

**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 **TARGET CANADA CO., TARGET
CANADA HEALTH CO., TARGET CANADA MOBILE GP CO.,
TARGET CANADA PHARMACY (BC) CORP., TARGET
CANADA PHARMACY (ONTARIO) CORP., TARGET CANADA
PHARMACY CORP., TARGET CANADA PHARMACY (SK)
CORP.,** and **TARGET CANADA PROPERTY LLC.**

APPLICANTS

**RESPONDING MOTION RECORD OF AMSKOR CORPORATION
(Motion to Accept Filing of the Amended Plan
and Authorize Creditors' Meeting)
(Returnable April 13, 2016)**

LERNERS LLP

130 Adelaide Street West, Suite 2400
Toronto, ON M5H 3P5

Lisa Munro (LSUC#: 36006R)
Tel: 416.601.2360
Fax: 416.601.2416
E-mail: lmunro@lernalers.ca

Domenico Magisano (LSUC #: 45725E)
Tel: 416.601.4121
Fax: 416.601.4123
E-mail: dmagisano@lernalers.ca

Lawyers for Amskor Corporation

TO: **SERVICE LIST**

CCAA Proceedings of Target Canada Co. et al, Court File No. CV-15-10832-00CL

Combined Service List
(as at March 9, 2016)

<u>PARTY</u>	<u>CONTACT</u>
<p>OSLER, HOSKIN & HARCOURT LLP Barristers & Solicitors Box 50, 1 First Canadian Place Toronto, ON M5X 1B8</p> <p>Canadian Counsel to the Applicants</p>	<p>Tracy Sandler Tel: 416.862.5890 Email: tsandler@osler.com</p> <p>Jeremy Dacks Tel: 416.862.4923 Email: jdacks@osler.com</p> <p>Shawn T. Irving Tel: 416.862.4733 Email: sirving@osler.com</p> <p>Robert Carson Tel: 416.862.4235 Fax: 416.862.6666 Email: rcarson@osler.com</p> <p>Andrea Lockhart Tel: 416.862.6829 Fax: 416.862.6666 Email: alockhart@osler.com</p>
<p>DAVIES WARD PHILLIPS & VINEBERG LLP Barristers & Solicitors 155 Wellington Street West Toronto, ON M5V 3J7</p> <p>Canadian Counsel to Target Corporation</p>	<p>Jay A. Swartz Tel: 416.863.5520 Email: jswartz@dwpv.com</p> <p>Robin Schwill Tel: 416.863.5502 Email: rschwill@dwpv.com</p> <p>Dina Milivojevic Tel: 416.367.7460 Fax: 416.863.0871 Email: dmilivojevic@dwpv.com</p>
<p>FAEGRE BAKER DANIELS LLP Barristers & Solicitors 2200 Wells Fargo Center 90 S. Seventh Street Minneapolis, MN U.S.A. 55402</p> <p>U.S. Counsel to Target Corporation</p>	<p>Dennis Ryan Tel: 612.766.6810 Fax: 612.766.1600 Email: Dennis.Ryan@FaegreBD.com</p>

<p>GOODMANS LLP Barristers & Solicitors Bay Adelaide Centre 333 Bay Street, Suite 3400 Toronto, ON M5H 2S7</p> <p>Counsel to Alvarez & Marsal Canada Inc. in its capacity as Monitor</p>	<p>Jay Carfagnini Tel: 416.597.4107 Fax: 416.979.1234 Email: jcarfagnini@goodmans.ca</p> <p>Alan Mark Tel: 416.597.4264 Fax: 416.979.1234 Email: amark@goodmans.ca</p> <p>Gale Rubenstein Tel: 416.597.4148 Fax: 416.979.1234 Email: grubenstein@goodmans.ca</p> <p>Melaney Wagner Tel: 416.597.4258 Fax: 416.979.1234 Email: mwagner@goodmans.ca</p> <p>Jesse Mighton Tel: 416.597.5148 Fax: 416.979.1234 Email: jmighton@goodmans.ca</p>
<p>ALVAREZ & MARSAL CANADA INC. Royal Bank Plaza, South Tower 200 Bay Street, Suite 2900 P.O. Box 22 Toronto, ON M5J 2J1</p> <p>Monitor</p>	<p>Doug McIntosh Tel: 416.847.5150 Fax: 416.572.2201 Email: dmcintosh@alvarezandmarsal.com</p> <p>Al Hutchens Tel: 416.847.5159 Fax: 416.847.5201 Email: ahutchens@alvarezandmarsal.com</p> <p>Greg A. Karpel Tel: 416.847.5170 Fax: 416.847.5201 Email: gkarpel@alvarezandmarsal.com</p> <p>Steven Glustein Tel: 416.847.5173 Fax: 416.847.5201 Email: sglustein@alvarezandmarsal.com</p> <p>Bill Kosturos Tel: 1.415.490.2309 Fax: 1.415.837.1684 Email: bkosturos@alvarezandmarsal.com</p> <p>Matthew Henry Tel: 1.310.975.2684 Fax: 1.310.975.2601 Email: mhenry@alvarezandmarsal.com</p>

<p>KOSKIE MINSKY LLP Barristers & Solicitors 20 Queen Street West Suite 900, P.O. Box 52 Toronto ON M5H 3R3</p> <p>Employee Representative Counsel</p>	<p>Susan Philpott Tel: 416.595.2104 Fax: 416.977.3316 Email: sphilpott@kmlaw.ca</p> <p>Simon Archer Tel: 416.595.2267 Fax: 416.977.3316 Email: sarcher@kmlaw.ca</p> <p>Clio Godkewitsch Tel: 416.595.2120 Fax: 416.977.3316 Email: cgodkewitsch@kmlaw.ca</p> <p>James Harnum Tel: 416.542.6285 Fax: 416.977.3316 Email: jharnum@kmlaw.ca</p>
<p>CHAITONS LLP Barristers & Solicitors 5000 Yonge Street 10th Floor Toronto ON M2N 7E9</p> <p>Counsel to the Directors and Officers of the Applicants</p>	<p>Harvey Chaiton Tel: 416.218.1129 Fax: 416.222.8402 Email: harvey@chaitons.com</p>
<p>LAX O’SULLIVAN SCOTT LISUS LLP Barristers & Solicitors Suite 2750, 145 King Street West Toronto, ON M5H 1J8</p> <p>Counsel to Hon. John D. Ground in his capacity as Trustee of the Employee Trust</p>	<p>Terrence O’Sullivan Tel: 416.598.3556 Fax: 416.598.3730 Email: tosullivan@counsel-toronto.com</p> <p>Lauren Epstein lepstein@counsel-toronto.com</p>
<p>DAOUST VUKOVICH LLP Barristers & Solicitors 20 Queen Street West Suite 3000 Toronto, ON M5H 3R3</p> <p>Counsel to Fishman Holdings North America Inc.</p>	<p>Wolfgang Kaufmann Tel: 416.597.3952 Fax: 416.597.8897 Email: wolfgang@dv-law.com</p> <p>Gasper Galati Tel: 416.598.7050 Fax: 416.597.8897 Email: ggalati@dv-law.com</p> <p>Kenneth Pimentel Tel: 416.597.9306 Fax: 416.597.8897 Email: kpimentel@dv-law.com</p>

<p>DAOUST VUKOVICH LLP Barristers & Solicitors 20 Queen Street West Suite 3000 Toronto, ON M5H 3R3</p> <p>Counsel to Montez Corporation</p>	<p>Wolfgang Kaufmann Tel: 416.597.3952 Fax: 416.597.8897 Email: wolfgang@dv-law.com</p> <p>Gasper Galati Tel: 416.598.7050 Fax: 416.597.8897 Email: ggalati@dv-law.com</p> <p>Kenneth Pimentel Tel: 416.597.9306 Fax: 416.597.8897 Email: kpimentel@dv-law.com</p>
<p>DAOUST VUKOVICH LLP Barristers & Solicitors 20 Queen Street West Suite 3000 Toronto, ON M5H 3R3</p> <p>Counsel to Westcliffe Management Ltd.</p>	<p>Wolfgang Kaufmann Tel: 416.597.3952 Fax: 416.597.8897 Email: wolfgang@dv-law.com</p> <p>Gasper Galati Tel: 416.598.7050 Fax: 416.597.8897 Email: ggalati@dv-law.com</p> <p>Kenneth Pimentel Tel: 416.597.9306 Fax: 416.597.8897 Email: kpimentel@dv-law.com</p>
<p>DAOUST VUKOVICH LLP Barristers & Solicitors 20 Queen Street West Suite 3000 Toronto, ON M5H 3R3</p> <p>Counsel to Valiant Rental Inc.</p>	<p>Wolfgang Kaufmann Tel: 416.597.3952 Fax: 416.597.8897 Email: wolfgang@dv-law.com</p> <p>Gasper Galati Tel: 416.598.7050 Fax: 416.597.8897 Email: ggalati@dv-law.com</p>
<p>DAOUST VUKOVICH LLP Barristers & Solicitors 20 Queen Street West Suite 3000 Toronto, ON M5H 3R3</p> <p>Counsel to Bridlewood Mall Management Inc.</p>	<p>Wolfgang Kaufmann Tel: 416.597.3952 Fax: 416.597.8897 Email: wolfgang@dv-law.com</p> <p>Gasper Galati Tel: 416.598.7050 Fax: 416.597.8897 Email: ggalati@dv-law.com</p>

<p>PLAZA RETAIL REIT 145 King Street West Suite 1710 Toronto, ON M5H 1J8</p>	<p>Kevin Salsberg Tel: 416.361.1520 Fax: 416.815.7760 Email: kevin.salsberg@plaza.ca</p> <p>Jamie Petrie Tel: 416.361.5892 Fax: 416.815.7760 Email: Jamie.petrie@plaza.ca</p> <p>Michael Zakuta Tel: 416.361.5892 Fax: 416.815.7760 Email: michael.zakuta@plaza.ca</p>
<p>BENNETT JONES LLP Barristers & Solicitors One First Canadian Place Suite 3400 Toronto, ON M5X 1A4</p> <p>Counsel to RioCan Management Inc.</p>	<p>S. Richard Orzy Tel: 416.777.5737 Fax: 416.863.1716 Email: orzyr@bennettjones.com</p> <p>Sean H. Zweig Tel: 416.777.6254 Fax: 416.863.1716 Email: zweigs@bennettjones.com</p> <p>Richard Swan Tel: 416.777.7479 Fax: 416.863.1716 Email: swanr@bennettjones.com</p>
<p>LAX O'SULLIVAN LISUS GOTTLIEB LLP Barristers & Solicitors 145 King Street West Suite 2750 Toronto, ON M5H 1J8</p> <p>Counsel to Kingsett Capital Inc.</p>	<p>Matthew P. Gottlieb Tel: 416.644.5353 Fax: 416.598.3730 Email: mgottlieb@counsel-toronto.com</p> <p>Andrew Winton Tel: 416.644.5342 Fax: 416.598.3730 Email: awinton@counsel-toronto.com</p> <p>Laura M. Wagner Tel: 416.645.5076 Fax: 416.598.3730 Email: lwagner@counsel-toronto.com</p>
<p>LAWSON LUNDELL LLP Barristers & Solicitors Suite 1600 Cathedral Place 925 West Georgia Street Vancouver, BC V6C 3L2</p> <p>Counsel to APL Co. Pte Ltd.</p>	<p>Heather M.B. Ferris Tel: 1.604.631.9145 Fax: 1.604.694.2957 Email: hfferris@lawsonlundell.com</p> <p>Kimberley A. Robertson Tel: 1.604.631.9142 Fax: 1.604.669.1620 Email: krobertson@lawsonlundell.com</p>

<p>LAWSON LUNDELL LLP Barristers & Solicitors Suite 1600 Cathedral Place 925 West Georgia Street Vancouver, BC V6C 3L2</p> <p>Counsel to Shape Properties Ltd.</p>	<p>Heather M.B. Ferris Tel: 1.604.631.9145 Fax: 1.604.694.2957 Email: hferris@lawsonlundell.com</p>
<p>DENTONS CANADA LLP Barristers & Solicitors 77 King Street West, Suite 400 Toronto-Dominion Centre Toronto, ON M5K 0A1</p> <p>Counsel to Carlton Cards Limited and Papyrus- Recycled Greetings Canada Ltd.</p>	<p>Kenneth Kraft Tel: 416.863.4374 Fax: 416.863.4592 Email: kenneth.kraft@dentons.com</p> <p>John Salmas Tel: 416.863.4737 Fax: 416.863.4592 Email: john.salmas@dentons.com</p>
<p>DENTONS CANADA LLP Barristers & Solicitors 850 - 2nd Street SW 15th Floor, Bankers Court Calgary, AB T2P 0R8</p> <p>Counsel to Carlton Cards Limited and Papyrus- Recycled Greetings Canada Ltd.</p>	<p>Robert Kennedy Tel: 1.403.268.7161 Fax: 1.403.268.3100 Email: robert.kennedy@dentons.com</p>

