



Court File No.

**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.**

**NOTICE OF APPLICATION**

**A LEGAL PROCEEDING HAS BEEN COMMENCED** by the applicant. The claim made by the applicant appears on the following page.

**THIS APPLICATION** will come on for a hearing before a Judge presiding over the Commercial List:

- In person;
- By telephone conference;
- By video conference.

at the following location:

Join Zoom Meeting – *details to be provided by court staff closer to the hearing date.*

on **October 29, 2024, at 1:00 p.m.**, or as soon after that time as the application can be heard,

**IF YOU WISH TO OPPOSE THIS APPLICATION**, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

**IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION**, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

**IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

Date:

Issued by: \_\_\_\_\_  
Local Registrar

Address of Court Office: 330 University Avenue, 9<sup>th</sup> Floor  
Toronto, Ontario M5G 1R7

**TO: SERVICE LIST**

## APPLICATION

1. The Applicant, Royal Bank of Canada (“**RBC**”), brings this application for an order (the “**Initial Order**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) that, among other things:

- (a) abridges the time for service of the Notice of Application and the Application Record and dispenses with further service thereof, if necessary;
- (b) declares that the members of the Chesswood Group (as defined below) are parties to which the CCAA applies;
- (c) grants a stay of proceedings up to and including November 8, 2024 (the “**Initial Stay Period**”) in respect of the Chesswood Group;
- (d) appoints FTI Consulting Canada Inc. (“**FTI**”) as monitor of the Chesswood Group with expanded powers to oversee the business and financial affairs of the Chesswood Group (in such capacity, the “**Monitor**”);
- (e) grants a charge in the amount of US\$2,000,000 in favour of the Monitor, Foreign Representative and Canadian and U.S. counsel to the Monitor and Foreign Representative (the “**Administration Charge**”);
- (f) approves the DIP Financing Term Sheet (as defined below) between the Chesswood Group, by and through the Monitor, and the DIP Lenders (as defined below) and authorizes borrowings in an initial advance amount of US\$4,000,000;
- (g) grants a charge in favour of the DIP Lenders (the “**DIP Charge**”); and
- (h) dispenses with the requirement for Chesswood Group Limited (“**Chesswood**” or the “**Borrower**”) to make certain securities filings.

2. Should the proposed Initial Order be granted, RBC intends to seek an Amended and Restated Initial Order (the “**ARIO**”) within 10 days of the Initial Order being granted.
3. The proposed ARIO is anticipated to include, among other things, (i) an extension of the stay of proceedings, (ii) increases to the amount of the DIP Facility (as defined below) and the DIP Charge, and (iii) a key employee retention plan and associated charge.
4. Capitalized terms used and not defined herein have the meanings given to them in the affidavit sworn by Wenwei (Wendy) Chen on October 28, 2024 (the “**Chen Affidavit**”).

## **THE GROUNDS FOR THE APPLICATION ARE:**

### **Background**

5. The Chesswood Group entities are insolvent.
6. The Chesswood Group entities are companies to which the CCAA applies, and the claims against them exceed C\$5 million.
7. The “**Chesswood Group**” is made up of the Borrower, a Canadian public company listed under the symbol TSX:CHW, and its direct and indirect subsidiaries, i.e. 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**”), Rifco Inc., Waypoint Investment Partners Inc. and 1000390232 Ontario Inc. (collectively, the “**Existing Guarantors**”).
8. The Chesswood Group is a financial services company that provides loans to small businesses and consumers across Canada and the United States. The Chesswood Group focuses on equipment, vehicle and legal financing, specializing in providing loans to a wide range of credit

profiles and in niche areas of its industry verticals. In Canada, the Chesswood Group also operates an investment firm focused on the equipment and consumer financing sectors.

9. The primary secured lenders to the Chesswood Group are RBC, The Toronto-Dominion Bank, The Huntington National Bank, M&T Bank, Canadian Imperial Bank of Commerce and Laurentian Bank of Canada (collectively, the “**Existing Lenders**”), pursuant to the Existing Credit Agreement (as defined below). The Existing Guarantors are guarantors under the Existing Credit Agreement.

