Report at paras. 47-49.

carry a vote on any plan of arrangement, as their deficiency claim on the Credit Facility Obligations is anticipated to be far in excess of the value of other unsecured claims.[62]

(b) ResidualCo. should be added as a CCAA Party

48. The proposed Pawnee RVO provides that, upon delivery of the Monitor's certificate confirming closing, ResidualCo. "shall be a company to which the CCAA applies and shall be added as a CCAA Party in these CCAA proceedings."[63] This step is typical in RVO transactions.

49. The CCAA applies to a "debtor company" or affiliated debtor companies where the total claims against the debtor/affiliated debtors exceed $5 million.[64] A "debtor company" means, *inter alia*, a company that is insolvent.[65] Whether a company is insolvent is evaluated by reference to the definition of "insolvent person" in the *Bankruptcy and Insolvency Act* ("**BIA**") and the expanded concept of insolvency adopted by this court in *Stelco*.[66]

50. Upon the transfer of the excluded contracts, assets, and liabilities to ResidualCo., the realizable value of its assets will be insufficient to satisfy all of its obligations (which will include the Purchased Companies' significant obligations under the Existing Credit Agreement). ResidualCo. will therefore become "insolvent" under the BIA test and face the kind of imminent liquidity crisis that satisfies the expanded *Stelco* test, making it a "debtor company" to which the

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[62] Fourth Report at para. 49.
[63] Draft Pawnee RVO at para. 5(a).
[64] CCAA, s. 3(1).
[65] CCAA, s. 2(1).
[66] *Re Just Energy Corp*., 2021 ONSC 1793 at paras. 49-50; *Laurentian University of Sudbury*, 2021 ONSC 659 at paras. 30-32, citing *Stelco Inc., Re* (2004), 48 C.B.R. (4th) 299 (ONSC) at para. 26 ("a financially troubled corporation is insolvent if it is reasonably expected to run out of liquidity within reasonable proximity of time as compared with the time reasonably required to implement a restructuring").

CCAA applies. ResidualCo. should therefore be added as a CCAA Party in these CCAA proceedings.

(c) The Releases should be approved

51. Third party releases (*i.e.,* releases in favour of parties other than the CCAA debtor company) have been granted in cases involving RVOs. As the Québec Superior Court noted in *Blackrock Metals*, it "is now commonplace for third-party releases, in favor of parties to a restructuring, their professional advisors as well as their directors, officers and others, to be approved outside of a plan in the context of a transaction."[67]

52. The same test for granting third party releases in a CCAA plan applies to a release in an RVO.[68] The court must ask: (a) whether the parties to be released were necessary to the restructuring of the debtor; (b) whether the claims to be released are rationally connected to the purpose of the restructuring and necessary for it; (c) whether the restructuring could succeed without the releases; (d) whether the parties being released contributed to the restructuring; and (e) whether the releases benefit the debtors as well as the creditors generally.[69] It is not necessary for each of these factors to apply in order for the proposed release to be granted.[70]

53. The Pawnee RVO contemplates the issuance of releases (the "**Releases**") in favour of:

(a) current and former directors, officers, employees, legal counsel, and advisors of Chesswood, the Pawnee Vendor, the Purchased Companies, and ResidualCo.;

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67 *Blackrock Metals* at para. 128.

68 See *Harte Golde* at para. 80, citing the factors set out in *Lydian International Limited (Re)*, 2020 ONSC 4006 at para. 54 [*Lydian International*], a plan sanction decision.

69 *Blackrock Metals* at para. 130, citing *Harte Gold* at paras. 78-86 and *Lydian International* at para. 54.

70 *Harte Gold* at para. 80.