<p>DENTONS CANADA LLP Barristers & Solicitors 99 Bank Street, Suite 1420 Ottawa, ON K1P 1H4</p> <p>Counsel to Mead Johnson Nutrition Canada Co.</p>	<p>David Elliott Tel: 1.613.783.9638 Email: david.elliott@dentons.com</p> <p>Fraser Mackinnon Blair Tel: 1.613.783.9647 Email: fraser.mackinnon.blair@dentons.com</p> <p>Philip Rimer Tel: 1.613.783.9634 Email: Philip.rimer@dentons.com</p>
<p>DENTONS CANADA LLP Barristers & Solicitors 1 Place Ville Marie 39th Floor Montréal, QC H3B 4M7</p> <p>Counsel to Milliken Sales, Inc.</p>	<p>Ari Y. Sorek Tel: 1.514.878.8883 Email: ari.sorek@dentons.com</p>
<p>OWEN BIRD LAW CORPORATION Barristers & Solicitors Bentall 3, Suite 2900, 595 Burrard Street PO Box 49130 Vancouver, BC V7X 1J5</p> <p>Counsel to Glentel Inc.</p>	<p>Jonathan L. Williams Tel: 1.604.688.0401 Fax: 1.604.688.2827 Email: jwilliams@owenbird.com</p>
<p>BORDEN LADNER GERVAIS LLP Barristers & Solicitors 1200 Waterfront Centre, 200 Burrard Street P.O. Box 48600 Vancouver, BC V7X 1T2</p> <p>Counsel to Damco Canada Inc.</p>	<p>Kendall E. Andersen Tel: 1.604.640.4078 Fax: 1.604.622.5936 Email: kandersen@blg.com</p>
<p>DAMCO CANADA INC.</p>	<p>Dennis O'Brien Email: dennis.a.obrien@maersk.com</p> <p>Jan K. Andersen Email: jan.k.andersen@damco.com</p>
<p>DAMCO DISTRIBUTION CANADA INC.</p>	<p>Dennis O'Brien Email: dennis.a.obrien@maersk.com</p> <p>Colin Green Email: colin.green@damco.com</p> <p>Kellie Kopeck Email: kellie.kopeck@damco.com</p>
<p>LONDON DRUGS LIMITED 12831 Horseshoe Way Richmond, BC V7A 4X5</p>	<p>Christine MacLean General Counsel Tel: 1.604.272.7674 Email: cmaclean@londondrugs.com</p>

<p>THORNTON GROUT FINNIGAN LLP Barristers & Solicitors 100 Wellington Street West Suite 3200 Toronto, ON M5K 1K7</p> <p>Counsel to Oxford Properties Group Inc.</p>	<p>D.J. Miller Tel: 416.304.0559 Fax: 416.304.1313 Email: djmiller@tgf.ca</p>
<p>BRENNAN, RECUPERO, CASCIONE, SCUNGIO & MCALLISTER, LLP Barristers & Solicitors 362 Broadway Providence, RI U.S.A. 02909</p> <p>Counsel to Expeditors International of Washington, Inc. and its subsidiaries and affiliates, including Expeditors Canada, Inc.</p>	<p>Thomas S. Hemmendinger Tel: 1.401.453.2300 Ext. 106 Fax: 1.401.453.2345 Email: themmendinger@brcs.com</p>
<p>DENTONS CANADA LLP Barristers & Solicitors 77 King Street West, Suite 400 Toronto-Dominion Centre Toronto, ON M5K 0A1</p> <p>Counsel to Canada Mortgage and Housing Corporation</p>	<p>Renée Brosseau Tel: 416.863.4650 Fax: 416.863.4592 Email: renee.brosseau@dentons.com</p>
<p>TORYS LLP Barristers & Solicitors 79 Wellington St. West, 30th Floor Box 270, TD Tower South Toronto, ON M5K 1N2</p> <p>Counsel to The Cadillac Fairview Corporation Limited and its affiliates</p>	<p>David Bish Tel: 416.865.7353 Fax: 416.865.7380 Email: dbish@torys.com</p> <p>Adam Slavens Tel: 416.865.7333 Fax: 416.865.7380 Email: aslavens@torys.com</p> <p>Lily Coodin Tel: 416.865.7541 Fax: 416.865.7380 Email: lcoodin@torys.com</p>
<p>TORYS LLP Barristers & Solicitors 79 Wellington St. West, 30th Floor Box 270, TD Tower South Toronto, ON M5K 1N2</p> <p>Counsel to First Capital Realty Inc.</p>	<p>Scott A. Bomhof Tel: 416.865.7370 Fax: 416.865.7380 Email: sbomhof@torys.com</p> <p>Jeremy Opolsky Tel: 416.865.8117 Fax: 416.865.7380 Email: jopolsky@torys.com</p>

<p>THE CIT GROUP/COMMERCIAL SERVICES, INC. 201 South Tryon Street P.O. Box 30317, 28231-1307 Charlotte, North Carolina U.S.A. 28202</p>	<p>Robert W. Franklin Director and Assistant Chief Counsel, Law Department Tel: 1.704.339.2975 Fax: 1.704.339.2894 Email: robert.franklin@cit.com</p>
<p>MILLER THOMSON LLP Barristers & Solicitors Scotia Plaza 40 King Street West, Suite 5800 P.O. Box 1011 Toronto, ON M5H 3S1</p> <p>Counsel to Hamilton Beach Brands Canada, Inc.</p>	<p>Jeffrey C. Carhart Tel: 416.595.8615 Fax: 416.595.8695 Email: jcarhart@millerthomson.com</p> <p>Margaret R. Sims Tel: 416.595.8577 Fax: 416.595.8695 Email: msims@millerthomson.com</p>
<p>MILLER THOMSON LLP Barristers & Solicitors Scotia Plaza 40 King Street West, Suite 5800 P.O. Box 1011 Toronto, ON M5H 3S1</p> <p>Counsel to Spectrum Brands Canada, Inc. and Spectrum Brands, Inc.</p>	<p>Jeffrey C. Carhart Tel: 416.595.8615 Fax: 416.595.8695 Email: jcarhart@millerthomson.com</p> <p>Margaret R. Sims Tel: 416.595.8577 Fax: 416.595.8695 Email: msims@millerthomson.com</p>
<p>MILLER THOMSON LLP Barristers & Solicitors Scotia Plaza 40 King Street West, Suite 5800 P.O. Box 1011 Toronto, ON M5H 3S1</p> <p>Counsel to GL Creations</p>	<p>Jeffrey C. Carhart Tel: 416.595.8615 Fax: 416.595.8695 Email: jcarhart@millerthomson.com</p> <p>Margaret R. Sims Tel: 416.595.8577 Fax: 416.595.8695 Email: msims@millerthomson.com</p>
<p>MILLER THOMSON LLP Barristers & Solicitors Scotia Plaza 40 King Street West, Suite 5800 P.O. Box 1011 Toronto, ON M5H 3S1</p> <p>Counsel to Travelway Group Int'l Inc.</p>	<p>Jeffrey C. Carhart Tel: 416.595.8615 Fax: 416.595.8695 Email: jcarhart@millerthomson.com</p> <p>Margaret R. Sims Tel: 416.595.8577 Fax: 416.595.8695 Email: msims@millerthomson.com</p>
<p>MILLER THOMSON LLP Barristers & Solicitors Scotia Plaza 40 King Street West, Suite 5800 P.O. Box 1011 Toronto, ON M5H 3S1</p> <p>Counsel to Skechers USA Canada, Inc.</p>	<p>Jeffrey C. Carhart Tel: 416.595.8615 Fax: 416.595.8695 Email: jcarhart@millerthomson.com</p>

<p>MILLER THOMSON LLP Barristers & Solicitors Scotia Plaza 40 King Street West, Suite 5800 P.O. Box 1011 Toronto, ON M5H 3S1</p> <p>Counsel to Ginsey Industries, Inc.</p>	<p>Jeffrey C. Carhart Tel: 416.595.8615 Fax: 416.595.8695 Email: jcarhart@millerthomson.com</p>
<p>MILLER THOMSON LLP Barristers & Solicitors Scotia Plaza 40 King Street West, Suite 5800 P.O. Box 1011 Toronto, ON M5H 3S1</p> <p>Counsel to Indo Count Industries Ltd.</p>	<p>Jeffrey C. Carhart Tel: 416.595.8615 Fax: 416.595.8695 Email: jcarhart@millerthomson.com</p>
<p>MILLER THOMSON LLP Barristers & Solicitors Scotia Plaza 40 King Street West, Suite 5800 P.O. Box 1011 Toronto, ON M5H 3S1</p> <p>Counsel to Asurion Canada, Inc.</p>	<p>Jeffrey C. Carhart Tel: 416.595.8615 Fax: 416.595.8695 Email: jcarhart@millerthomson.com</p>
<p>MILLER THOMSON LLP Barristers & Solicitors Scotia Plaza 40 King Street West, Suite 5800 P.O. Box 1011 Toronto, ON M5H 3S1</p> <p>Counsel to Thomas, Large & Singer Inc.</p>	<p>Jeffrey C. Carhart Tel: 416.595.8615 Fax: 416.595.8695 Email: jcarhart@millerthomson.com</p>
<p>UNITED CLEANING SERVICES LIMITED 46 Hedgedale Road Brampton, ON L6T 5L2</p>	<p>Randhir S. Garcha Tel: 905.595.4830 Ext. 272 Fax: 905.595.4831 Email: randy.garcha@ucsl.com</p>
<p>FOGLER, RUBINOFF LLP Barristers & Solicitors Suite 3000, P.O. Box 95 Toronto-Dominion Centre 77 King Street West Toronto, ON M5K 1G8</p> <p>Counsel to Doral Holdings Limited and 430635 Ontario Inc.</p>	<p>Vern W. DaRe Tel: 416.941.8842 Fax: 416.941.8852 Email: vdare@foglers.com</p>

<p>LAVERY, DE BILLY, LLP Barristers & Solicitors 1, Place Ville Marie, Suite 4000 Montréal, QC H3B 4M4</p> <p>Counsel to Dorel Industries Inc.</p>	<p>Jonathan Warin Tel: 1.514.878.5616 Fax: 1.514.871.8977 Email: jwarin@lavery.ca</p>
<p>COMINAR REIT Complexe Jules-Dallaire – T3 2820 Laurier Blvd, Suite 850 Québec City, QC G1V 0C1</p>	<p>Manon Deslauriers Tel: 1.418.681.6300 ext 2321 Fax: 1.418.681.2946 Email: manon.deslauriers@cominar.com</p> <p>Michel Paquet Email: michel.paquet@cominar.com</p> <p>Sylvain Cossette Email: sylvain.cossette@cominar.com</p> <p>Jean Leclerc Email: jean.leclerc@cominar.com</p> <p>Gilles Hamel Email: gilles.hamel@cominar.com</p> <p>Guillaume Rouleau Email: Guillaume.rouleau@cominar.com</p>
<p>CANADIAN PACIFIC RAILWAY 1100 Avenue des Canadiens-de-Montréal Suite G3 Montréal, QC H3B 2S2</p>	<p>Ken Legrand Tel: 1.514.395.6436 Email: Ken_legrand@cpr.ca</p>
<p>CANADIAN PACIFIC RAILWAY Building #1, 7550 Ogdendale Road South Calgary, AB T2C 4X9</p>	<p>Cassandra Quach Tel: 1.403.319.7016 Email: Cassandra_Quach@cpr.ca</p>
<p>WEIRFOULDS LLP Barristers & Solicitors 66 Wellington Street West Suite 4100, P.O. Box 35 Toronto-Dominion Centre Toronto, ON M5K 1B7</p> <p>Counsel to PCL Constructors Canada Inc.</p>	<p>Glenn Ackerley Tel: 416.947.5008 Fax: 416.365.1876 Email: gackerley@weirfoulds.com</p> <p>Scott McGrath Tel: 416.947.5038 Fax: 416.365.1876 Email: smcgrath@weirfoulds.com</p> <p>Graham Brown Tel: 416.947.5073 Fax: 416.365.1876 Email: gbrown@weirfoulds.com</p>

<p>WEIRFOULDS LLP Barristers & Solicitors 66 Wellington Street West Suite 4100, P.O. Box 35 Toronto-Dominion Centre Toronto, ON M5K 1B7</p> <p>Counsel to PCL Construction Management Inc.</p>	<p>Glenn Ackerley Tel: 416.947.5008 Fax: 416.365.1876 Email: gackerley@weirfoulds.com</p> <p>Scott McGrath Tel: 416.947.5038 Fax: 416.365.1876 Email: smcgrath@weirfoulds.com</p> <p>Graham Brown Tel: 416.947.5073 Fax: 416.365.1876 Email: gbrown@weirfoulds.com</p>
<p>WEIRFOULDS LLP Barristers & Solicitors 66 Wellington Street West Suite 4100, P.O. Box 35 Toronto-Dominion Centre Toronto, ON M5K 1B7</p> <p>Counsel to Ace Bayou Corporation</p>	<p>H. Scott Fairley Tel: 416.947.5015 Fax: 416.365.1876 Email: sfairley@weirfoulds.com</p> <p>Nadia Chiesa Tel: 416.947.5084 Fax: 416.365.1876 Email: nchiesa@weirfoulds.com</p>
<p>MINDEN GROSS LLP Barristers & Solicitors 145 King Street West Suite 2200 Toronto, ON M5H 4G2</p> <p>Counsel to Menkes Property Management Services Ltd., as agent for HOOPP Realty Inc.</p>	<p>David T. Ullmann Tel: 416.369.4148 Fax: 416.864.9223 Email: dullmann@mindengross.com</p>
<p>MINDEN GROSS LLP Barristers & Solicitors 145 King Street West Suite 2200 Toronto, ON M5H 4G2</p> <p>Counsel to Primaris Reit</p>	<p>David T. Ullmann Tel: 416.369.4148 Fax: 416.864.9223 Email: dullmann@mindengross.com</p> <p>Catherine Francis Tel: 416.369.4137 Fax: 416.864.9223 Email: cfrancis@mindengross.com</p>