10. Additionally, Pawnee and Rifco are party to several securitization and servicing agreements (the “**Securitization Agreements**”) with various securitization funders (the “**Securitization Funders**”).

11. The Chesswood Group’s assets, including those pledged as collateral to the Existing Lenders, are located in several Canadian provinces and U.S. states.

12. As detailed below, the Chesswood Group is in default of its obligations under the Existing Credit Agreement.

### **Loan and Security Documents and Indebtedness to RBC**

13. Pursuant to a second amended and restated credit agreement dated January 14, 2022, as amended, and as may be further amended or restated, (the “**Existing Credit Agreement**”), among the (i) Borrower, (ii) RBC, as Administrative Agent and Collateral Agent (in those capacities, the “**Agent**”) and (iii) the Existing Lenders, the Existing Lenders agreed to extend certain credit facilities (the “**Credit Facilities**”), as further described in the Chen Affidavit.

14. The availability of borrowings to Chesswood under the Credit Facilities is determined by a borrowing base (the “**Borrowing Base**”), which itself is determined by a detailed formula in the Existing Credit Agreement.

15. As at October 24, 2024, the total amounts outstanding under the Credit Facilities were US\$66,254,723.30 and C\$92,797,926.72, plus costs and expenses incurred by the Agent and the Existing Lenders and plus interest, which continues to accrue (the “**Indebtedness**”). In addition, there are outstanding letters of credit in the amounts of US\$4,000,000 and C\$6,600,000 issued under the Existing Credit Agreement.

16. The Existing Guarantors have each executed guarantees in favour of the Existing Lenders in respect of the Indebtedness (collectively, the “**Existing Guarantees**”).

17. To secure the obligations in the Existing Guarantees, each of the Existing Guarantors has also granted the Agent a security interest in all of its respective present and after acquired undertaking and property pursuant to individual security agreements. To secure its obligations under the Existing Credit Agreement, the Borrower has also granted the Agent a security interest in all of its respective present and after acquired undertaking and property pursuant to a general security agreement dated December 8, 2014.

### **Securitization of Loan and Lease Assets**

18. Certain members of the Chesswood Group are servicers of equipment loans and leases that have been sold to securitization vehicles or directly to third-party funders to generate funding (i.e., the upfront payment or purchase price) that the Chesswood Group then redeployed to grow its business. If the securitized loans and leases perform as anticipated, related cash flows available to be remitted to certain securitization funding parties (the “**Securitization Funders**”) will be sufficient to cover their upfront payment plus anticipated yield and expense amounts and an anticipated residual value on the related assets.

19. As noted above, Pawnee and Rifco, along with certain special purpose securitization vehicles not subject to these proceedings (“**SPVs**”), are party to Securitization Agreements with

the various Securitization Funders.

20. The Securitization Agreements function as packages of equipment loans and leases, along with the related receivables, sold to the SPVs (with the Securitization Funders financing the acquisition) or directly to the Securitization Funders. The Securitization Agreements generally contemplate that the applicable Chesswood Group entity is required to continue to administer or “service” the loans and leases.

21. The Securitization Agreements generally also permit the Securitization Funders to replace the applicable Chesswood Group entity as servicer if specified events occur, including in some instances, an insolvency of the applicable servicer or the Borrower.

### **Chesswood Group’s Financial Difficulties and Strategic Review**

22. The Chesswood Group has been suffering from poor financial performance over the past eighteen months or longer. Rising interest and operating costs and portfolio write-downs have caused a significant decline in its profitability.

23. A special committee of Chesswood directors (the “**Special Committee**”) was appointed in January 2024 to review the Chesswood Group’s strategic options. On June 14, 2024, Chesswood announced that the Special Committee had come to the view that it was in the Chesswood Group’s best interests to actively pursue a sale of one or more of its business units or the company as a whole, and failing such sale (or sales), to commence an orderly winddown of one or more of its business units.

