

**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., 1000390232 ONTARIO INC. and CGL HOLDCO, LLC**

**FACTUM OF ROYAL BANK OF CANADA, IN ITS CAPACITY AS
ADMINISTRATIVE AGENT AND COLLATERAL AGENT**

November 13, 2025

BLAKE, CASSELS & GRAYDON LLP
Barristers and Solicitors
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

Milly Chow, LSO #55172H
Tel: 416-863-3262
Email: milly.chow@blakes.com

Jake Harris, LSO #85481T
Tel: 416-863-2523
Email: jake.harris@blakes.com

Lawyers for Royal Bank of Canada in its
capacity as administrative agent and collateral
agent

TO: SERVICE LIST

PART I - OVERVIEW

1. This Factum is filed in support of the motion (the “**Lift Stay Motion**”) by Royal Bank of Canada (“**RBC**”), in its capacity as administrative agent and collateral agent (the “**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 “**Pre-Filing Credit Agreement**”), for an order (the “**Lift Stay Order**”) and related relief under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”).

2. The Lift Stay Order, among other things:

- (a) provides for the lifting of the stay of proceedings (the “**Stay**”) established pursuant to the amended and restated initial order dated November 7, 2024 (the “**ARIO**”) in the within proceedings to permit the Agent, for and on behalf of the Pre-Filing Lenders, to commence and pursue a proceeding (the “**Claim**”) against Chesswood Group Limited (“**Chesswood**”) and certain former directors and officers or senior management figures (the “**Individual Defendants**”) of the CCAA Parties (as defined below); and
- (b) orders and directs the registrar of the Ontario Superior Court of Justice to issue the Claim.

PART II - FACTS

3. The facts with respect to this Motion are briefly summarized below and more fully set out in the affidavit of Wenwei (Wendy) Chen sworn October 27, 2025 (the “**Second Chen Affidavit**”).¹

Background

4. Chesswood is a holding company based in Toronto, Ontario and incorporated pursuant to the *Ontario Business Corporations Act*, R.S.O. 1990, c. B. 16 (“**OBCA**”). Chesswood and its subsidiaries operated in speciality finance across various industries and sectors. The business of Chesswood and its subsidiaries consisted in originating loans and leases, collecting interest and principal thereon, and in certain cases selling or securitizing the loans and leases for payment.²

5. The primary secured lenders to the Chesswood Group are the Pre-Filing Lenders comprised of RBC, The Toronto-Dominion Bank, The Huntington National Bank, M&T Bank, Canadian Imperial Bank of Commerce and Laurentian Bank of Canada.³

6. The Pre-Filing Lenders provided credit facilities to Chesswood pursuant to the Pre-Filing Credit Agreement.⁴ The original commitment of the Pre-Filing Lenders under the Pre-Filing Credit Agreement was a maximum aggregate principal amount of \$300 million.⁵

¹ Capitalized terms not otherwise defined have the same meanings as in the Second Chen Affidavit. All references to monetary amounts in the Second Chen Affidavit and in this factum are in United States dollars unless otherwise noted.

² Second Chen Affidavit at para 5.

³ Second Chen Affidavit at para 6.

⁴ Second Chen Affidavit at para 7.

⁵ Second Chen Affidavit at para 8.

7. To secure its obligations under the Pre-Filing Credit Agreement, the Chesswood Group granted the Pre-Filing Lenders a security interest over all of its present and after acquired undertakings and property, pursuant to guarantees and security agreements dated as of December 8, 2014.⁶

The Borrowing Base Errors and Events of Default

8. The availability of borrowings to Chesswood under the Pre-Filing Credit Agreement was determined by a borrowing base (the “**Borrowing Base**”) which is determined by a detailed formula in the Pre-Filing Credit Agreement based on the value of certain specified eligible receivables and specified margins, plus certain specified limits (the “**Lending Limit**”). The Borrowing Base as set out in a Borrowing Base certificate (the “**Borrowing Base Certificate**”) was required to be delivered by Chesswood to the Agent monthly. For each requested borrowing, Chesswood was required to deliver a Borrowing Base Certificate, in the form attached to the Pre-Filing Credit Agreement, which certifies the various amounts required to calculate the Borrowing Base Certificate.⁷

9. Certain financial irregularities were discovered at the end of May 2024, resulting in the Lending Limit being exceeded and a Borrowing Base deficiency of approximately \$92 million (the “**Borrowing Base Deficiency**”).⁸ As confirmed by certain Borrowing Base Certificates delivered by Chesswood, the Accommodations Outstanding under the Pre-Filing Credit Agreement had

⁶ Second Chen Affidavit at para 9.

