

**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., LEASE-WIN LIMITED, WINDSET  
CAPITAL CORPORATION, CHESSWOOD CAPITAL MANAGEMENT INC.,  
CHESSWOOD CAPITAL MANAGEMENT USA INC., 942328 ALBERTA INC.,  
908696 ALBERTA INC., WAYPOINT INVESTMENT PARTNERS INC.  
1000390232 ONTARIO INC. and CGL HOLDCO, LLC

**FACTUM OF THE MONITOR  
(Stay Extension Order and Waypoint AVO)**

June 6, 2025

**OSLER, HOSKIN & HARCOURT LLP**  
100 King Street West  
1 First Canadian Place  
Suite 6200, P.O. Box 50  
Toronto ON M5X 1B8

**Marc Wasserman** (LSO# 44066M)  
Tel: 416-862-4908  
Email: [mwasserman@osler.com](mailto:mwasserman@osler.com)

**Dave Rosenblat** (LSO# 64586K)  
Tel: 416-862-5673  
Email: [drosenblat@osler.com](mailto:drosenblat@osler.com)

**Sean Stidwill** (LSO# 71078J)  
Tel: 416-862-4217  
Email: [sstidwill@osler.com](mailto:sstidwill@osler.com)

Fax: 416.862.6666

Lawyers for the Monitor

## 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.<sup>1</sup> 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. Since the Initial Order, the Monitor has undertaken an expansive mandate, working consistently to oversee the CCAA Parties’ business while pursuing potential transactions in search of a value-maximizing resolution to these CCAA proceedings. Its efforts have yielded results, including an asset sale by the Rifco Entities and a share sale of Pawnee and Tandem, approved by this Court on January 29, 2025 and March 7, 2025, respectively.

---

<sup>1</sup> The “**CCAA Parties**” are comprised of Chesswood Group Limited (“**Chesswood**”), Case Funding Inc., Chesswood Holdings Ltd., Chesswood US Acquisitionco Ltd. (the “**Pawnee Vendor**”), Lease-Win Limited, Windset Capital Corporation, 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.) (together with Rifco, the “**Rifco Entities**”), Waypoint Investment Partners Inc., 1000390232 Ontario Inc., and CGL Holdco, LLC (“**ResidualCo**”). The Initial Order applied to two additional entities, Pawnee Leasing Corporation (“**Pawnee**”) and Tandem Finance Inc. (“**Tandem**”), and did not include ResidualCo. Following the Pawnee RVO (as defined below), Pawnee and Tandem were removed from and ResidualCo was added to these CCAA proceedings.

4. The Monitor now seeks:

- (a) an order (the “**Waypoint AVO**”) approving a share sale by the Waypoint Vendor to Axis pursuant to the Waypoint SPA (each as defined below) (the “**Proposed Waypoint Transaction**”); and
- (b) an order (the “**Stay Extension Order**”) extending the Stay Period (as defined in the ARIO) until and including October 3, 2025.

5. The Proposed Waypoint Transaction should be approved. Extensive marketing efforts undertaken both prior to and during these CCAA proceedings establish that the Proposed Waypoint Transaction is the best (and only) transaction available and will benefit all stakeholders. Granting the proposed Waypoint AVO will minimize the costs to the CCAA Parties’ estate associated with the wind down of Waypoint, including by avoiding the need to incur the potential costs to complete the surrender of the Waypoint Registrations (as defined below) within the CCAA proceedings.

6. Extending the Stay Period is necessary and 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 Waypoint Transaction (if approved), and continues to advance the CCAA proceedings, including in respect of the wind down of the CCAA Parties as may be necessary.