(b) the Monitor and its counsel, and their respective current and former directors, officers, partners, employees, consultants, and advisors; and

(c) North Mill and its current and former directors, officers, employees, legal counsel, and advisors (the persons in clauses (a) to (c) collectively, the "**Pawnee Released Parties**"),

in each case, limited to matters arising in connection with or relating to the Pawnee SPA, the Proposed Pawnee Transaction, and the proposed Pawnee RVO.[71]

54. The proposed Releases are being sought to achieve certainty and finality for the Pawnee Released Parties.[72] They are rationally connected to the restructuring, as they are limited to matters involving the Proposed Pawnee Transaction, and benefit parties who were necessary to arriving at the Proposed Pawnee Transaction. The Releases are consistent with releases granted in numerous RVO transactions in favour of the debtor, its current directors and officers, the monitor and its counsel, and the purchaser of the business and its directors and officers.[73]

(d) The Confidential Appendix should be sealed

55. The Confidential Appendix contains an unredacted copy of the Pawnee SPA, which, in the context of the competitive SISP, discloses certain commercially sensitive financial information (the "**Confidential Information**"), including the purchase price, the deposit, and portions of certain provisions related to the determination of the purchase price.[74] The proposed Pawnee RVO includes a provision sealing the Confidential Appendix pursuant to section 137(2) of the *Courts of*

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[71] Fourth Report at para. 38.
[72] Fourth Report at para. 39.
[73] See, *e.g.*, *Harte Gold* at paras. 78-86; *Blackrock Metals* at paras. 125-137.
[74] Fourth Report at para. 51.

Justice Act, such that it does not form part of the public court record pending further order of the court.[75]

56. Courts granting a sealing order consider three factors:[76]

(a) whether court openness poses a serious risk to an important public interest;

(b) whether the order sought is necessary to prevent this serious risk to the identified interest because reasonable alternative measure will not prevent this risk; and

(c) whether, as a matter of proportionality, the benefits of the order outweigh its negative effects.

57. Each of these considerations supports the sealing the Confidential Appendix:

(a) **Public interest**: This Court has recognized the public's interest in maintaining the confidentiality of notices of intention to bid, given the legitimate risk to the commercial interests of SISP participants, the debtor company, and the debtor's stakeholders should the transaction fail to close.[77] The disclosure of the Confidential Information could pose a serious risk to the objective of maximizing value in these CCAA proceedings. If the Proposed Pawnee Transaction were to not close, disclosure of the Confidential Information would impair the integrity of any subsequent process to find an alternate purchaser.[78]

(b) **Lack of a reasonable alternative**: There is no reasonable alternative to the sealing order that would protect the confidentiality of the Confidential Information.

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75 Draft Pawnee RVO at para. 23.
76 *Sherman Estate v. Donovan*, 2021 SCC 25 at para. 38.
77 *Just Energy* at para. 72.
78 Fourth Report at para. 52.

(c) **Proportionality**: CCAA courts have approved sealing orders where the information over which confidentiality is sought to be maintained is "discrete, proportional, and limited."[79] The terms of the Pawnee SPA have been for the most part made public through a selectively redacted version of the Pawnee SPA attached as Appendix "B-1" to the Fourth Report. In the circumstances, the salutary effects of the proposed sealing order outweighs any deleterious effects that may exist.[80]

58. Finally, the Monitor supports the proposed sealing order. CCAA courts have referred to the support of the monitor as a relevant factor in determining whether the *Sherman Estate* test is met.[81]

B. The proposed Stay Extension Order should be granted

59. 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 here.

60. The current Stay Period will expire on March 31, 2025. The Monitor is seeking an extension of the Stay Period up to and including May 2, 2025. The stay extension is appropriate and necessary in the circumstances to provide ongoing stability to the CCAA Parties, including

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79 *Original Traders Energy Ltd. and 2496750 Ontario Inc. (Re)*, 2023 ONSC 753 at para. 63 [*Original Traders*].
80 Fourth Report at para. 52.
81 *Original Traders* at paras. 60, 64.

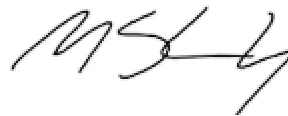
while the Monitor works to close the Proposed Pawnee Transaction, if approved, and continues to advance the CCAA proceedings.[82]

61. 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.[83] The Monitor forecasts that the CCAA Parties will have sufficient liquidity to continue operating in the ordinary course of business during the requested extension of the Stay Period.[84] The Monitor believes that no creditor of the CCAA Parties would be materially prejudiced by the extension of the Stay Period.[85]

PART V - RELIEF REQUESTED

62. The Monitor requests that this Court grant the proposed Pawnee RVO and extend the Stay Period until and including May 2, 2025.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 5th day of March, 2025.