<p>McLEAN & KERR LLP Barristers & Solicitors 130 Adelaide Street West Suite 2800 Toronto, ON M5H 3P5</p> <p>Counsel to 20 VIC Management Inc. (on behalf of various landlords), Morguard Investments Limited (on behalf of various landlords), Calloway Real Estate Investment Trust (on behalf of Calloway REIT (Hopedale) Inc., Calloway REIT (Laurentian Inc.), Crombie REIT, Triovest Realty Advisors Inc. (on behalf of various landlords), Brad-Lea Meadows Limited and Blackwood Partners Management Corporation (on behalf of Surrey CC Properties Inc.)</p>	<p>Walter R. Stevenson Tel: 416.369.6602 Fax: 416.366.8571 Email: wstevenson@mcleankerr.com</p> <p>Linda Galessiere Tel: 416.369.6609 Fax: 416.366.8571 Email: lgalessiere@mcleankerr.com</p> <p>Gus Camelino Tel: 416.369.6621 Fax: 416.366.8571 Email: gcamelino@mcleankerr.com</p>
<p>McLEAN & KERR LLP Barristers & Solicitors 130 Adelaide Street West Suite 2800 Toronto, ON M5H 3P5</p> <p>Counsel to Imagine! Print Solutions Inc.</p>	<p>S. Michael Citak Tel: 416.369.6619 Fax: 416.366.8571 Email: mcitak@mcleankerr.com</p>
<p>BORDEN LADNER GERVAIS LLP S.E.N.C.R.L., S.R.L. Barristers & Solicitors 1000 Rue de la Gauchetière Ouest Suite / Bureau 900 Montréal, QC H3B 5H4</p> <p>Counsel to Bell Canada</p>	<p>François Gagnon Tel: 1.514.954.2553 Fax: 1.514.954.1905 Email: fgagnon@blg.com</p>
<p>BORDEN LADNER GERVAIS LLP S.E.N.C.R.L., S.R.L. Barristers & Solicitors 1000 Rue de la Gauchetière Ouest Suite / Bureau 900 Montréal, QC H3B 5H4</p> <p>BORDEN LADNER GERVAIS LLP Barristers & Solicitors Scotia Plaza 40 King Street West Toronto, ON M5H 3Y4</p> <p>Counsel to Hasbro Canada Corporation</p>	<p>Marc Duchesne Tel: 1.514.954.3102 Fax: 1.514.954.1905 Email: mduchesne@blg.com</p> <p>Kyle Plunkett Tel: 416.367.6314 Fax: 416.361.2557 Email: kplunkette@blg.com</p>

<p>BORDEN LADNER GERVAIS LLP Barristers & Solicitors Scotia Plaza 40 King Street West Toronto, ON M5H 3Y4</p> <p>Counsel to Razor USA LLC</p>	<p>Aliza Premji Tel: 416.367.6704 Fax: F 416.682.2845 Email: apremji@blg.com</p>
<p>BORDEN LADNER GERVAIS LLP Barristers & Solicitors Scotia Plaza 40 King Street West Toronto, ON M5H 3Y4</p> <p>Counsel to Bell Canada</p>	<p>Andrew Hodhod Tel: 416.367.6290 Fax: 416.361.2799 Email: ahodhod@blg.com</p>
<p>8239959 CANADA INC. c/o SHINDICO REALTY INC. 200-1355 Taylor Ave. Winnipeg, MB R3M 3Y9</p>	<p>Robert W. Shindleman Tel: 1.202.474.2000 Fax: 1.202.284.7155 Email: rshindleman@shindico.com</p> <p>Justin G. Zarnowski Tel: 1.202.928.8212 Fax: 1.202.284.7155 Email: jzarnowski@shindico.com</p>
<p>FILLMORE RILEY LLP Barristers & Solicitors 1700-360 Main Street Winnipeg, MB R3C 3Z3</p> <p>Counsel to TransX Ltd.</p>	<p>David J. Kroft Tel: 1.204.957.8346 Fax: 1.204.954.0346 Email: djkroft@fillmoreriley.com</p>
<p>TRANSX LTD. 2595 Inkster Boulevard Winnipeg, MB R3C 2E6</p>	<p>Pankaj Sharma Tel: 1.204.631.4135 Fax: 1.204.631.4109 Email: vpfinance@transx.com</p>
<p>CASSELS BROCK & BLACKWELL LLP Barristers & Solicitors 2100 Scotia Plaza 40 King Street West Toronto, ON M5H 3C2</p> <p>Counsel to Warner Brothers Distributing Inc.</p>	<p>Larry Ellis Tel: 416.869.5406 Fax: 416.640.3004 Email: lellis@casselsbrock.com</p> <p>Erin Craddock Tel: 416.860.6480 Fax: 416.644.9324 Email: ecraddock@casselsbrock.com</p>

<p>CASSELS BROCK & BLACKWELL LLP Barristers & Solicitors 2100 Scotia Plaza 40 King Street West Toronto, ON M5H 3C2</p> <p>Counsel to Solutions 2 GO Inc.</p>	<p>Larry Ellis Tel: 416.869.5406 Fax: 416.640.3004 Email: lellis@casselsbrock.com</p> <p>Erin Craddock Tel: 416.860.6480 Fax: 416.644.9324 Email: ecraddock@casselsbrock.com</p>
<p>CASSELS BROCK & BLACKWELL LLP Barristers & Solicitors 2100 Scotia Plaza 40 King Street West Toronto, ON M5H 3C2</p> <p>Counsel to Merchant Retail Solutions ULC</p>	<p>R. Shayne Kukulowicz Tel: 416.860.6463 Fax: 416.640.3176 Email: skukulowicz@casselsbrock.com</p> <p>Jane O. Dietrich Tel: 416.860.5223 Fax: 416.640.3144 Email: jdietrich@casselsbrock.com</p>
<p>CASSELS BROCK & BLACKWELL LLP Barristers & Solicitors 2100 Scotia Plaza 40 King Street West Toronto, ON M5H 3C2</p> <p>Counsel to Gordon Brothers Canada ULC</p>	<p>R. Shayne Kukulowicz Tel: 416.860.6463 Fax: 416.640.3176 Email: skukulowicz@casselsbrock.com</p> <p>Jane O. Dietrich Tel: 416.860.5223 Fax: 416.640.3144 Email: jdietrich@casselsbrock.com</p>
<p>CASSELS BROCK & BLACKWELL LLP Barristers & Solicitors 2100 Scotia Plaza 40 King Street West Toronto, ON M5H 3C2</p> <p>Counsel to Roots Canada Ltd.</p>	<p>Joseph Bellissimo Tel: 416.860.6572 Fax: 416.642.7150 Email: jbellissimo@casselsbrock.com</p> <p>Erin Craddock Tel: 416.860.6480 Fax: 416.644.9324 Email: ecraddock@casselsbrock.com</p> <p>Leonard Loewith Tel: 416.860.6471 Fax: 416.640.3092 Email: lloewith@casselsbrock.com</p>

<p>CASSELS BROCK & BLACKWELL LLP Barristers & Solicitors 2100 Scotia Plaza 40 King Street West Toronto, ON M5H 3C2</p> <p>Counsel to Conair Consumer Products ULC</p>	<p>Joseph Bellissimo Tel: 416.860.6572 Fax: 416.642.7150 Email: jbellissimo@casselsbrock.com</p> <p>Natalie Levine Tel: 416.860.6568 Fax: 416.640.3207 Email: nlevine@casselsbrock.com</p>
<p>CASSELS BROCK & BLACKWELL LLP Barristers & Solicitors 2100 Scotia Plaza 40 King Street West Toronto, ON M5H 3C2</p> <p>Counsel to General Partner of Winners Merchants International L.P.</p>	<p>John Birch Tel: 416.860.5225 Fax: 416.640.3057 Email: jbirch@casselsbrock.com</p>
<p>STIKEMAN ELLIOTT LLP Barristers & Solicitors 5300 Commerce Court West 199 Bay Street Toronto, ON M5H 3C2</p> <p>Counsel to Eleven Points Logistics Inc.</p>	<p>Daniel S. Murdoch Tel: 416.869.5529 Fax: 416.947.0866 Email: dmurdoch@stikeman.com</p> <p>Kathryn Esaw Tel: 416.869.6820 Fax: 416.947.0866 Email: kesaw@stikeman.com</p>
<p>STIKEMAN ELLIOTT LLP Barristers & Solicitors 5300 Commerce Court West 199 Bay Street Toronto, ON M5H 3C2</p> <p>Counsel to Lowe's Companies Canada, ULC</p>	<p>Mario Paura Tel: 416.869.5938 Fax: 416.947.0866 Email: mpaura@stikeman.com</p> <p>Maria Konyukhova Tel: 416.869.5230 Fax: 416.947.0866 Email: mkonyukhova@stikeman.com</p>
<p>STIKEMAN ELLIOTT LLP Barristers & Solicitors 1155 René-Lévesque Boulevard West Suite 4000 Montréal, QC H3B 3V2</p> <p>Counsel to Carat Canada</p>	<p>Guy P. Martel Tel: 1.514.397.3163 Fax: 1.514.397.3222 Email: gmartel@stikeman.com</p> <p>Danny Duy Vu Tel: 1.514.39.6495 Fax: 1.514.397.3222 Email: ddvu@stikeman.com</p>

<p>SOLMON ROTHBART GOODMAN LLP Barristers & Solicitors 375 University Avenue, Suite 701 Toronto, ON M5G 2J5</p> <p>Counsel to ISSI Inc.</p>	<p>Melvyn L. Solmon Tel: 416.947.1093 (Ext. 333) Fax: 416.947.0079 Email: msolmon@srglegal.com</p> <p>Nancy J. Tourgis Tel: 416.947.1093 (Ext. 342) Fax: 416.947.0079 Email: ntourgis@srglegal.com</p>
<p>SPORTS INDUSTRY CREDIT ASSOCIATION 245 Victoria Avenue Suite 800 Montreal, QC H3Z 2M6</p>	<p>Brian Dabarno Tel: 1.514.931.5561 Ext: 226 Fax: 1.514.931.2896 Email: brian@sica.ca</p>
<p>FASKEN MARTINEAU DuMOULIN LLP Barristers & Solicitors 333 Bay Street, Suite 2400 Bay Adelaide Centre, Box 20 Toronto, ON M5H 2T6</p> <p>Counsel to Ivanhoe Cambridge Inc.</p>	<p>Aubrey E. Kauffman Tel: 416.868.3538 Fax: 416.364.7813 Email: akauffman@fasken.com</p>
<p>FASKEN MARTINEAU DuMOULIN LLP Barristers & Solicitors 333 Bay Street, Suite 2400 Bay Adelaide Centre, Box 20 Toronto, ON M5H 2T6</p> <p>Counsel to Sobeys Capital Incorporated</p>	<p>Stuart Brotman Tel: 416.865.5419 Fax: 416.364.7813 Email: sbrotman@fasken.com</p>
<p>FASKEN MARTINEAU DuMOULIN LLP Barristers & Solicitors The Stock Exchange Tower 800 Victoria Square Suite 3700, PO Box 242 Montréal, PQ H4Z 1E9</p> <p>Counsel to Ivanhoe Cambridge Inc.</p>	<p>Luc Morin Tel: 1.514.397.5121 Fax: 1.514.397.7600 Email: lmorin@fasken.com</p>
<p>FASKEN MARTINEAU DuMOULIN LLP Barristers & Solicitors The Stock Exchange Tower 800 Victoria Square Suite 3700, PO Box 242 Montréal, PQ H4Z 1E9</p> <p>Counsel to Canadian Pacific Railway Ltd.</p>	<p>Brandon Farber Tel: 1.514.397.5179 Fax: 1.514.397.7600 Email: bfarber@fasken.com</p>