## PART II - THE FACTS

### A. Background

7. The CCAA Parties' business was to provide loans to small businesses and consumers across Canada and the United States, focusing on equipment, vehicle, and legal financing.<sup>2</sup> The CCAA Parties ultimately suffered an impending liquidity crisis caused by several continuing defaults under the Existing Credit Agreement.<sup>3</sup>

8. This Court accordingly granted the Initial Order on October 29, 2024 (the "**Filing Date**") on an application by the Pre-Filing Agent.<sup>4</sup> The Initial Order also approved the DIP financing principal terms sheet dated October 29, 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, and the lenders thereunder (the "**DIP Lenders**"), and authorizing borrowings under a secured super-priority credit facility established thereunder (the "**DIP Facility**").<sup>5</sup>

9. 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**").<sup>6</sup>

---

<sup>2</sup> Sixth Report of FTI Consulting Canada Inc., as Monitor, dated June 2, 2025 (the "**Sixth Report**") at para. 14. Unless otherwise specified, capitalized terms in this factum have the same meaning as in the Sixth Report.

<sup>3</sup> Sixth Report at para. 14.

<sup>4</sup> Sixth Report at para. 1.

<sup>5</sup> Sixth Report at para. 2.

<sup>6</sup> Sixth Report at para. 3. The U.S. Court subsequently entered orders on October 31, 2024 and November 25, 2024: Sixth Report at paras. 3, 5.

10. On November 7, 2024, this Court issued the ARIO, which extended the Stay Period until January 31, 2025, and increased the permitted DIP Borrowings (as defined in the ARIO).<sup>7</sup>

11. On December 19, 2024, this Court issued an order approving a sale and investment solicitation process (the “**SISP**”) in respect of the CCAA Parties (other than the Rifco Entities).<sup>8</sup>

12. On January 29, 2025, this Court issued orders approving the sale of certain assets by the Rifco Entities to Vault Auto Finance Corporation and extending the Stay Period until March 31, 2025.<sup>9</sup>

13. On March 7, 2025, this Court issued an order (the “**Pawnee RVO**”) approving the sale by the Pawnee Vendor of all of the issued and outstanding shares in the capital of Pawnee and Tandem to North Mill Equipment Finance, LLC through a reverse vesting transaction, and vesting certain retained assets and liabilities in ResidualCo (the “**Pawnee Transaction**”). That day, the Court also issued an order extending the Stay Period until May 2, 2025.<sup>10</sup>

14. The Pawnee Transaction closed on April 1, 2025.<sup>11</sup>

15. On May 1, 2025, the Court issued an order that, among other things, (i) extended the Stay Period until June 16, 2025, (ii) approved the reports and activities of the Monitor, and (iii) approved the fees and disbursements of the Monitor and the Monitor’s counsel.<sup>12</sup>

---

<sup>7</sup> Sixth Report at para. 4.

<sup>8</sup> Sixth Report at para. 6.

<sup>9</sup> Sixth Report at paras. 8-9.

<sup>10</sup> Sixth Report at paras. 10-11.

<sup>11</sup> Sixth Report at para. 12.

<sup>12</sup> Sixth Report at para. 13.

**B. The Business of Waypoint**

16. Waypoint Investment Partners Inc. (“**Waypoint**”) is an Ontario corporation headquartered in Toronto that is a wholly-owned subsidiary of Chesswood Capital Management Inc. (the “**Waypoint Vendor**”). Waypoint is registered as an investment fund manager, portfolio manager and exempt market dealer in several Canadian provinces (the applicable registrations are referred to herein as the “**Waypoint Registrations**”).<sup>13</sup>

17. Waypoint was initially acquired by the Waypoint Vendor in 2022. However, in 2022 and continuing into 2023, Waypoint’s management fees were insufficient to cover its operating expenses (primarily salaries and fund administration costs), resulting in reported net losses of approximately C\$525,000 and C\$1.2 million, respectively. Waypoint funded these net losses through unsecured intercompany loans from Waypoint Vendor of C\$720,000 and C\$1.4 million in 2022 and 2023, respectively (the “**Intercompany Loans**”).<sup>14</sup>

18. Waypoint previously managed the following four funds (together, the “**Funds**”):

- (a) Waypoint Private Credit Fund LP (“**PCF**”), the general partner of which (i) was wholly-owned by Waypoint and an affiliate of Waypoint and (ii) had a 0.001% interest in PCF;
- (b) Chesswood Canadian Asset-Backed Credit Fund LP (“**CABCF**”), the general partner of which (i) was wholly-owned by Waypoint and an affiliate of Waypoint and (ii) had a 0.001% interest in CABCF;

---

<sup>13</sup> Sixth Report at para. 23.