### **Financial Irregularities, Corresponding Event of Default and Other Events of Default**

24. Also on June 14, 2024, after reviewing an annual external audit of its Borrowing Base, Chesswood announced that it was in breach of its borrowing base covenants contained in the

Existing Credit Agreement (the “**Borrowing Base Event of Default**”).

25. The audit had revealed a significant deficiency in the Borrowing Base, ultimately calculated at approximately US\$92 million.

26. Other Events of Default (together with the Borrowing Base Event of Default, the “**Events of Default**”) have occurred, as further described in the Chen Affidavit, and are continuing.

### **Waivers, Sale Transactions and End of Waiver Period**

27. The Existing Lenders entered into several successive waiver agreements (collectively, the “**Waivers**”) with the Borrower pursuant to which the Existing Lenders agreed to waive certain Events of Default for a limited period (the “**Waiver Period**”) to allow the Chesswood Group to sell certain of its assets to pay down the Indebtedness.

28. The Chesswood Group was successful in completing several sale transactions during the Waiver Period. However, to date, it has been unable to effect sales of a large part of its business. The Waiver Period ended on October 16, 2024.

### **Continuing Defaults and Resulting Demands**

29. Due to the continuing Events of Default, on October 28, 2024, the Agent formally demanded payment from the Chesswood Group via written notices (the “**Demands**”) in accordance with the Existing Credit Agreement.

30. Concurrently with the Demands, the Agent also delivered to the Chesswood Group entities notices of intention to enforce security pursuant to Section 244 of the *Bankruptcy and Insolvency Act* (Canada).



### **Urgent Need for Relief under the CCAA**

31. As a result of the aforementioned events, including the termination of the Waiver Period, the Chesswood Group is insolvent, unable to meet its obligations as they come due, unable to repay the Existing Lenders and does not have the cash flow to fund its operations in the ordinary course.

32. Additionally, the Chesswood Group has over US\$800 million of loan and lease assets securitized with the Securitization Funders. Some Securitization Funders are, in accordance with the provisions of the related Securitization Agreements, holding back funds owing to the Chesswood Group as a result of loan asset performance issues. Where Securitization Funders have terminated the applicable Chesswood Group entity as servicer, all residual proceeds from any securitized loan and lease assets to which the applicable Chesswood Group entity would be entitled are automatically locked-up (i.e. into reserve accounts). No such residual proceeds may be remitted to such Chesswood Group entity until the full repayment of amounts owing to the Securitization Funders. As a result, the flow of funds to repay the Credit Obligations could be delayed as far out as 2032.

33. Compounding the Chesswood Group's other financial difficulties, the Ontario Securities Commission issued a failure to file cease trade order (the "**Cease Trade Order**") against Chesswood on or about August 15, 2024. The Cease Trade Order has not been lifted.

34. The Existing Lenders are prepared to provide necessary interim financing to the Chesswood Group on the conditions that Chesswood Group be granted protection under the CCAA and that the Monitor be granted expanded powers to oversee and manage the Chesswood Group's business and financial affairs.

35. The Agent has brought this Application for the proposed Initial Order because it: (i) provides the best opportunity to determine how to engage in a sale or winddown of the Chesswood

Group that is most beneficial for all stakeholders, including the Existing Lenders, other creditors and employees and (ii) for all the reasons above, is the approach most likely to maximize recovery and preserve jobs.

### **The Requested Stay Period**

36. Given its financial challenges, the Chesswood Group requires the Initial Stay Period in order to maintain the status quo. The Initial Stay Period will give the Chesswood Group and the Monitor the breathing space they require to stabilize operations for the benefit of all stakeholders of the Chesswood Group and pursue a solution to the Chesswood Group's current difficulties through sale transactions or an orderly winddown under the supervision of this Court.

### **Proposed Monitor**

37. The Agent proposes that FTI be appointed Monitor in these CCAA proceedings. FTI has consented to act as Monitor, subject to this Court's approval.

### **Monitor's Expanded Powers**

38. In the proposed Initial Order, RBC is seeking enhanced powers of the Monitor for the Monitor to be best placed to oversee and manage the Chesswood Group's business and financial affairs.