<p>FASKEN MARTINEAU DuMOULIN LLP Barristers & Solicitors The Stock Exchange Tower 800 Victoria Square Suite 3700, PO Box 242 Montréal, PQ H4Z 1E9</p> <p>Counsel to McKesson Canada</p>	<p>Luc Bêliveau Tel: 1.514.397.4336 Fax: 1.514.397.7600 Email: lbeliveau@fasken.com</p> <p>Brandon Farber Tel: 1.514.397.5179 Fax: 1.514.397.7600 Email: bfarber@fasken.com</p>
<p>FASKEN MARTINEAU DuMOULIN LLP Barristers & Solicitors The Stock Exchange Tower 800 Victoria Square Suite 3700, PO Box 242 Montréal, PQ H4Z 1E9</p> <p>Counsel to Distribution Select, a division of Archambault Group inc., a subsidiary of Quebecor Media Inc.</p>	<p>Guillaume-Pierre Michaud Tel: 1.514.397.5264 Fax: 1.514.397.7600 Email: gmichaud@fasken.com</p>
<p>THE SCOTTS COMPANY LLC 14111 Scottslawn Road Marysville, Ohio USA 43041</p>	<p>Lewis J. Dolezal Jr. Tel: 1.937.578.1319 Fax: 1.937.644.7568 Email: lewis.dolezal@scotts.com</p>
<p>COTY CANADA 1255 Rte Transcanadienne Dorval, QC H9P 2V4</p>	<p>Robert Spensieri Tel: 1.514.421.5066 Email: robert_spensieri@cotyinc.com</p>
<p>BLANEY MCMURTRY LLP Barristers & Solicitors 2 Queen Street East Suite 1500 Toronto, ON M5C 3G5</p> <p>Counsel to Advitek Inc.</p>	<p>Lou Brzezinski Tel: 416.593.2952 Fax: 416.594.5084 Email: lbrzezinski@blaney.com</p>
<p>BLANEY MCMURTRY LLP Barristers & Solicitors 2 Queen Street East Suite 1500 Toronto, ON M5C 3G5</p> <p>Counsel to Universal Studios Canada Inc.</p>	<p>Lou Brzezinski Tel: 416.593.2952 Fax: 416.594.5084 Email: lbrzezinski@blaney.com</p> <p>Alexandra Teodorescu Tel: 416.596.4279 Fax: 416.593.5437 Email: ATeodorescu@blaney.com</p>

<p>BLANEY MCMURTRY LLP Barristers & Solicitors 2 Queen Street East Suite 1500 Toronto, ON M5C 3G5</p> <p>Counsel to Nintendo of Canada, Ltd.</p>	<p>Lou Brzezinski Tel: 416.593.2952 Fax: 416.594.5084 Email: lbrzezinski@blaney.com</p> <p>Alexandra Teodorescu Tel: 416.596.4279 Fax: 416.593.5437 Email: ATEodorescu@blaney.com</p>
<p>BLANEY MCMURTRY LLP Barristers & Solicitors 2 Queen Street East Suite 1500 Toronto, ON M5C 3G5</p> <p>Counsel to Thyssenkrupp Elevator (Canada) Limited</p>	<p>Lou Brzezinski Tel: 416.593.2952 Fax: 416.594.5084 Email: lbrzezinski@blaney.com</p> <p>Chad Kopach Tel: 416.593.2985 Fax: 416.594.5437 Email: ckopach@blaney.com</p> <p>Alexandra Teodorescu Tel: 416.596.4279 Fax: 416.593.5437 Email: ATEodorescu@blaney.com</p>
<p>BLANEY MCMURTRY LLP Barristers & Solicitors 2 Queen Street East Suite 1500 Toronto, ON M5C 3G5</p> <p>Counsel to Optrust Retail Inc.</p>	<p>John C. Wolf Tel: 416.593.1221 Fax: 416.593.5437 Email: jwolf@blaney.com</p> <p>Alexandra Teodorescu Tel: 416.596.4279 Fax: 416.593.5437 Email: ATEodorescu@blaney.com</p>
<p>BLANEY MCMURTRY LLP Barristers & Solicitors 2 Queen Street East Suite 1500 Toronto, ON M5C 3G5</p> <p>Counsel to bcIMC Realty Corporation</p>	<p>John C. Wolf Tel: 416.593.1221 Fax: 416.593.5437 Email: jwolf@blaney.com</p> <p>Alexandra Teodorescu Tel: 416.596.4279 Fax: 416.593.5437 Email: ATEodorescu@blaney.com</p>
<p>BLANEY MCMURTRY LLP Barristers & Solicitors 2 Queen Street East Suite 1500 Toronto, ON M5C 3G5</p> <p>Counsel to PCM Sheridan Inc.</p>	<p>John C. Wolf Tel: 416.593.1221 Fax: 416.593.5437 Email: jwolf@blaney.com</p> <p>Alexandra Teodorescu Tel: 416.596.4279 Fax: 416.593.5437 Email: ATEodorescu@blaney.com</p>

<p>BLANEY MCMURTRY LLP Barristers & Solicitors 2 Queen Street East Suite 1500 Toronto, ON M5C 3G5</p> <p>Counsel to Artis Tamarack Ltd.</p>	<p>John C. Wolf Tel: 416.593.1221 Fax: 416.593.5437 Email: jwolf@blaney.com</p> <p>Alexandra Teodorescu Tel: 416.596.4279 Fax: 416.593.5437 Email: ATeodorescu@blaney.com</p>
<p>BLANEY MCMURTRY LLP Barristers & Solicitors 2 Queen Street East Suite 1500 Toronto, ON M5C 3G5</p> <p>Counsel to Hazeldean Mall LP</p>	<p>John C. Wolf Tel: 416.593.1221 Fax: 416.593.5437 Email: jwolf@blaney.com</p> <p>Alexandra Teodorescu Tel: 416.596.4279 Fax: 416.593.5437 Email: ATeodorescu@blaney.com</p>
<p>BLANEY MCMURTRY LLP Barristers & Solicitors 2 Queen Street East Suite 1500 Toronto, ON M5C 3G5</p> <p>Counsel to Milton Mall LP</p>	<p>John C. Wolf Tel: 416.593.1221 Fax: 416.593.5437 Email: jwolf@blaney.com</p> <p>Alexandra Teodorescu Tel: 416.596.4279 Fax: 416.593.5437 Email: ATeodorescu@blaney.com</p>
<p>BLANEY MCMURTRY LLP Barristers & Solicitors 2 Queen Street East Suite 1500 Toronto, ON M5C 3G5</p> <p>Counsel to Penretail III Limited Partnership and Penretail Management Ltd.</p>	<p>John C. Wolf Tel: 416.593.1221 Fax: 416.593.5437 Email: jwolf@blaney.com</p> <p>Alexandra Teodorescu Tel: 416.596.4279 Fax: 416.593.5437 Email: ATeodorescu@blaney.com</p>
<p>BLANEY MCMURTRY LLP Barristers & Solicitors 2 Queen Street East Suite 1500 Toronto, ON M5C 3G5</p> <p>Counsel to Hillside Centre I LP and Hillside Centre II LP</p>	<p>John C. Wolf Tel: 416.593.1221 Fax: 416.593.5437 Email: jwolf@blaney.com</p> <p>Alexandra Teodorescu Tel: 416.596.4279 Fax: 416.593.5437 Email: ATeodorescu@blaney.com</p>

<p>BLANEY MCMURTRY LLP Barristers & Solicitors 2 Queen Street East Suite 1500 Toronto, ON M5C 3G5</p> <p>Counsel to 2725312 Canada Inc. and 2973758 Canada Inc.</p>	<p>John C. Wolf Tel: 416.593.1221 Fax: 416.593.5437 Email: jwolf@blaney.com</p> <p>Alexandra Teodorescu Tel: 416.596.4279 Fax: 416.593.5437 Email: ATEodorescu@blaney.com</p>
<p>BLANEY MCMURTRY LLP Barristers & Solicitors 2 Queen Street East Suite 1500 Toronto, ON M5C 3G5</p> <p>Counsel to Investors Group Trust Co. Ltd. as Trustee for Investors Real Property Fund</p>	<p>John C. Wolf Tel: 416.593.1221 Fax: 416.593.5437 Email: jwolf@blaney.com</p>
<p>BLANEY MCMURTRY LLP Barristers & Solicitors 2 Queen Street East Suite 1500 Toronto, ON M5C 3G5</p> <p>Counsel to 391102 B.C. Ltd.</p>	<p>John C. Wolf Tel: 416.593.1221 Fax: 416.593.5437 Email: jwolf@blaney.com</p>
<p>BLANEY MCMURTRY LLP Barristers & Solicitors 2 Queen Street East Suite 1500 Toronto, ON M5C 3G5</p> <p>Counsel to Direct Energy Marketing Limited</p>	<p>Ralph Cuervo-Lorens Tel: 416.593.2990 Fax: 416.594.2437 Email: rcuervolorens@blaney.com</p>
<p>BLANEY MCMURTRY LLP Barristers & Solicitors 2 Queen Street East Suite 1500 Toronto, ON M5C 3G5</p> <p>Counsel to RPI Consulting Group Inc.</p>	<p>Lou Brzezinski Tel: 416.593.2952 Fax: 416.594.5084 Email: lbrzezinski@blaney.com</p>
<p>BLANEY MCMURTRY LLP Barristers & Solicitors 2 Queen Street East Suite 1500 Toronto, ON M5C 3G5</p> <p>Counsel for Direct Construction Company Limited</p>	<p>Lou Brzezinski Tel: 416.593.2952 Fax: 416.594.5084 Email: lbrzezinski@blaney.com</p> <p>Alexandra Teodorescu Tel: 416.596.4279 Fax: 416.593.5437 Email: ATEodorescu@blaney.com</p>

<p>BLANEY MCMURTRY LLP Barristers & Solicitors 2 Queen Street East Suite 1500 Toronto, ON M5C 3G5</p> <p>Counsel for Pelican Creations Inc.</p>	<p>Lou Brzezinski Tel: 416.593.2952 Fax: 416.594.5084 Email: lbrzezinski@blaney.com</p> <p>Alexandra Teodorescu Tel: 416.596.4279 Fax: 416.593.5437 Email: ATEodorescu@blaney.com</p>
<p>BLANEY MCMURTRY LLP Barristers & Solicitors 2 Queen Street East Suite 1500 Toronto, ON M5C 3G5</p> <p>Counsel for Irving Consumer Products Limited</p>	<p>Lou Brzezinski Tel: 416.593.2952 Fax: 416.594.5084 Email: lbrzezinski@blaney.com</p> <p>Alexandra Teodorescu Tel: 416.596.4279 Fax: 416.593.5437 Email: ATEodorescu@blaney.com</p>
<p>BLANEY MCMURTRY LLP Barristers & Solicitors 2 Queen Street East Suite 1500 Toronto, ON M5C 3G5</p> <p>Counsel for Farmer Bros. Co.</p>	<p>Lou Brzezinski Tel: 416.593.2952 Fax: 416.594.5084 Email: lbrzezinski@blaney.com</p> <p>Alexandra Teodorescu Tel: 416.596.4279 Fax: 416.593.5437 Email: ATEodorescu@blaney.com</p>
<p>BLANEY MCMURTRY LLP Barristers & Solicitors 2 Queen Street East Suite 1500 Toronto, ON M5C 3G5</p> <p>Counsel for Transource Freightways Ltd.</p>	<p>Lou Brzezinski Tel: 416.593.2952 Fax: 416.594.5084 Email: lbrzezinski@blaney.com</p> <p>Alexandra Teodorescu Tel: 416.596.4279 Fax: 416.593.5437 Email: ATEodorescu@blaney.com</p>
<p>DE GRANDPRÉ CHAIT LLP 1000 De La Gauchetière Street Ouest Suite 2900 Montreal, QC H3B 4W5</p> <p>Counsel to Faubourg Boisbriand Shopping Centre Limited Partnership</p>	<p>Stephen M. Raicek Tel: 1.514.878.3215 Fax: 1.514.878.5715 Email: sraicek@dgcllex.com</p> <p>Matthew Maloley Tel: 1.514.878.3243 Fax: 1.514.878.5743 Email: mmaloley@dgcllex.com</p>

<p>DE GRANDPRÉ CHAIT LLP 1000 De La Gauchetière Street Ouest Suite 2900 Montreal, QC H3B 4W5</p> <p>Counsel to Sun Life Assurance Company of Canada</p>	<p>Stephen M. Raicek Tel: 1.514.878.3215 Fax: 1.514.878.5715 Email: sraicek@dgclex.com</p> <p>Matthew Maloley Tel: 1.514.878.3243 Fax: 1.514.878.5743 Email: mmaloley@dgclex.com</p>
<p>DE GRANDPRÉ CHAIT LLP 1000 De La Gauchetière Street Ouest Suite 2900 Montreal, QC H3B 4W5</p> <p>Counsel to Place Versailles Inc.</p>	<p>Stephen M. Raicek Tel: 1.514.878.3215 Fax: 1.514.878.5715 Email: sraicek@dgclex.com</p> <p>Ronald Stein Tel: 1.514.878.3254 Fax: 1.514.878.5754 Email: rstein@dgclex.com</p> <p>Matthew Maloley Tel: 1.514.878.3243 Fax: 1.514.878.5743 Email: mmaloley@dgclex.com</p>
<p>ROYAL BANK OF CANADA 200 Bay Street, North Tower Toronto, ON M5J 2J5</p>	<p>Livia Kolter-Held Tel: 416.974.0356 Fax: 416.974.2217 Email: livia.kolter-held@rbc.com</p> <p>Mary Arzoumanidis Tel: 416.955.4730 Fax: 416.955.5015 Email: mary.arzoumanidis@rbc.com</p>
<p>CCA and B LLC 3350 Riverwood Parkway, Ste 300 Atlanta, GA 30339 U.S.A.</p>	<p>Hillary Gardner Tel: 1.678.402.0947 Email: Hillary.Gardner@elfontheshelf.com</p>
<p>HAHN & HESSEN LLP Barristers & Solicitors 488 Madison Avenue New York, NY 10022 U.S.A.</p>	<p>Edward L. Schnitzer Tel: 1.212.478.7215 Fax: 1.212.478.7400 Email: eschnitzer@hahnhausen.com</p> <p>Joseph Orbach Tel: 1.212.478.7396 Fax: 1.212.478.7400 Email: jorbach@hahnhausen.com</p>
<p>TRANSOURCE FREIGHTWAYS 620 Alford Avenue Delta, BC V3M 6X1</p>	<p>Kal Kajla Tel: 1.604.525.0527 Email: Kal@transourcefreightways.ca</p>