⁷ Second Chen Affidavit at para 10.

⁸ Affidavit of Wenwei (Wendy) Chen sworn October 28, 2024 (the “**First Chen Affidavit**”) at para 52.

exceeded the Lending Limit.⁹ This constituted an Event of Default under Section 10.1(a) of the Pre-Filing Credit Agreement (the “**Borrowing Base Event of Default**”).¹⁰

10. In addition to the Borrowing Base Event of Default, certain other Events of Default had occurred and were continuing under the Pre-Filing Credit Agreement.¹¹

11. Following the Borrowing Base Event of Default and the other Events of Default, the Pre-Filing Lenders entered into certain waiver agreements with Chesswood, which were intended to allow the Chesswood Group to sell certain of its assets in order to reduce the amount of indebtedness owing to the Pre-Filing Lenders. Although the Chesswood Group was successful in completing several sale transactions following the waivers, it was unable to effect sales of a large part of its business, and significant indebtedness remained outstanding under the Pre-Filing Credit Agreement.¹²

12. As a result of the failure of the Chesswood Group to sufficiently reduce the obligations owing to the Pre-Filing Lenders, and due to the ongoing Events of Default, the Agent applied to this Court on October 28, 2024 for an initial order under the CCAA that would allow the Chesswood Group to obtain interim financing to allow it to continue operations while engaging in a sale or wind down of its remaining assets for the benefit of its stakeholders, including the Pre-Filing Lenders, other creditors and employees.¹³

⁹ Second Chen Affidavit at para 12.

¹⁰ Second Chen Affidavit at para 12.

¹¹ Second Chen Affidavit at para 13.

¹² Second Chen Affidavit at para 14.

¹³ Second Chen Affidavit at para 15.

The Chesswood Group's CCAA Proceedings

13. On October 29, 2024, this Court granted an order (the “**Initial Order**”) that, among other things, established the Stay until November 8, 2024 (the “**Stay Period**”), approved interim financing arrangements for the benefit of the Chesswood Group and appointed FTI Consulting Canada Inc. as Monitor (the “**Monitor**”) with enhanced powers to manage the Chesswood Group and the sale of its assets, for the benefit of its stakeholders.¹⁴

14. On November 7, 2024, this Court granted an order amending the Initial Order (the “**Amended and Restated Initial Order**”) which, among other things, extended the Stay Period. The Amended and Restated Initial Order provides that the Stay applies not only to claims against any of the CCAA Parties, including Chesswood, but also to any claim against any of the former, current or future directors or officers of the CCAA Parties.¹⁵

15. Following the issuance of the Amended and Restated Initial Order, the Chesswood Group and the Monitor engaged in extensive marketing of the Chesswood Group's assets. These efforts resulted in the sale of substantially all of the assets of the Chesswood Group. During this time, the Stay Period was extended several times by orders of this Court.¹⁶

16. At this point of the CCAA proceedings, the CCAA Parties have no material assets and no operating businesses remaining.¹⁷

¹⁴ Second Chen Affidavit at para 16.

¹⁵ Second Chen Affidavit at para 17.

¹⁶ Second Chen Affidavit at para 18.

¹⁷ Second Chen Affidavit at para 19.