<sup>14</sup> Sixth Report at para. 24.

- (c) Waypoint All Weather Alternative Fund (“**AWF**”), a mutual fund trust of which Waypoint was the trustee and had no interest; and
- (d) Chesswood Canadian Asset-Backed Credit Fund Trust (“**CABCF Trust**”), a mutual fund trust of which Waypoint was the trustee and had no interest.<sup>15</sup>

19. PCF, AWF and CABCF Trust’s assets have been monetized, proceeds therefrom have been distributed, and the Funds have been terminated. Unitholders of the other Fund, CABCF, were previously transferred to a third-party fund. Waypoint currently manages one segregated client investment account, which is currently in the process of being moved to a new investment manager by the applicable client, as well as four accounts (the “**MT Accounts**”) held by Max Torokvei (“**Torokvei**”), Waypoint’s Chief Executive Officer and Portfolio Manager, or by his family members or persons related to him (namely, Axis, discussed below).<sup>16</sup>

20. Waypoint holds *de minimis* assets, including the Waypoint Registrations, and books and records and intellectual property relating to the Waypoint business. Waypoint has *de minimis* cash on hand and does not have any other liquid assets, and is not generating any income. Torokvei and Waypoint’s Chief Compliance Officer and Director of Operations & Client Service are Waypoint’s only remaining employees.<sup>17</sup>

### **C. The Proposed Waypoint Transaction**

21. Following the completion of the SISP, which did not culminate in a transaction involving Waypoint or its assets, the Monitor considered various alternatives with respect to Waypoint,

---

<sup>15</sup> Sixth Report at para. 25.

<sup>16</sup> Sixth Report at para. 26.

<sup>17</sup> Sixth Report at para. 27.

including the costs, requirements and implications of surrendering the Waypoint Registrations and ceasing Waypoint's operations. In assessing the process and cost for winding up Waypoint and ceasing operations given the lack of interest from potential purchasers, the Monitor was advised that the Ontario Securities Commission ("OSC") will require Waypoint to complete an application to surrender the Waypoint Registrations to bring an end to its obligations thereunder, including various ongoing reporting requirements. This process may require significant time and cost, particularly given Waypoint's continued, unresolved working capital deficiency that had been reported to the OSC on November 18, 2024, which Waypoint does not have the liquidity to satisfy.<sup>18</sup>

22. As the Monitor assessed the costs, requirements and implications of surrendering the Waypoint Registrations and ceasing Waypoint's operations, Axis Holdings Inc. ("Axis") approached the Monitor with a proposal to acquire Waypoint for nominal consideration. Axis is a holding corporation controlled by Torokvei and persons related to him, and Torokvei is the Vice President of Axis. Axis made this proposal with a view to either: (i) administering the cessation of operations, including the surrender of the Waypoint Registrations (rather than having it be completed within the CCAA proceedings, which Waypoint's management believed could have a reputational impact on applicable registered individuals), or (ii) obtaining the required OSC approvals to allow for Waypoint to continue to manage the MT Accounts with the use of the Waypoint Registrations, which is a preferred path forward for Torokvei and Axis, which as noted above is a holder of one of the MT Accounts.<sup>19</sup>

---

<sup>18</sup> Sixth Report at para. 31.

<sup>19</sup> Sixth Report at para. 34.