<p>SUTTS, STROSBERG LLP Barristers & Solicitors 251 Goyeau Street Suite 600 Windsor, ON N9A 6V4</p> <p>Counsel to Pharmacy Franchisee Association of Canada</p>	<p>William V. Sasso Tel: 1.519.561.6222 Fax: 1.519.561.6203 Email: wvs@strosbergco.com</p> <p>Sharon Strosberg Tel: 1.519.561.6244 Fax: 1.519.561.6203 Email: sharon@strosbergco.com</p>
<p>CROCHETIÈRE, PÉTRIN Barristers & Solicitors 5800 boul. Louis-H. – La Fontaine Montréal, QU H1M 1S7</p> <p>Counsel to Aliments Triumph Inc.</p>	<p>Alexandre Franco Tel: 1.514.354.3645 Fax: 1.514.354.6511 Email: afranco@crochetiere-petrin.qc.ca</p>
<p>ALIMENTS TRIUMPH INC. 1020 Boulevard Michèle-Bohec Blainville, QC J7C 5L7</p>	<p>Patrick J. Carvell Email: pcarvell@atriomphe.com</p>
<p>BENNETT JONES LLP Barristers & Solicitors One First Canadian Place Suite 3400 Toronto, ON M5X 1A4</p> <p>Counsel to One York Street Inc. (Menkes Development Ltd.)</p>	<p>Raj Sahni Tel: 416.777.4804 Fax: 416.863.1716 Email: sahnir@bennettjones.com</p> <p>Derek Bell Tel: 416.777.4638 Fax: 416.863.1716 Email: belld@bennettjones.com</p>
<p>CORRE PARTNERS MANAGEMENT LLC 1370 Avenue of the Americas 29th Floor New York, New York 10019 U.S.A.</p>	<p>Stephen Lam Tel: 1.646.863.7157 Fax: 1.646.863.7161 Email: steve.lam@correpartners.com</p>
<p>BLAKE, CASSELS & GRAYDON LLP Barristers & Solicitors 199 Bay Street Suite 4000, Commerce Court West Toronto, ON M5L 1A9</p> <p>Counsel to Philips Electronics Ltd.</p>	<p>Linc Rogers Tel: 416.863.4168 Fax: 416.863.2653 Email: linc.rogers@blakes.com</p> <p>Aryo Shalviri Tel: 416.863.2962 Fax: 416.863.2653 Email: aryo.shalviri@blakes.com</p>

<p>BLAKE, CASSELS & GRAYDON LLP Barristers & Solicitors 199 Bay Street Suite 4000, Commerce Court West Toronto, ON M5L 1A9</p> <p>Counsel to Bose Limited</p>	<p>Linc Rogers Tel: 416.863.4168 Fax: 416.863.2653 Email: linc.rogers@blakes.com</p> <p>Aryo Shalviri Tel: 416.863.2962 Fax: 416.863.2653 Email: aryo.shalviri@blakes.com</p>
<p>BLAKE, CASSELS & GRAYDON LLP Barristers & Solicitors 199 Bay Street Suite 4000, Commerce Court West Toronto, ON M5L 1A9</p> <p>Counsel to Dyson Canada Ltd.</p>	<p>Linc Rogers Tel: 416.863.4168 Fax: 416.863.2653 Email: linc.rogers@blakes.com</p> <p>Aryo Shalviri Tel: 416.863.2962 Fax: 416.863.2653 Email: aryo.shalviri@blakes.com</p>
<p>BLAKE, CASSELS & GRAYDON LLP Barristers & Solicitors 199 Bay Street Suite 4000, Commerce Court West Toronto, ON M5L 1A9</p> <p>Counsel to Lego Canada Inc.</p>	<p>Linc Rogers Tel: 416.863.4168 Fax: 416.863.2653 Email: linc.rogers@blakes.com</p> <p>Aryo Shalviri Tel: 416.863.2962 Fax: 416.863.2653 Email: aryo.shalviri@blakes.com</p>
<p>BLAKE, CASSELS & GRAYDON LLP Barristers & Solicitors 199 Bay Street Suite 4000, Commerce Court West Toronto, ON M5L 1A9</p> <p>Counsel to Hanesbrands Inc.</p>	<p>Linc Rogers Tel: 416.863.4168 Fax: 416.863.2653 Email: linc.rogers@blakes.com</p> <p>Aryo Shalviri Tel: 416.863.2962 Fax: 416.863.2653 Email: aryo.shalviri@blakes.com</p>
<p>BLAKE, CASSELS & GRAYDON LLP Barristers & Solicitors 199 Bay Street Suite 4000, Commerce Court West Toronto, ON M5L 1A9</p> <p>Counsel to Smucker Foods of Canada Corp. / Corp. de Produits Alimentaires Smucker du Canada</p>	<p>Linc Rogers Tel: 416.863.4168 Fax: 416.863.2653 Email: linc.rogers@blakes.com</p> <p>Aryo Shalviri Tel: 416.863.2962 Fax: 416.863.2653 Email: aryo.shalviri@blakes.com</p>

<p>BLAKE, CASSELS & GRAYDON LLP Barristers & Solicitors 199 Bay Street Suite 4000, Commerce Court West Toronto, ON M5L 1A9</p> <p>Counsel to Vita-Mix Corporation</p>	<p>Linc Rogers Tel: 416.863.4168 Fax: 416.863.2653 Email: linc.rogers@blakes.com</p> <p>Aryo Shalviri Tel: 416.863.2962 Fax: 416.863.2653 Email: aryo.shalviri@blakes.com</p>
<p>BLAKE, CASSELS & GRAYDON LLP Barristers & Solicitors 199 Bay Street Suite 4000, Commerce Court West Toronto, ON M5L 1A9</p> <p>Counsel to Moore Canada Corporation d/b/a RR Donnelley</p>	<p>Linc Rogers Tel: 416.863.4168 Fax: 416.863.2653 Email: linc.rogers@blakes.com</p> <p>Aryo Shalviri Tel: 416.863.2962 Fax: 416.863.2653 Email: aryo.shalviri@blakes.com</p>
<p>BLAKE, CASSELS & GRAYDON LLP Barristers & Solicitors 199 Bay Street Suite 4000, Commerce Court West Toronto, ON M5L 1A9</p> <p>Counsel to Nestlé Canada Inc.</p>	<p>Linc Rogers Tel: 416.863.4168 Fax: 416.863.2653 Email: linc.rogers@blakes.com</p> <p>Aryo Shalviri Tel: 416.863.2962 Fax: 416.863.2653 Email: aryo.shalviri@blakes.com</p>
<p>BLAKE, CASSELS & GRAYDON LLP Barristers & Solicitors 199 Bay Street Suite 4000, Commerce Court West Toronto, ON M5L 1A9</p> <p>Counsel to Funai Corporation Inc.</p>	<p>Linc Rogers Tel: 416.863.4168 Fax: 416.863.2653 Email: linc.rogers@blakes.com</p> <p>Aryo Shalviri Tel: 416.863.2962 Fax: 416.863.2653 Email: aryo.shalviri@blakes.com</p>
<p>BLAKE, CASSELS & GRAYDON LLP Barristers & Solicitors 199 Bay Street Suite 4000, Commerce Court West Toronto, ON M5L 1A9</p> <p>Counsel to Medela Canada Inc.</p>	<p>Aryo Shalviri Tel: 416.863.2962 Fax: 416.863.2653 Email: aryo.shalviri@blakes.com</p>
<p>BLAKE, CASSELS & GRAYDON LLP Barristers & Solicitors 199 Bay Street Suite 4000, Commerce Court West Toronto, ON M5L 1A9</p> <p>Counsel to Northwest Plaza Ltd.</p>	<p>Joseph Grignano Tel: 416.863.4025 Fax: 416.863.2653 Email: joseph.grignano@blakes.com</p>

<p>BLAKE, CASSELS & GRAYDON LLP Barristers & Solicitors 199 Bay Street Suite 4000, Commerce Court West Toronto, ON M5L 1A9</p> <p>Counsel to ASM Capital V, L.P.</p>	<p>Milly Chow Tel: 416.863.2594 Fax: 416.863.2653 Email: milly.chow@blakes.com</p>
<p>ASM CAPITAL V, L.P. 7600 Jericho Turnpike Suite 302 Woodbury, NY 11797 U.S.A.</p>	<p>Douglas Wolfe Tel: 1.516.422.7102 Fax: 1.516.422.7118 Email: DWolfe@asmcapital.com</p>
<p>GOWLING LAFLEUR HENDERSON LLP Barristers & Solicitors 1 First Canadian Place 100 King St. West, Suite 1600 Toronto, ON M5X 1G5</p> <p>Counsel to Fiera Properties Limited</p>	<p>Clifton P. Prophet Tel: 416.862.3509 Fax: 416.862.7661 Email: clifton.prophet@gowlings.com</p> <p>Frank Lamie Tel: 416.862.3609 Fax: 416.862.7661 Email: frank.lamie@gowlings.com</p> <p>Haddon Murray Tel: 416.862.3604 Fax: 416.862.7661 Email: haddon.murray@gowlings.com</p>
<p>BURCHELLS LLP Barristers & Solicitors 1801 Hollis St., Suite 1800 Halifax, NS B3J 3N4</p> <p>Counsel to Halifax 1658 Bedford Highway Inc.</p>	<p>David Hutt Tel: 1.902.442.8373 Fax: 1.902.420.9326 Email: dhutt@burchells.ca</p>
<p>AIRD & BERLIS LLP Barristers & Solicitors 181 Bay St., Suite 1800 Toronto, ON M5J 2T9</p> <p>Counsel to CompuCom Systems, Inc. and CompuCom Canada Co.</p>	<p>D. Robb English Tel: 416.865.4748 Fax: 416.863.1515 Email: renglish@airdberlis.com</p>

<p>AIRD & BERLIS LLP Barristers & Solicitors 181 Bay St., Suite 1800 Toronto, ON M5J 2T9</p> <p>Counsel to RSP Architects, Ltd.</p>	<p>Ian Aversa Tel: 416.865.3082 Fax: 416.863.1515 Email: iaversa@airdberlis.com</p> <p>Jeremy Nemers Tel: 416.865.7724 Fax: 416.863.1515 Email: jnemers@airdberlis.com</p>
<p>AIRD & BERLIS LLP Barristers & Solicitors 181 Bay St., Suite 1800 Toronto, ON M5J 2T9</p> <p>Counsel to CREIT</p>	<p>Steven Graff Tel: 416.865.7726 Fax: 416.863.1515 Email: sgraff@airdberlis.com</p>
<p>EVOLUTION LIGHTING, LLC 16200 NW 59th Ave, Suite 101 Miami Lakes, FL 33014 U.S.A.</p>	<p>Mitch Mossman Tel: 1.786.533.1807 Ext. 246 Fax: 1.305.558.8027 Email: mitchm@evolutionlightingllc.com</p>
<p>DEPARTMENT OF JUSTICE Ontario Regional Office 130 King Street West, Suite 3400 Toronto, ON M5X 1K6</p> <p>Counsel to Attorney General of Canada in Right of Canada</p>	<p>Diane Winters Tel: 416.973.3172 Fax: 416.973.0810 Email: Diane.Winters@justice.gc.ca</p> <p>Andrew D. Kinoshita Tel: 416.973.9337 Fax: 416.973.0810 Email: andrew.kinoshita@justice.gc.ca</p>
<p>SEAPORT GLOBAL HOLDINGS LLC 360 Madison Avenue, 22nd Floor New York, NY 10017 U.S.A.</p>	<p>Scott Friedberg Tel: 1.212.616.7728 Cell: 1.917.913.4281 Email: SFriedberg@theseaportgroup.com</p>
<p>NORTON ROSE FULBRIGHT CANADA LLP Barristers & Solicitors Royal Bank Plaza, South Tower, Suite 3800 200 Bay Street, P.O. Box 84 Toronto, ON M5J 2Z4</p> <p>NORTON ROSE FULBRIGHT CANADA LLP Barristers & Solicitors Suite 1500, 2828 Laurier Boulevard Québec, QC G1V 0B9</p> <p>Counsel to Cominar Real Estate Investment Trust</p>	<p>Alan Merskey Tel: 416.216.4805 Fax: 416.216.3930 Email: alan.merskey@nortonrosefulbright.com</p> <p>Evan Cobb Tel: 416.216.1929 Fax: 416.216.3930 Email: evan.cobb@nortonrosefulbright.com</p> <p>Christian Roy Tel: 1.418.640.5028 Fax: 1.418.640.1500 Email: christian.roy@nortonrosefulbright.com</p>