OSLER, HOSKIN & HARCOURT, LLP
per Mark Sheeley
P.O. Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Lawyers for the Monitor

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82 Fourth Report at para. 55.
83 Fourth Report at para. 58.
84 Fourth Report at para. 58. An updated cash flow forecast for the period ending May 2, 2025 is attached as Appendix "A" to the Fourth Report.
85 Fourth Report at para. 58.

SCHEDULE "A"

LIST OF AUTHORITIES

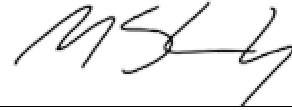
1. *Acerus Pharmaceuticals Corporation (Re)*, 2023 ONSC 3314
2. *Aquilini Development Limited Partnership v Garibaldi at Squamish Limited Partnership*, 2024 BCSC 764
3. *Arrangement relatif à Blackrock Metals Inc.*, 2022 QCCS 2828, leave to appeal ref'd 2022 QCCA 1073, leave to appeal ref'd 2023 CanLII 36969 (SCC)
4. *Arrangement relatif à Former Gestion Inc.*, 2024 QCCS 3645, leave to appeal ref'd 2024 QCCA 1441
5. *Bank of Montreal v Haro-Thurlow Street Project Limited Partnership*, 2024 BCSC 1722
6. *Chesswood Group Limited et al. (Re)* (20 December 2024), Toronto CV-24-00730212-00CL (ONSC)
7. *Good Natured Products Inc. (Re)*, 2024 BCSC 2126
8. *Harte Gold Corp (Re)*, 2022 ONSC 653
9. *Innovere Medical Inc. v. BDC Capital Inc. et al* (13 January 2025), Toronto CV-24-730634-00CL
10. *Just Energy Group Inc. et. al. v. Morgan Stanley Capital Group Inc. et. al.*, 2022 ONSC 6354
11. *Laurentian University of Sudbury*, 2021 ONSC 659
12. *Lydian International Limited (Re)*, 2020 ONSC 4006
13. *Original Traders Energy Ltd. and 2496750 Ontario Inc. (Re)*, 2023 ONSC 753
14. *PaySlate Inc. (Re)*, 2023 BCSC 977
15. *Quest University Canada (Re)*, 2020 BCSC 1883, leave to appeal ref'd 2020 BCCA 364
16. *Re Just Energy Corp.*, 2021 ONSC 1793
17. *Royal Bank of Canada v. Soundair Corp*. (1991), 4 O.R. (3d) 1 (CA)
18. *Sherman Estate v. Donovan*, 2021 SCC 25
19. *Stelco Inc., Re* (2004), 48 C.B.R. (4th) 299 (ONSC)
20. *Validus Power Corp. et al. and Macquarie Equipment Finance Limited*, 2024 ONSC 250

LIST OF AUTHORITIES

21. *Xplore Inc. (Re)*, 2024 ONSC 5250

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

Date March 5, 2025



Signature

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

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

Definitions

2 (1) In this Act, […]

debtor company means any company that

(a) is bankrupt or insolvent,

(b) has committed an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* or is deemed insolvent within the meaning of the *Winding-up and Restructuring Act*, whether or not proceedings in respect of the company have been taken under either of those Acts,

(c) has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act*, or

(d) is in the course of being wound up under the *Winding-up and Restructuring Act* because the company is insolvent; (*compagnie débitrice*)

[…]

Application

3 (1) This Act applies in respect of a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies, determined in accordance with section 20, is more than $5,000,000 or any other amount that is prescribed.

[…]

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.

Stays, etc. — other than initial application

11.02 (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 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.

[…]

***Courts of Justice Act*, R.S.O. 1990, c. C.43**

Documents public

137 (1) On payment of the prescribed fee, a person is entitled to see any document filed in a civil proceeding in a court, unless an Act or an order of the court provides otherwise.

Sealing documents

(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

Court lists public

(3) On payment of the prescribed fee, a person is entitled to see any list maintained by a court of civil proceedings commenced or judgments entered.

Copies

(4) On payment of the prescribed fee, a person is entitled to a copy of any document the person is entitled to see.

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
(Reverse Vesting Order and Stay Extension Order)

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