17. On October 2, 2025, this Court granted an order (the “**Stay Extension and Ancillary Matters Order**”) that extended the Stay Period to January 30, 2026 to allow the Monitor to complete certain wind-down activities before the termination of the CCAA proceedings. Among the wind-down activities the Monitor intends to complete before the termination of the CCAA proceedings, which are set out in detail in the Eighth Report of the Monitor and the Supplement to the Eighth Report of the Monitor, is the establishment of a protocol (the “**Books and Records Protocol**”) that sets out the procedure for the retention of certain of the CCAA Parties’ physical and electronic records at the request of parties who may have claims against the CCAA Parties and/or their directors and officers, or at the request of defendants to such claims. The Books and Records Protocol was approved by this Court pursuant to the Stay Extension and Ancillary Matters Order. The Books and Records Protocol provides that parties may make written requests to the Monitor in respect of the retention of particular books and records of the CCAA Parties on or before November 28, 2025 (the “**Request Deadline**”) and that the Monitor is authorized to make arrangements to destroy any books and records that are not subject to a request following December 31, 2025.¹⁸

Statement of Claim

18. Notwithstanding the sale of the Chesswood Group’s assets during the CCAA proceedings and the distribution of proceeds from such sales to the Pre-Filing Lenders as secured creditors of the Chesswood Group (after repayment in full of the interim financing previously

¹⁸ Second Chen Affidavit at para 20.

approved by this Court), the Pre-Filing Lenders are still owed approximately C\$83.2 million as at October 24, 2025 pursuant to the Pre-Filing Credit Agreement.¹⁹

19. The Pre-Filing Lenders have determined that it is prudent to direct the Agent to move to lift the Stay and bring the Claim against Chesswood and the Individual Defendants in respect of matters related to the Borrowing Base Deficiency at this time so that the defendants to the Claim have an opportunity to make a request in respect of the retention of particular books and records of the CCAA Parties in accordance with the Books and Records Protocol, if they so choose, prior to the Request Deadline. As the Stay has been extended to January 30, 2026, and the Monitor is authorized to destroy the books and records after December 31, 2025, lifting the Stay so that the Agent can issue the Claim now will allow the defendants to the Claim to ensure that the books and records of the CCAA Parties that they may require to defend the Claim are retained and not destroyed if the Agent waits until after the Stay expires on January 30, 2026 to bring the Claim.²⁰

PART III - ISSUES

20. This principal issue on the Motion is whether:

- (a) the Stay should be lifted so that the Agent may commence and pursue the Claim against Chesswood and the Individual Defendants.

¹⁹ Second Chen Affidavit at para 21.

²⁰ Second Chen Affidavit at para 22.

PART IV - THE LAW AND DISCUSSION

The Stay Should Be Lifted

21. This Court has broad discretion to lift a stay imposed by an initial order made in CCAA proceedings.²¹ Courts will consider three broad factors when determining whether to lift a stay imposed under the CCAA:²²

- a) the relative prejudice to the parties;
- b) the balance of convenience; and
- c) where relevant, the merits.

22. Generally, in situations where the parties receiving CCAA protection have ceased operating and their assets have been sold (and the proceeds from those sales distributed), there is nothing left to restructure or reorganize, and it is appropriate to allow for the stay of proceedings to be lifted.²³ Courts in Canada have lifted stays of proceedings for claims to be brought against directors and officers in such circumstances²⁴ and even when there is a claims process still ongoing.²⁵ In this case, the CCAA Parties have no material assets and no operating businesses

²¹ *Ivaco Inc., Re*, [2006 CanLII 34551 \(ON CA\)](#) at para [70](#); *Grant Forest Products Inc. v. The Toronto-Dominion Bank*, [2015 ONCA 570](#) at para [99](#) (“**Grant Forest**”).

²² *Canwest Global Communications Corp. (Re)*, [2009 CanLII 70508 \(ON SC\)](#) at para [32](#) (“**Canwest**”); *Timminco Limited (Re)*, [2012 ONSC 2515](#) at para [17](#) (“**Timminco**”).

²³ *Grant Forest* at paras [111-112](#); *Re Puratone et al*, [2013 MBOB 171](#) at paras [15](#) and [27](#) (“**Puratone**”).

²⁴ See *Puratone*.

²⁵ *Eighth Report of FTI Consulting Canada Inc.*, as Monitor of 15315441 Canada Inc at paras 35 and 38; [Order in the CCAA Proceedings of 15315441 Canada Inc.](#) at para 5.

remaining.²⁶ There are only minor activities left for the Monitor to complete in the CCAA proceedings.²⁷

23. Due to the status of the CCAA proceedings, and because the relative prejudices, balance of convenience and merits of the Claim all indicate that the Stay should be lifted, the Agent submits that it is appropriate for this Court to lift the Stay so that the Agent may commence and pursue the Claim.