<p>PALIARE ROLAND ROSENBERG ROTHSTEIN LLP Barristers & Solicitors 155 Wellington Street West 35th Floor Toronto, ON M5V 3H1</p> <p>Counsel to Microsoft Corporation</p>	<p>Lindsay Scott Tel: 416.646.7442 Fax: 416.646.4301 Email: lindsay.scott@paliareroland.com</p>
<p>FARRIS, VAUGHAN, WILLS & MURPHY LLP Barristers & Solicitors 200 - 700 W Georgia Street Vancouver, BC V7Y 1B3</p> <p>Counsel to Claims Recovery Group LLC</p>	<p>David E. Gruber Tel: 1.604.661.9361 Fax: 1.604.661.9349 Email: dgruber@farris.com</p> <p>Arden Beddoes Tel: 1.604.661.9380 Fax: 1.604.661.9349 Email: abeddoes@farris.com</p>
<p>CLAIMS RECOVERY GROUP LLC</p>	<p>Rob Axenrod Email: TargetCanadaNotices@claimsrecoveryllc.com</p>
<p>CLARK WILSON LLP Barristers & Solicitors 900-885 West Georgia Street Vancouver, BC V6C 3H1</p> <p>Counsel to Narland Properties (Haney) Ltd.</p>	<p>Christopher Ramsay Tel: 1.604.643.3176 Fax: 1.604.687.6314 Email: cjr@cwilson.com</p> <p>Katie G. Mak Tel: 1.604.643.3105 Fax: 1.604.687.6314 Email: kgm@cwilson.com</p>
<p>DAVPART INC. 4576 Yonge Street, Suite 700 Toronto, ON M2N 6N4</p> <p>Landlord to Target Store T3560, located at Lindsay Square, 401 Kent Street West</p>	<p>Karen Citron Tel: 416.222.3010 Fax: 416.222.3013 Email: citronk@daypart.com</p>
<p>LIQUIDITY SOLUTIONS, INC. One University Plaza, Suite 312 Hackensack, NJ 07601 U.S.A.</p>	<p>Michael Handler Tel: 1.201.968.0001 Fax: 1.201.968.0010 Email: mhandler@liquiditysolutions.com and lsi@liquiditysolutions.com</p>

<p>TORKIN MANES LLP Barristers & Solicitors 151 Yonge Street, Suite 1500 Toronto, ON M5C 2W7</p> <p>Counsel to Springs Window Fashion LLC</p>	<p>S. Fay Sulley Tel: 416.777.5419 Fax: 1.888.587.5769 Email: fsulley@torkinmanes.com</p> <p>Jeffrey Simpson Tel: 416.777.5413 Fax: 1.888.587.9143 Email: jsimpson@torkinmanes.com</p>
<p>ALLUVIUM PARTNERS LLC 28 West 44th Street, 16TH Floor New York, NY 10036 U.S.A.</p>	<p>Darren F. Yulfo Tel: 1.212.882.1866 Fax: 1.212.882.1867 Email: dyulfo@alluviumpartnersllc.com</p>
<p>UNIQUE INDUSTRIES, INC. 4750 League Island Blvd. Philadelphia, PA USA, 19112-1222</p>	<p>Michael Dougherty Tel: 1.215.218.7794 Email: mdougherty@favours.com</p> <p>Glenn Wattenmaker Tel: 1.215.218.7704 Email: gwattenmaker@favours.com</p>
<p>FARMER BROS. CO. 20333 S. Normandie Avenue Torrance, CA USA, 90502</p>	<p>Colleen A. Brooks Tel: 1.310.787.5393 Fax: 1.310.787.5376 Email: cbrooks@farmerbros.com</p>
<p>KELLY SANTINI LLP Barristers & Solicitors 160 Elgin Street, Suite 2401 Ottawa, ON K2P 2P7</p> <p>Counsel to Lozier Corporation</p>	<p>Rick Brooks Tel: 1.613.238.6321 Ext.248 Fax: 1.613.233.4553 Email: rbrooks@kellysantini.com</p> <p>Shawn O'Connor Tel: 1.613.238.6321 Ext.230 Fax: 1.613.233.4553 Email: soconnor@kellysantini.com</p>
<p>KELLY SANTINI LLP Barristers & Solicitors 160 Elgin Street, Suite 2401 Ottawa, ON K2P 2P7</p> <p>Counsel to Lozier Store Fixtures, LLC</p>	<p>Rick Brooks Tel: 1.613.238.6321 Ext.248 Fax: 1.613.233.4553 Email: rbrooks@kellysantini.com</p>
<p>SPARK LLP Barristers & Solicitors 169 King Street East, Third Floor Toronto, ON M5A 1J4</p> <p>Counsel to Helen of Troy LP</p>	<p>Jeffrey Rosekat Tel: 416.639.2151 Fax: 647.490.4888 Email: jeff@spark.law</p>

<p>SPARK LLP Barristers & Solicitors 169 King Street East, Third Floor Toronto, ON M5A 1J4</p> <p>Counsel to Kaz Canada Inc.</p>	<p>Jeffrey Rosekat Tel: 416.639.2151 Fax: 647.490.4888 Email: jeff@spark.law</p>
<p>SPARK LLP Barristers & Solicitors 169 King Street East, Third Floor Toronto, ON M5A 1J4</p> <p>Counsel to Kaz Far East Ltd.</p>	<p>Jeffrey Rosekat Tel: 416.639.2151 Fax: 647.490.4888 Email: jeff@spark.law</p>
<p>SPARK LLP Barristers & Solicitors 169 King Street East, Third Floor Toronto, ON M5A 1J4</p> <p>Counsel to Idelle Labs Ltd.</p>	<p>Jeffrey Rosekat Tel: 416.639.2151 Fax: 647.490.4888 Email: jeff@spark.law</p>
<p>First Capital 3350 Riverwood Parkway, Suite 1750 Atlanta, GA 30339 U.S.A.</p> <p>Counsel to Tara Toy Corp.</p>	<p>Kim Withrow Tel: 1.678.594.5900 Email: kwithrow@firstcapital.com</p> <p>Vicki Heller Tel: 1.678.594.5900 Email: vheller@firstcapital.com</p> <p>Kevin McGarry Tel: 1.678.594.5900 Email: kmcgarry@firstcapital.com</p> <p>Lance Baker Tel: 1.954.557.5050 Email: Lbaker@firstcapital.com</p>
<p>First Capital 3350 Riverwood Parkway, Suite 1750 Atlanta, GA 30339 U.S.A.</p> <p>Counsel to Miken Clothing</p>	<p>Kim Withrow Tel: 1.678.594.5900 Email: kwithrow@firstcapital.com</p> <p>Vicki Heller Tel: 1.678.594.5900 Email: vheller@firstcapital.com</p> <p>Kevin McGarry Tel: 1.678.594.5900 Email: kmcgarry@firstcapital.com</p> <p>Lance Baker Tel: 1.954.557.5050 Email: Lbaker@firstcapital.com</p>

GOLDMAN SLOAN NASH & HABER LLP Barristers & Solicitors 480 University Avenue, Suite 1600 Toronto, ON M5G 1V2 Counsel to Virginia Johnson Lifestyle Ltd.	Michael Rotsztain Tel: 416.597.7870 Fax: 416.597.3370 Email: rotsztain@gsnh.com
Periscope, Inc. 921 Washington Avenue South Minneapolis, MN 55415 U.S.A.	Aaron Martin Tel: 1.612.399.0417 Email: amartin@periscope.com Virginia Hines Tel: 1.612.399.0410 Email: vhines@periscope.com
Periscope Canada, Inc. 921 Washington Avenue South Minneapolis, MN 55415 U.S.A.	Aaron Martin Tel: 1.612.399.0417 Email: amartin@periscope.com Virginia Hines Tel: 1.612.399.0410 Email: vhines@periscope.com
Primeshares World Markets / VonWin Capital 261 Fifth Avenue, 22nd Floor New York, NY 10016 U.S.A.	Neil Desai Tel: 1.212.889.3088 Fax: 1.212.889.2232 Email: nd@primeshares.com
Coface North America Insurance Company 50 Millstone Road Bldg 100, Suite 360 East Windsor, NJ 08520 U.S.A.	Amy Schmidt Tel: 1.609.469.0459 Email: amy_schmidt@coface.com
Rapid Displays Inc. 4300 West 47th Street Chicago, IL 60632 U.S.A.	Karen Teel Tel: 1.773.843.7870 Fax: 1.773.927.0975 Email: kteel@rapiddisplays.com Brian L. Greenburg Tel: 1.773.927.5000 Fax: 1.773.927.1091 Email: bgreenburg@rapiddisplays.com
R S P ARCHITECTS 1220 Marshall Street N.E Minneapolis, MN 55413 U.S.A.	Pat Parrish Email: pat.parrish@rsparch.com Tel: 1.612.677.7100 Fax: 1.612.677.7499

BEAUWARD SHOPPING CENTRES LTD. 430, Arthur-Sauvé boulevard, Bureau 6010 Saint-Eustache, QC J7R 6V7	Nathalie Parent Tel: 1.450.473.6831 Ext. 203 Fax: 1.450.473.2184 Email: nparent@beauward.com Richard Hamelin Tel: 1.450.473.6831 Ext. 202 Fax: 1.450.473.2184 Email: rhamelin@beauward.com
MCMILLAN LLP Barristers & Solicitors Brookfield Place 181 Bay Street, Suite 4400 Toronto, ON M5J 2T3	Wael Rostom Tel: 416.865.7790 Fax: 416.865.7048 Email: wael.rostom@mcmillan.ca
MCMILLAN LLP Barristers & Solicitors Royal Centre 1055 West Georgia Street Suite 1500, PO Box 11117 Vancouver, BC V6E 4N7	Daniel Shouldice Tel: 1.778.328.1497 Fax: 1.604.685.7084 Email: daniel.shouldice@mcmillan.ca
AMERICAN TEXTILE CO. RIDC Riverplace 10 North Linden Street Duquesne, PA 15110 U.S.A.	Scott Neil Tel: 1.412.948.1020 Ext.263 Fax: 1.412.948.1002 Email: sneil@americantextile.com
TIERNEY STAUFFER LLP Barristers & Solicitors 510-1600 Carling Avenue Ottawa, ON K1Z 0A1 Counsel to Katherine Strediny	Susan Mitchell Tel: 1.613.288.3209 Fax: 1.613.728.9866 Email: smitchell@tslawyers.ca
BOBILA WALKER LAW LLP Barristers & Solicitors First Canadian Place 100 King Street West, Suite 5600 Toronto, ON M5X 1C9 Counsel to M.E.T.R.O. (Manufacture, Export, Trade, Research Office) Incorporated / Kerson Invested Limited	Maria Bobila Tel: 416.847.1859 Fax: 416.644.8801 Email: maria@bobilawalkerlaw.com

JEFFERIES LEVERAGED CREDIT PRODUCTS, LLC 520 Madison Avenue New York, NY 10022 U.S.A.	Richard Dalessio Tel: 1.212.284.2300 Email: rdalessio@jefferies.com Michael Richards Tel: 1.212.708.2826 Email: mrichards@jefferies.com Jay Sommer Tel: 1.212.708.2822 Email: jsommer1@jefferies.com
LOWENSTEIN SANDLER LLP Barristers & Solicitors 1251 Avenue of the Americas, 19th Floor New York, NY 10020 U.S.A.	Bruce S. Nathan Tel: 1.212.204.8686 Fax: 1.973.422.6851 Email: bnathan@lowenstein.com David M. Banker Tel: 1.212.204.8692 Fax: 1.973.422.6863 Email: dbanker@lowenstein.com
CENTERBRIDGE PARTNERS, L.P. 375 Park Avenue, 12th Floor New York, NY 10152 U.S.A.	Tim Denari Tel: 1.212.672.4457 Email: tdenari@centerbridge.com
HYUNDAI MERCHANT MARINE (AMERICA), INC. 222 W. Las Colinas Boulevard Suite 700 Irving, TX 75039 U.S.A.	Sook H. Lee Tel: 1.972.501.1154 Fax: 1.972.501.1281 Email: aqshl@hmm21.com
KATTEN MUCHIN ROSENMAN LLP Barristers & Solicitors 575 Madison Avenue New York, NY 10022-2585 U.S.A. Counsel to Banc of America Credit Products Inc.	Darius J. Goldman Tel: 1.212.940.6355 Fax: 1.973.422.6851 Email: dg@kattenlaw.com Jessica Chue Tel: 1.212.940.6793 Fax: 1.212.940.8776 Email: jessica.chue@kattenlaw.com
BANC OF AMERICA CREDIT PRODUCTS INC. c/o Bank of America Merrill Lynch Bank of America Tower – 3rd Floor One Bryant Park New York, New York 10036 U.S.A.	Ryan Weddle Email: ryan.weddle@baml.com Esther Chung Tel: 1.646.855.7450 Email: esther.chung@baml.com Ante Jakic Tel: 1.646.855.7450 Email: ante.jakic@baml.com