23. Ultimately, the Monitor, the Waypoint Vendor and Axis were able to agree to terms for a share transaction, in the form of a share purchase agreement between the Waypoint Vendor and Axis, which will be signed imminently (the “**Waypoint SPA**”).<sup>20</sup>

24. Pursuant to the Waypoint SPA, if approved:<sup>21</sup>

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

---

<sup>20</sup> Sixth Report at para. 36.

<sup>21</sup> The key terms of the Waypoint SPA are summarized in detail in the Sixth Report at para. 38, and a copy of the form of the Waypoint SPA is included as Appendix “B” to the Sixth Report. Capitalized terms not otherwise defined are as defined in the Waypoint SPA.

- (d) the outside date for closing is August 1, 2025 (unless otherwise agreed by the parties).

### **PART III -THE ISSUES**

- 25. The issues to be considered on this motion are whether:
  - (a) the proposed Waypoint AVO should be granted; and
  - (b) the proposed Stay Extension Order should be granted.

### **PART IV - THE LAW**

#### **A. The proposed Waypoint AVO should be granted**

- 26. 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.

27. 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 efficacy and integrity of the process for obtaining offers; and (iv) whether there was any unfairness in the working out of the process.<sup>22</sup>

28. The factors listed in subsection 36(3) are not exhaustive.<sup>23</sup> 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.<sup>24</sup> 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."<sup>25</sup>

29. Taking into account the factors listed in subsection 36(3) of the CCAA and other statutory requirements, this Court should approve the Proposed Waypoint Transaction and grant the proposed Waypoint AVO, which the Monitor would be in the best interests of all stakeholders.

---

<sup>22</sup> *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](#), 1991 CanLII 2727 (C.A.) [*Soundair*].

<sup>23</sup> *Pride* at para. 10.

<sup>24</sup> *Pride* at para. 13.

<sup>25</sup> *Pride* at para. 14. See also *BBB Canada Inc.*, [2023 ONSC 2308](#) at para. 13.

**(a) The process was reasonable**

30. 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.<sup>26</sup>

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.<sup>27</sup>

31. Waypoint was marketed broadly as part of a pre-filing sale process undertaken by RBC Capital Markets (“**RBCCM**”) in respect of the Chesswood Group during 2024, in which RBCCM contacted 187 parties and as a result of which 26 non-disclosure agreements were signed. On July 25, 2024, a non-binding letter of intent to purchase Waypoint was submitted, though no transaction involving the sale of, or investment in, Waypoint was ultimately completed.<sup>28</sup>

32. Following the Filing Date, and in accordance with the SISP, the Monitor contacted 198 parties that may have had an interest in the Chesswood Group’s business, including Waypoint. Three parties expressed an interest specifically in Waypoint’s business and signed non-disclosure agreements to gain access to a data room and evaluate the potential acquisition of Waypoint or its assets. In addition, the party that had expressed an interest during RBCCM’s pre-filing sale process contacted the Monitor after the Filing Date and the Monitor continued discussions with that party

---

<sup>26</sup> 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.

<sup>27</sup> *Soundair* at paras. 48-49.

<sup>28</sup> Sixth Report at para. 29.

during the SISP. The Monitor did not receive any offers in respect of Waypoint from any party through the SISP.<sup>29</sup>

33. 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 Waypoint 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.<sup>30</sup>

34. Furthermore, the only parties with an economic interest in the proceeds are the Pre-Filing Lenders,<sup>31</sup> who support the Monitor's motion for the proposed Waypoint AVO and consent to the Proposed Waypoint Transaction,<sup>32</sup> the closing of which is conditioned upon, among other things, the Pre-Filing Lenders releasing Waypoint from all obligations under the Existing Credit Agreement.<sup>33</sup>

---

<sup>29</sup> Sixth Report at para. 30.

<sup>30</sup> Sixth Report at para. 39.

<sup>31</sup> Amounts owing under the DIP Facility were repaid from the proceeds of the Pawnee Transaction. See the June 2025 Forecast, under "Total Debt", for the balance of the DIP Facility (nil) and the facility under the Existing Credit Agreement as of May 30, 2025 (~US\$66 million).