Lifting the Stay Will Not Prejudice Any Parties

24. Although the Court will consider potential prejudice to parties affected by the stay when a party proposes to lift that stay to bring a claim against directors and officers of the CCAA applicants, the consideration of such prejudice is in respect of the ongoing restructuring of the applicants.²⁸ It follows that, where there is no potential to prejudice the restructuring of the entities protected by the stay, then the key prejudice that is relevant to the ‘relative prejudice’ factor is not present.

25. The Agent’s proposed lifting of the Stay will not prejudice the CCAA Parties. Their assets have been sold and the proceeds from those sales largely distributed. There is no business left to restructure.²⁹

26. There is also no specific prejudice to Chesswood or the Individual Defendants. The

²⁶ Second Chen Affidavit at para 19.

²⁷ [Supplement to Monitor’s Eighth Report](#) at para 14.

²⁸ *Nortel Networks Corp., Re*, [57 C.B.R. \(5th\) 232](#) at para [36](#); *Canwest* at paras [45](#) and [51](#).

²⁹ Second Chen Affidavit at para 19.

Individual Defendants are no longer officers, directors or senior management figures of Chesswood.³⁰ Lifting the Stay now allows the Agent to bring the Claim only a few months prior to the scheduled expiration of the Stay on January 30, 2026, which was extended to facilitate the implementation of the Books and Records Protocol.³¹ In fact, lifting the Stay now to allow the Agent to bring the Claim benefits Chesswood and the Individual Defendants by allowing them to contact the Monitor to ensure that any books and records that they may require to defend the Claim are retained and not destroyed. If the Stay is not lifted now, then such records may be destroyed before the Stay is scheduled to expire in January.³² There is no prejudice to directors and officers in facing a claim approximately two months sooner than the Agent would otherwise be permitted to proceed with the Claim without lifting the Stay due to the termination of the CCAA proceedings and expiry of the Stay.³³

The Balance of Convenience Favours Lifting the Stay

27. Where the CCAA proceedings are almost over and will not be put at risk by the proposed claim to be brought, then the balance of convenience favours the party seeking to lift the stay.³⁴

28. The underlying purpose of the stay is to allow the CCAA to accomplish its legislative goal, which is the successful restructuring of Canadian businesses.³⁵ That purpose no longer exists in these CCAA proceedings, as there is no restructuring to be put at risk by the Agent being permitted

³⁰ Second Chen Affidavit at para 3.

³¹ [Supplement to Monitor's Eighth Report](#) at para 5.

³² Second Chen Affidavit at para 22.

³³ [Puratone](#) at para 38.

³⁴ [Puratone](#) at paras 27-29.

³⁵ [Canwest](#) at para 28.

to commence and pursue the Claim.³⁶ The CCAA proceedings have almost run their course. The Monitor brought a motion in early September seeking, among other things, the termination of the CCAA proceedings (and the Stay).³⁷ However, that relief was deferred as the Monitor determined that, before such termination should proceed, it was appropriate to implement the Books and Records Protocol for the benefit of parties involved in potential litigation with respect to the CCAA Parties.³⁸

29. Lifting the Stay now for the Agent to proceed with the Claim allows the Agent, Chesswood and the Individual Defendants the opportunity to participate in the Books and Records Protocol so that any books and records of the Chesswood Group relevant to any litigation claims can be preserved before the termination of the CCAA proceedings and procedural fairness can be maintained.³⁹

The Claim Discloses a Reasonable Cause of Action

30. When considering the third factor, the merits of the proposed action, all that needs to be demonstrated is that there is a “reasonable cause of action” or a “tenable case”.⁴⁰ This factor is used primarily to prevent a stay from being lifted where the claim has little chance of success.⁴¹ The court may scrutinize the proposed claim to determine whether it is meritorious.⁴²

³⁶ Second Chen Affidavit at para 19.

³⁷ [Supplement to Monitor’s Eighth Report](#) at para 3.