<p>TD BANK GROUP Legal Department 66 Wellington Street West TD Tower, 15th Floor Toronto, Ontario M5K 1A2</p>	<p>Teresa Walsh Tel: 416.307.7833 Email: Teresa.Walsh@td.com</p>
<p>STEWART MCKELVEY Barristers & Solicitors Suite 900 Purdy's Wharf Tower One 1959 Upper Water Street Halifax, NS B3J 3N2</p>	<p>D. Fraser MacFadyen Tel: 1.902.420.3365 Fax: 1.902.496.6182 Email: fmacfadyen@stewartmckelvey.com</p>
<p>KLEIN LAWYERS LLP Barristers & Solicitors 400-1385 West 8th Avenue Vancouver, BC V6H 3V9</p> <p>Counsel to Nelly Changsek Ku de Com</p>	<p>Karalyn Moore Tel: 1.604.874.7171 Fax: 1.604.874.7180 Email: kmoore@callkleinlawyers.com</p>
<p>BLAKELEY LLP Barristers & Solicitors 54 W. 40th Street New York, NY 10018 U.S.A.</p> <p>Counsel to Activa Leisure</p>	<p>Ruth Fagan Tel: 1.929.272.7566 Fax: 1.949.260.0613 Email: rfagan@blakeleyllp.com</p>
<p>SUNHAM HOME FASHIONS, LLC 136 Madison Avenue New York, NY 10016 U.S.A.</p>	<p>Arthur Courbanou Tel: 1.212.695.1218 Ext.1160 Fax: 1.267.295.2021 Email: arthurcourbanou@sunham.com</p>
<p>GOLDMAN SLOAN NASH & HARBER LLP Barristers & Solicitors 480 University Avenue Toronto, ON M5G 1V2</p> <p>Counsel to Kone Inc.</p>	<p>Paul Hancock Tel: 416.597.7881 Fax: 416.597.3370 Email: hancock@gsnh.com</p>
<p>SVITLANA BURLAKOVA 2223 Glenwood School Drive Burlington, ON L7R 3R4</p>	<p>Svitlana Burlakova Tel: 289 981 8148 Email: burlakov87@gmail.com</p>
<p>CLIFFORD CHANCE US LLP 31 West 52nd Street New York, NY 10019 U.S.A.</p> <p>Counsel to Citigroup Financial Products Inc.</p>	<p>Timothy Bennett Tel: 1.212.878.3235 Email: timothy.bennett2@cliffordchance.com</p>

<p>CITIGROUP FINANCIAL PRODUCTS INC. 390 Greenwich Street New York, NY 10013 USA</p>	<p>Bryan Magliaro Tel: 1.212.723.6064 Email: bryan.magliaro@citi.com</p> <p>Kenneth Keeley Tel: 1.212.723.6501 Email: kenneth.keeley@citi.com</p>
<p>HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA Ministry of Justice PO Box 9289, Station Provincial Government Victoria, BC V8W9J7</p>	<p>Heather Wellman Tel: 1.250.356.8434 Fax: 1.250.387.0700 Email: Heather.Wellman@gov.bc.ca</p> <p>Aaron Welch Tel: 1.250.356.8589 Fax: 1.250.387.0700 Email: Aaron.Welch@gov.bc.ca</p>
<p>LERNERS LLP 130 Adelaide Street West, Suite 2400 Toronto, ON M5H 3P5 Counsel to Amskor Corporation</p>	<p>Domenico Magisano Tel: 416.601.4121 Fax: 416.601.4123 Email: dmagisano@lernal.com</p>
<p>CONTRARIAN CAPITAL MANAGEMENT, L.L.C. 411 West Putnam Avenue, Suite 425 Greenwich, CT 06830 U.S.A.</p>	<p>Keith McCormack Tel: 1.203.862.8270 Email: kmccormack@contrariancapital.com</p> <p>Kimberly Gianis Tel: 1.203.862.8250 Fax: 1.203.629.1977 Email: kgianis@contrariancapital.com</p>
<p>LERNERS LLP 130 Adelaide Street West, Suite 2400 Toronto, ON M5H 3P5 Counsel to Amskor Corporation</p>	<p>Domenico Magisano Tel: 416.601.4121 Fax: 416.601.4123 Email: dmagisano@lernal.com</p>
<p>PLACE VERSAILLES INC. 7275 Rue Sherbrooke E Bureau 300 Montréal, QC H1N 1E9</p>	<p>William Gregory Tel: 1.514.352.1440 Email: williamgregory@placeversailles.com</p>

<p>BOWERY INVESTMENT MANAGEMENT, LLC 1325 Avenue of the Americas, 28th Floor New York, New York 10019 U.S.A.</p>	<p>Bradley Max Tel: 1.212.259.4318 Email: BMax@boweryim.com</p>
<p>FARALLON CAPITAL MANAGEMENT LLC One Maritime Plaza Suite 2100 San Francisco CA 94111 U.S.A.</p>	<p>Michael Linn Tel: 1. 415.421.2132 Email: mlinn@farcap.com</p>
<p>PUSHOR MITCHELL LLP 301 - 1665 Ellis Street Kelowna, BC V1Y 2B3</p>	<p>Alf Kempf Tel: 1.250.869.1215 Email: Kempf@pushormitchell.com</p>
<p>UBISOFT 625 3rd Street San Francisco, CA 94107 U.S.A.</p>	<p>Lauren Jaques Tel: 1.415.571.2125 Fax: 1.415-728-9483 Email: lauren.jaques@ubisoft.com</p>
<p>BORDEN LADNER GERVAIS LLP S.E.N.C.R.L., S.R.L. Barristers & Solicitors 1000 Rue de la Gauchetière Ouest Suite / Bureau 900 Montréal, QC H3B 5H4 Counsel to LeapFrog Canada, Inc.</p>	<p>Marc Duchesne Tel: 1.514.954.3102 Fax: 1.514.954.1905 Email: mduchesne@blg.com Andrew Hodhod Tel: 1.514.954.3140 Fax: 1.514.954.1905 Email: ahodhod@blg.com</p>
<p>PACIFIC CYCLE, INC. 4902 Hammersley Road Madison, WI 53711 U.S.A. Counsel to Pacific Cycle, Inc. and Dorel Industries Inc.</p>	<p>Robert Silvis Tel: 1.608.268.8330 Email: BSilvis@Pacific-Cycle.com</p>
<p>BELLUS CAPITAL MANAGEMENT, LLC 299 Park Ave New York, NY 10171 U.S.A.</p>	<p>Jim Cullinane Tel: 1.212.763.5645 Email: jcullinane@belluscapital.com</p>

<p>AIRD & BERLIS LLP Barristers & Solicitors 181 Bay St., Suite 1800 Toronto, ON M5J 2T9</p> <p>Counsel to Discovery Harbour Shopping Centre Ltd.</p>	<p>Miranda Spence Tel: 416.865.3414 Fax: 416.863.1515 Email: mspence@airdberlis.com</p>
<p>AIRD & BERLIS LLP Barristers & Solicitors 181 Bay St., Suite 1800 Toronto, ON M5J 2T9</p> <p>Counsel to Northwest Realty Inc.</p>	<p>Steven Graff Tel: 416.865.7726 Fax: 416.863.1515 Email: sgraff@airdberlis.com</p> <p>Miranda Spence Tel: 416.865.3414 Fax: 416.863.1515 Email: mspence@airdberlis.com</p>
<p>KPA LAWYERS PROFESSIONAL CORPORATION Barristers & Solicitors 4304 Village Centre Court Mississauga, ON L4Z 1S2</p> <p>Counsel to Leda Health Innovations</p>	<p>Preet Pannu Tel: 905.965.6263 Fax: 905.965.6162 Email: preet@kpalawyers.ca</p>
<p>KPA LAWYERS PROFESSIONAL CORPORATION Barristers & Solicitors 4304 Village Centre Court Mississauga, ON L4Z 1S2</p> <p>Counsel to D&G Laboratories</p>	<p>Preet Pannu Tel: 905.965.6263 Fax: 905.965.6162 Email: preet@kpalawyers.ca</p>
<p>DISTRESSED RESEARCH AND TRADING ARGO PARTNERS 12 West 37th Street, 9th Floor New York, NY 10018 U.S.A.</p>	<p>Paul S. Berg Tel: 212.643.5457 Fax: 212.643.6401 Email: paul@argopartners.net</p>

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2.	Consent, dated May 27, 2015
3.	Notice of Application, issued June 3, 2015, bearing Court File Number: CV15-10987-00CL
4.	Proof of Claim of Amskor Corporation
5.	Decision of the Honourable Regional Senior Justice Morawetz, dated January 15, 2016

TAB 1

Court File No. CV-15-10832-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE
REGIONAL SENIOR JUSTICE
MORAWETZ

WEDNESDAY, THE 27TH
OF MAY, 2015

)
)
)



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 TARGET CANADA CO., TARGET
CANADA HEALTH CO., TARGET CANADA MOBILE GP
CO., TARGET CANADA PHARMACY (BC) CORP.,
TARGET CANADA PHARMACY (ONTARIO) CORP.,
TARGET CANADA PHARMACY CORP., TARGET
CANADA PHARMACY (SK) CORP., and TARGET
CANADA PROPERTY LLC

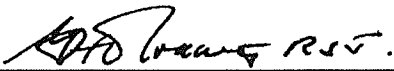
APPLICANTS

ORDER

THIS MOTION made by the Amskor Corporation ("**Amskor**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the "**CCAA**") for an Order: (i) approving the issuing of the Notice of Application attached hereto as Schedule "A" (the "**Amskor Application**") on the Commercial List; and (ii) lifting the stay of proceedings granted to Target Corporation ("**Target US**") in these proceedings (the "**Stay**") pursuant to the Initial Order of this court dated January 15, 2015, as amended and restated on February 11, 2015 (the "**Initial Order**"), if necessary, for the sole purpose of permitting Amskor to proceed with the Amskor Application was read this day at 330 University Avenue, Toronto. Ontario


ON READING the Consent of the lawyers for Amskor and Target US, filed, and being advised that the lawyers for both the Applicants and Alvarez & Marsal Canada Inc. in its capacity as Monitor have been advised of this consent motion:

1. **THIS COURT ORDERS** that the Notice of Application in the Amskor Application may be issued in the Ontario Superior Court of Justice - Commercial List.
2. **THIS COURT ORDERS** that, to the extent required, the stay of proceedings granted to Target US pursuant to paragraph 19 of the Initial Order, is hereby lifted for the sole purpose of permitting Amskor to proceed with the Amskor Application.



MORAWETZ R.S.J.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

 JUN - 1 2015

SCHEDULE "A"

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

AMSKOR CORPORATION o/a CAM of America

Applicant

- and -

TARGET CORPORATION

Respondent

APPLICATION UNDER Rule 14.05(3)(d) and (g) of the *Rules of Civil Procedure*
R.R.O. 1990 Reg. 194 (as amended)**NOTICE OF APPLICATION**

TO THE RESPONDENTS:

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 on a date to be set by a Judge of the Commercial List at a 9:30am chambers appointment at the Court House, 330 University Ave., Toronto, Ontario.

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 the 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.

- 2 -

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 May , 2015

Issued by _____
Local registrar

Address of court office 330 University Avenue
7th Floor
Toronto, Ontario M5G 1R7

TO: Target Corporation
1000 Nicollet Mall
Minneapolis, Minnesota
55403
United States of America

- 3 -

APPLICATION

1. THE APPLICANT AMSKOR CORPORATION o/a CAM OF AMERICA (“AMSKOR”) MAKES APPLICATION FOR, AMONG OTHER THINGS:

- (a) a declaration that Target Corporation (“**Target US**”) has an obligation to perform the terms of the Current Supply Agreement (as hereinafter defined);
- (b) a mandatory Order that Target US perform all of the terms of the Current Supply Agreement as more particularly described in paragraph 2(h) below;
- (c) an Order directing a trial of an issue with respect to damages;
- (d) pre judgement and post judgement interest, calculated in accordance with the *Courts of Justice Act* R.S.O. 1990 c. C.43 as amended
- (e) costs of this Application together with applicable taxes; and
- (f) such further and other relief as counsel may advise and this Court may permit.