As noted in the Supplement to the Fifth Report of the Monitor, dated April 30, 2025, filed in advance of the last hearing in these CCAA proceedings, it is anticipated the Pre-Filing Lenders will suffer a significant shortfall in recovery: see para. 19 therein, Case Center, Master p. E1112.

<sup>32</sup> Such consent and support was confirmed after the Sixth Report was filed. Counsel for the Pre-Filing Agent will be appearing at the hearing.

<sup>33</sup> Sixth Report at para. 38(f).

**(b) The purchase price is fair and reasonable**

35. 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.<sup>34</sup>

36. In this case, no transaction involving the sale of, or investment in, Waypoint resulted from the pre-filing marketing efforts undertaken by RBCCM. Further, despite the extensive marketing efforts during the SISP, no other transaction was identified in these CCAA proceedings for the purchase of Waypoint or its assets.<sup>35</sup>

37. As the Funds have been wound down, and all segregated client accounts (other than the MT Accounts) have been or will imminently be transferred to another investment manager, Waypoint's assets are of *de minimis* value and are exceeded by the retained liabilities (even before factoring in avoiding the costs associated with surrendering the Waypoint Registrations and completing other matters within the CCAA proceedings). Accordingly, the nominal purchase price is fair and reasonable. Furthermore, the acquisition would serve to have certain liabilities retained post-closing that would otherwise not receive recovery in the context of a wind down within the CCAA proceedings, while allowing the estate to avoid the costs of same.

---

<sup>34</sup> See *Pride* at para. 12; *Edward Collins Contracting Limited (Re)*, [2023 NLSC 139](#) at para. 68 [*Edward Collins*].

<sup>35</sup> Sixth Report at para. 39(b)-(c).

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

38. The Monitor believes that the Proposed Waypoint Transaction is more beneficial than a sale or disposition under a bankruptcy, for which no funding is available, and which would not generate any proceeds and would be costlier for the estate.<sup>36</sup>

39. In addition, under the Proposed Waypoint Transaction, Waypoint is retaining all liabilities, other than the Intercompany Loans and obligations under the Existing Credit Agreement and DIP Term Sheet, which excluded liabilities are to be released by contract (*i.e.*, not by way of a reverse vesting order). Given that Waypoint is a guarantor of the obligations under the Existing Credit Agreement, which will not be satisfied from the proceeds of these CCAA proceedings, the creditors of the retained liabilities would receive nothing in a bankruptcy.

**(d) The Proposed Waypoint Transaction complies with other statutory requirements**

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

41. As required by subsection 36(2) of the CCAA, all secured creditors who are likely to be affected by the Proposed Waypoint Transaction have been notified and, indeed, have provided their consent.

42. 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

---

<sup>36</sup> Sixth Report at para. 39(d).

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.<sup>37</sup> 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.”<sup>38</sup>

43. Insofar as Waypoint and Axis are “related persons” for purposes of subsection 36(4), the Proposed Waypoint 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 Waypoint.<sup>39</sup> Following the completion of the SISP, the Monitor considered various alternatives with respect to Waypoint, including continuing the complete wind up and ceasing of Waypoint’s operations, which was estimated to require significant time and cost.<sup>40</sup> Given its familiarity with Waypoint’s business and operations, Axis approached the Monitor and expressed an interest in acquiring Waypoint in the near term for nominal consideration.<sup>41</sup> The Proposed Waypoint Transaction would allow the Chesswood Group to avoid the potential cost of administering the surrender of the Waypoint Registrations and completing various tax returns, which in each case would require the assistance of Torokvei given his OSC registrations and familiarity with the business. In addition, the Proposed Waypoint Transaction would provide for the retention of liabilities that would not be satisfied in a wind-down scenario, including pre-filing accounts

---

<sup>37</sup> CCAA, s. 36(4).

<sup>38</sup> *Target Canada Co. (Re)*, [2015 ONSC 2066](#) at para. 15.