39. Chesswood's board of directors intends to resign immediately prior to the CCAA filing and, as such, providing enhanced powers to the Monitor provides the most effective way to conduct these CCAA proceedings while ensuring that the appropriate oversight of the Chesswood Group is in place.

### **Administration Charge**

40. The Agent seeks the Administration Charge, a super-priority charge over the Chesswood Group's property in Canada in favour of the Monitor, Foreign Representative and the Canadian and U.S. counsel to the Monitor and the Foreign Representative in the maximum amount of US\$2,000,000 to secure payments of their reasonable fees and disbursements incurred both before and after the granting of the Initial Order.

### **DIP Facility and DIP Charge**

41. Pursuant to a DIP financing principal terms sheet (the "**DIP Financing Term Sheet**"), Chesswood, as borrower, the Existing Guarantors as guarantors, RBC, as administrative and collateral agent, and the lenders thereunder (the "**DIP Lenders**") have agreed to establish a senior secured super-priority interim financing credit facility (the "**DIP Facility**") in the maximum amount of US\$65,000,000 for use during these CCAA proceedings, should the proposed Initial Order be granted.

42. An initial advance not to exceed US\$4,000,000 would be made on October 31, 2024 for use during the CCAA proceedings.

43. The DIP Facility would be secured by the DIP Charge, granted over all of the Chesswood Group's property in Canada and the U.S., in the initial maximum amount of US\$18,500,000 and would be subject only to the Administration Charge.

44. The purpose of the DIP Facility is to fund the short-term liquidity needs of the Chesswood Group during the CCAA proceedings.

### **Dispensing with Reporting and Filing Requirements**

45. The proposed Initial Order also dispenses with certain requirements for Chesswood to prepare and submit certain securities filings during the CCAA proceedings.

46. The preparation of securities filings is time consuming and would incur significant costs relative to the Chesswood Group's limited resources. Detailed financial information regarding the Chesswood Group will be made publicly available by the Monitor during the CCAA proceedings.

### **Chapter 15 Proceedings**

47. As the Chesswood Group has operations, assets and valuable relationships in the U.S., contemporaneously with the commencement of these CCAA proceedings, it is intended that the Monitor, as foreign representative for the Chesswood Group, will seek recognition and enforcement of these CCAA Proceedings pursuant to an order by the United States Bankruptcy Court for Delaware under Chapter 15 of the United States *Bankruptcy Code*.

### **OTHER GROUNDS**

48. The provisions of the CCAA and the inherent and equitable jurisdiction of this Honourable Court;

49. Rule 2.03, 3.02, 14.05 and 16 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and

50. Such further and other grounds as counsel may advise.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of this Application:

- (a) The Chen Affidavit;
- (b) The consent to act of FTI Consulting Canada Inc.; and

- (c) Such further and other evidence as counsel may advise and this Honourable Court permit.

Date: October 29, 2024

**BLAKE, CASSELS & GRAYDON LLP**

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

**Kelly Bourassa, LSO #43062R**

Tel: 416-863-2421

Email: [kelly.bourassa@blakes.com](mailto:kelly.bourassa@blakes.com)

**Milly Chow, LSO #35411D**

Tel: 416-863-2594

Email: [milly.chow@blakes.com](mailto:milly.chow@blakes.com)

**Jake Harris, LSO #85481T**

Tel: 416-863-2523

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

*Lawyers for the Applicant*

Court File No.:

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, et al.

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

Proceeding Commenced at Toronto

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**NOTICE OF APPLICATION**

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**BLAKE, CASSELS & GRAYDON LLP**

199 Bay Street

Suite 4000, Commerce Court West

Toronto, Ontario M5L 1A9

**Kelly Bourassa**, LSO #43062R

Tel: 416-863-2421

Email: [kelly.bourassa@blakes.com](mailto:kelly.bourassa@blakes.com)

**Milly Chow**, LSO #55172H

Tel: 416-863-2594

Email: [milly.chow@blakes.com](mailto:milly.chow@blakes.com)

**Jake Harris**, LSO #85481t

Tel: 416-863-2523

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

Lawyers for the Applicant