³⁸ [Supplement to Monitor’s Eighth Report](#) at para 5.

³⁹ Second Chen Affidavit at para 22.

⁴⁰ [Puratone](#) at para 18.

⁴¹ [Timminco](#) at para 17.

⁴² [Puratone](#) at para 20.

31. The Agent submits that the Claim discloses a reasonable cause of action. The financial irregularities that led to the Lending Limit being exceeded and the Borrowing Base Deficiency amounted to clear breaches of the Pre-Filing Credit Agreement by Chesswood, which have been acknowledged by Chesswood.⁴³ The errors that led to these events occurred under the supervision of the Individual Defendants and/or required the approval of the Individual Defendants. Therefore, they knew or ought to have known about these errors.⁴⁴

32. The Claim sets out that the Individual Defendants are liable to the Pre-Filing Lenders because they negligently oversaw the calculation of the Borrowing Base, made or contributed to the making of negligent misrepresentations in respect of the Borrowing Base and engaged in conduct oppressive to the Pre-Filing Lenders' reasonable expectations that the Borrowing Base would be represented truthfully and correctly.⁴⁵

33. Directors and officers may be exposed to personal liability for their own tortious actions,⁴⁶ and for oppressive conduct that is properly attributable to them and has breached the reasonable expectations of an oppression claimant.⁴⁷ The Claim alleges such independently tortious actions and oppressive conduct and thus falls within the principles of tort and oppression law under which directors and officers are exposed to personal liability.

⁴³ First Chen Affidavit at para 13.

⁴⁴ Second Chen Affidavit at Exhibit "C", paras 75-83.

⁴⁵ Second Chen Affidavit at Exhibit "C", paras 75, 84 and 95.

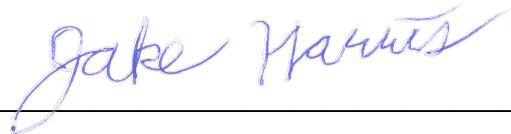
⁴⁶ *NBD Bank, Canada v. Dofasco Inc., et al.*, [1999] O.J. No. 4749 (ONCA) at paras 42 and 60.

⁴⁷ *Wilson v. Alharayeri*, 2017 SCC 39 at paras 24 and 31.

PART V - CONCLUSION

34. For the reasons set out above, the Agent respectfully recommends that this Court grant the Lift Stay Order in the form of the draft Lift Stay Order attached to the Agent's Motion Record at Tab 3.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 13th day of November, 2025.

A handwritten signature in blue ink, reading "Jake Harris", is written over a horizontal line.

Blake, Cassels & Graydon LLP
Lawyers for the Applicant

SCHEDULE "A"

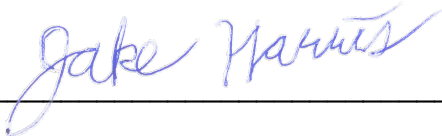
LIST OF AUTHORITIES

<u>Case</u>	
1.	<i>Canwest Global Communications Corp. (Re)</i> , 2009 CanLII 70508 (ON SC)
2.	<i>Grant Forest Products Inc. v. The Toronto-Dominion Bank</i> , 2015 ONCA 570
3.	<i>Ivaco Inc., Re</i> , 2006 CanLII 34551 (ON CA)
4.	<i>NBD Bank, Canada v. Dofasco Inc., et al.</i> , [1999] O.J. No. 4749
5.	<i>Nortel Networks Corp., Re</i> , 57 C.B.R. (5th) 232
6.	<i>Re Puratone et al</i> , 2013 MBQB 171
7.	<i>Timminco Limited (Re)</i> , 2012 ONSC 2515
8.	<i>Wilson v. Alharayeri</i> , 2017 SCC 39

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

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date: November 13, 2025



Jake Harris

SCHEDULE “B”

RELEVANT STATUTES

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

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

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.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding Commenced at Toronto

FACTUM

Returnable November 20, 2025

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

Milly Chow, LSO #35411D
Tel: 416-863-2594
Email: milly.chow@blakes.com

Jake Harris, LSO #85481T
Tel: 416-863-2523
Email: jake.harris@blakes.com

Lawyers for the Agent