<sup>39</sup> Sixth Report at paras. 29-30.

<sup>40</sup> Sixth Report at para. 31.

<sup>41</sup> Sixth Report at para. 34.

payable to unrelated trade creditors.<sup>42</sup> By way of these measures, any concerns associated with related-party transactions have been mitigated.

44. 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.”<sup>43</sup> Paragraph 6(5)(a) refers to amounts owing by a debtor company to its employees 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 two employees of Waypoint have been and will continue to be paid salaries and wages in the ordinary course until the closing of the Waypoint SPA (or their termination), the requirements of section 36(7) of the CCAA are satisfied on this motion.<sup>44</sup>

**B. The Stay Period should be extended**

45. 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.

46. The current Stay Period will expire on June 16, 2025. The Monitor is seeking an extension of the Stay Period up to and including October 3, 2025. The stay extension is appropriate and necessary in the circumstances to provide the CCAA Parties with the necessary stability and

---

<sup>42</sup> Sixth Report at para. 35.

<sup>43</sup> CCAA, s. 36(7). Paragraph 6(6)(a) concerns payments in respect of a prescribed pension plan, which it not in issue in this case.

<sup>44</sup> Sixth Report at para. 27.

breathing room as they work with the Monitor to close the Proposed Waypoint Transaction and while the Monitor works to monetize the CCAA Parties' remaining assets and continues to advance the CCAA proceedings towards a wind down.<sup>45</sup>

47. 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 during the requested extension of the Stay Period.<sup>46</sup> The Monitor believes that no creditor of the CCAA Parties would be materially prejudiced by the extension of the Stay Period.<sup>47</sup>

#### **PART V - RELIEF REQUESTED**

48. The Monitor requests that this Court:

- (a) approve the Proposed Waypoint Transaction and grant the proposed Waypoint AVO; and
- (b) extend the Stay Period until October 3, 2025 and grant the proposed Stay Extension Order.

---

<sup>45</sup> Sixth Report at para. 47.

<sup>46</sup> Sixth Report at paras. 49(b). An updated cash flow forecast for the period ending October 3, 2025 is attached as Appendix "A" to the Sixth Report.

<sup>47</sup> Sixth Report at para. 49(c).

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 6<sup>th</sup> day of June, 2025.



---

**OSLER, HOSKIN & HARCOURT LLP**

**per Mark Sheeley**

P.O. Box 50, 1 First Canadian Place

Toronto, ON M5X 1B8

Lawyers for the Monitor

## SCHEDULE "A"

### LIST OF AUTHORITIES

1. *BBB Canada Inc.*, [2023 ONSC 2308](#)
2. *Edward Collins Contracting Limited (Re)*, [2023 NLSC 139](#)
3. *Pride Group Holdings Inc. et al.*, [2024 ONSC 5908](#)
4. *Royal Bank v. Soundair Corp.* (1991), [4 O.R. \(3d\) 1](#), 1991 CanLII 2727 (C.A.)
5. *Sanjel Corporation (Re)*, [2016 ABQB 257](#)
6. *Target Canada Co. (Re)*, [2015 ONSC 2066](#)
7. *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 June 6, 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.

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  
(Stay Extension Order and Waypoint AVO)**

**OSLER, HOSKIN & HARCOURT LLP**

100 King Street West  
1 First Canadian Place  
Suite 6200, P.O. Box 50  
Toronto ON M5X 1B8

**Marc Wasserman** (LSO# 44066M)

Tel: 416-862-4908

Email: [mwasserman@osler.com](mailto:mwasserman@osler.com)

**Dave Rosenblat** (LSO# 64586K)

Tel: 416-862-5673

Email: [drosenblat@osler.com](mailto:drosenblat@osler.com)

**Sean Stidwill** (LSO# 71078J)

Tel: 416-862-4217

Email: [sstidwill@osler.com](mailto:sstidwill@osler.com)

Fax: 416.862.6666

Lawyers for the Monitor