2. THE GROUNDS FOR THE APPLICATION ARE:

Background and Original Supply Agreement

- (a) Amskor has been a supplier to Target Canada Corporation (“**Target Canada**”) and together with Target US are collectively, “**Target**”) since Target Canada’s entry into the Canadian market in or about March 2013 (the “**Original Supply Arrangement**”);

- 4 -

- (b) The Original Supply Arrangement was an informal arrangement wherein Target Canada would order product from Amskor on an as needed basis and Amskor would deliver same. Initially, payment for product was received by cheque from Target US; however over time, Amskor began receiving payment by way of wire transfer;
- (c) Target generally requires its suppliers to contribute towards Target's marketing of products and other ancillary expenses. This contribution is often referred to as a "Vendor Income Payment" and, in Amskor's case, was paid by Amskor to Target by way of a set-off against invoices delivered. During the Original Supply Arrangement, Amskor was required to remit three percent of its total invoices to Target Canada as its Vendor Income Payment;
- (d) In addition to the Vendor Income Payment, Amskor was required to provide further lump sum incentives to Target Canada on an as requested basis. These lump sum payments were used to compensate Target Canada for marketing and promotions it was implementing at its stores;

The Current Supply Agreement

- (e) In early 2014, Target approached Amskor regarding a more comprehensive supply arrangement. Specifically, Target wanted a more defined, and higher, Vendor Income Payment arrangement from Amskor. Amskor was not adverse to Target's request but wanted added commitments from Target in return. Specifically, Amskor required that:

- 5 -

- (i) Target Canada and Target US would be jointly and severally liable for all obligations under the new arrangement;
 - (ii) That the new arrangement would be for a five-year term; and
 - (iii) That Target would commit to minimum buy amounts from Amkor.

- (f) There were comprehensive negotiations regarding this new arrangement and initially, Target was resistant to including Target US as a party to the agreement. However, from Amkor's perspective this was an integral part of the draft agreement, as:
 - (i) Amkor understood it would eventually have opportunities to expand to the Target US market; and
 - (ii) Given that Target Canada was a nascent corporate entity, Amkor wanted the comfort that Target US would honour and support this new arrangement.

- (g) The inclusion of Target US as a party to the agreement was escalated within Target to legal counsel, who initially removed Target US from the draft agreement. Amkor insisted on Target US being a party under the new agreement and ultimately Target agreed. The agreement between Target and Amkor is dated April 15, 2014 (the "**Current Supply Agreement**") and together with the Original Supply Agreement are the "**Supply Agreements**") and is signed by Neeru Nandrajog ("**Neeru**") on behalf of Target (who at all material times was held out to have authority to enter into the Current Supply Agreement on behalf of Target) and Saeid Korhani on behalf of Amkor;

- (h) The salient terms of the Current Supply Agreement are as follows:

- 6 -

- (i) initial three-year term that can be extended at Target's sole discretion for an additional two years;
 - (ii) Amskor to remit \$5,000,000 in Vendor Income Payments over 5 years in up to \$1,000,000 yearly increments (the "Yearly Payments");
 - (iii) The Yearly Payments to be made to Target on a quarterly basis and deducted from Amskor invoices as follows:
 - (A) 15% of net net purchases by Target up to \$5,000,000 per year (each contract year beginning on May 1st and ending on April 30th); and
 - (B) 20% of net net purchases by Target for purchase amounts in excess of \$5,000,000 per year (each contract year beginning on May 1st and ending on April 30th).
 - (iv) Target to guarantee Amskor the following space allocations within their various stores:
 - (A) 12 feet of space allocation in the National In-Line Program of the Area Rug Section at all Target "large format" stores;
 - (B) 8 feet of space allocation in the National In-Line Program of the Utility Section at all Target "large format" stores; and
 - (C) 4 feet of space allocation in the National In-Line Program of the Area Rug Section in all Target "small stores".
 - (v) Target to promote Amskor's products and programs in its advertising at least once a quarter; and
 - (vi) The Current Supply Agreement is to be construed in accordance with the laws of the Province of Ontario;
- (i) The negotiations regarding the Supply Agreements were conducted with representatives of both Target Canada and Target US largely within Ontario and the Current Supply Agreement specifically states that the laws of Ontario apply;
- (j) In addition to the specific terms listed, Target required Amskor to provide a further \$75,000 chargeback on execution of the Current Supply

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Agreement. Amskor agreed and the \$75,000 payment was made by way of deduction from invoices for product delivered under the Original Supply Agreement (said deduction being in addition to Vendor Income Payment that already formed part of the Original Supply Agreement);

- (k) Furthermore, during the Current Supply Agreement (and in spite of the fact that the Current Supply Agreement was supposed to fix the Vendor Income Payments to the amounts listed therein), Target repeatedly requested that Amskor provide additional financial incentives and rebates. Amskor often acceded to these requests on the repeated promises made by Target of additional store openings in Canada and eventually, the ability to sell its products in the Target US market;
- (l) Throughout its interactions with Target, Amskor would correspond with both representatives of Target US and Target Canada;
- (m) Further, as recently as September 2014 (i.e. less than 5 months after the Current Supply Agreement came into force), Amskor was advised that Target US was already considering purchase of Amskor product for its US stores.

Target Canada CCAA Proceeding

- (n) Target and Amskor operated under the terms of the Current Supply Agreement from its inception in April 2014 until Target Canada filed for creditor protection pursuant to the *Companies' Creditors Arrangement Act* R.S.C. 1985 c. C-36 as amended (the "CCAA") on January 15, 2015;

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- (o) As a result of the CCAA proceeding, there is a stay of proceedings against Target Canada. While the CCAA proceeding also provides a limited stay of proceedings in favour of Target US, that stay does not apply to instances where Target US has a direct contractual relationship with a supplier in Canada;
- (p) Following Target Canada's filing for CCAA protection, Amskor attempted to contact representatives of Target US to engage in discussions about how it wished to proceed with the Current Supply Agreement. The only response Amskor received to its correspondence was an e-mail from Aaron Alt of Target US advising that the matter had been forwarded to Target US' legal department. Amskor has not received a response from Target US' counsel or any further communication from Target US;

Losses from Failure to Honour the Current Supply Agreement

- (q) Amskor is currently holding approximately \$6,888,807 in rugs and utility mats ordered by Target (the "**Ordered Product**"). The Ordered Product was procured at Target's behest due to its strict "just in time" shipping policy, which required Amskor to have product readily available for pick up at any time. This product was created to Target's strict specifications and is difficult, if not impossible, to resell to third parties without significant price reductions;

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- (r) In addition to the product ordered but not paid for by Target, Amskor has incurred \$626,726 in storage and shipping costs related to the Ordered Product, which amounts continue to accrue;
- (s) During the relationship Target demanded additional rebates and chargebacks from Amskor to assist with clearance sales of product that Target had previously purchased, but had not sold and now deemed "old stock" (referred to by the parties as "**Contract Markdown Support**"). While not obligated to provide Contract Markdown Support under either the Original Supply Agreement or the Current Supply Agreement, Amskor did so as it was advised that it would have a long and prosperous relationship with Target Canada and Target US. In total, Amskor provided \$301,794 in Contract Markdown Support;
- (t) Target also periodically requested additional rebates and chargebacks to assist with new store openings (the "**New Store Rebates**"). While not required to provide the New Store Rebates, Amskor did so for the same reasons it provided the Contract Markdown Support. Amskor provided Target with \$104,578 in New Store Rebates;
- (u) Furthermore, Amskor has over \$325,477 in unpaid receivables owing by Target under the Current Supply Agreement;
- (v) Amskor has incurred, and continues to incur substantial losses relating to, among other things, infrastructure, staffing, equipment purchases and upgrades, and additional procuring raw materials, all necessitated by its

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contractual obligations under the Supply Agreements and Target's requirement for "just in time" service

- (w) Finally, Amskor has been, and continues to be, deprived of the benefits it had negotiated and agreed to in the Current Supply Agreement which had at least 2 years and 3 months remaining at the time of the CCAA and could have been as long as 4 years and 3 months had the option for 2 additional years been exercised;
- (x) Rules 14.05(3)(d), 14.05(3)(g), 17.02(a), 17.02(c), and 17.02(f) of the *Rules of Civil Procedure*;
- (y) Section 99 of the *Courts of Justice Act*; and
- (z) Such further and other relief as counsel may advise and this Court may permit.

3. THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE APPLICATION:

- (a) Affidavit of Saeid Korhani, to be sworn; and
- (b) such further and other evidence

- 11 -

May __, 2015

LERNERS LLP
130 Adelaide Street West, Suite 2400
Toronto, ON M5H 3P5

Domenico Magisano (LSUC #: 45725E)
Tel: 416.601.4121
Fax: 416.601.4123

Lawyers for the Applicant

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
TARGET CANADA CO., et al

**ONTARIO
SUPERIOR COURT OF JUSTICE-COMMERCIAL
LIST**

Proceeding commenced at Toronto

NOTICE OF APPLICATION

LERNERS LLP
130 Adelaide Street West, Suite 2400
Toronto, ON M5H 3P5

Domenico Magisano LS#: 45725
Tel: 416.601.4121
Fax: 416.601.4123

Lawyers for the Applicant

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 TARGET CANADA CO., et al

Court File No. CV-15-10832-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER

LERNERS LLP
130 Adelaide Street West, Suite 2400
Toronto, ON M5H 3P5

Lisa Munro LS#: 36006R
Tel: 416.601.2360
Fax: 416.601.2416

Domenico Magisano LS#: 45725
Tel: 416.601.4121
Fax: 416.601.4123

Lawyers for Amskor Corporation

TAB 2

Court File No. CV-15-10832-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE
REGIONAL SENIOR JUSTICE
MORAWETZ)
)
)

~~FRIDAY~~
MONDAY, THE 27TH DAY
~~WEDNESDAY~~ OF MAY, 2015

BETWEEN:

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

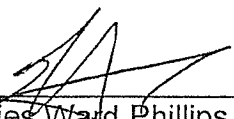
AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF TARGET CANADA CO., TARGET
CANADA HEALTH CO., TARGET CANADA MOBILE GP
CO., TARGET CANADA PHARMACY (BC) CORP.,
TARGET CANADA PHARMACY (ONTARIO) CORP.,
TARGET CANADA PHARMACY CORP., TARGET
CANADA PHARMACY (SK) CORP., and TARGET
CANADA PROPERTY LLC

APPLICANTS

CONSENT

THE PARTIES HERETO, by their lawyers, consent to an order in the form
attached as Schedule "A" and certify that no party to this proceeding is under any legal
disability.

Date: May 27, 2015



Davies Ward Phillips & Vineberg LLP
155 Wellington Street West
Toronto, ON M5V 3J7

Jay A. Swartz
Robin Schwill
&
Dina Milivojevic

- 2 -

Tel: 416.863.0900
Fax: 416.863.0871
Lawyers for the Respondent

Date: May 27, 2015

LERNERS LLP
130 Adelaide Street West, Suite 2400
Toronto, ON M5H 3P5

Lisa Munro LS#:36006R
Tel: 416.601.2360
Fax:416.601.2416

Domenico Magisano LS#:45725
Tel: 416.601.4121
Fax: 416.601.4123
Lawyers for Amskor Corporation

SCHEDULE "A"

Court File No. CV-15-10832-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE
REGIONAL SENIOR JUSTICE
MORAWETZ

WEDNESDAY, THE 27TH
OF MAY, 2015

)
)
)

BETWEEN:

IN THE MATTER OF THE *COMPANIES' CREDITORS
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CANADA PROPERTY LLC

APPLICANTS

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THIS MOTION made by the Amskor Corporation ("**Amskor**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the "**CCAA**") for an Order: (i) approving the issuing of the Notice of Application attached hereto as Schedule "A" (the "**Amskor Application**") on the Commercial List; and (ii) lifting the stay of proceedings granted to Target Corporation ("**Target US**") in these proceedings (the "**Stay**") pursuant to the Initial Order of this court dated January 15, 2015, as amended and restated on February 11, 2015 (the "**Initial Order**"), if necessary, for the sole purpose of permitting Amskor to proceed with the Amskor Application was read this day at 330 University Avenue, Toronto. Ontario

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ON READING the Consent of the lawyers for Amskor and Target US, filed, and being advised that the lawyers for both the Applicants and Alvarez & Marsal Canada Inc. in its capacity as Monitor have been advised of this consent motion:

1. **THIS COURT ORDERS** that the Notice of Application in the Amskor Application may be issued in the Ontario Superior Court of Justice - Commercial List.
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MORAWETZ R.S.J.

SCHEDULE "A"

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

AMSKOR CORPORATION o/a CAM of America

Applicant

- and -

TARGET CORPORATION

Respondent

**APPLICATION UNDER Rule 14.05(3)(d) and (g) of the *Rules of Civil Procedure*
R.R.O. 1990 Reg. 194 (as amended)**

NOTICE OF APPLICATION

TO THE RESPONDENTS:

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 on a date to be set by a Judge of the Commercial List at a 9:30am chambers appointment at the Court House, 330 University Ave., Toronto, Ontario.

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 the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

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- 2 -

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Date May , 2015

Issued by _____
Local registrar

Address of court office 330 University Avenue
7th Floor
Toronto, Ontario M5G 1R7

TO: Target Corporation
1000 Nicollet Mall
Minneapolis, Minnesota
55403
United States of America

- 3 -

APPLICATION

1. THE APPLICANT AMSKOR CORPORATION o/a CAM OF AMERICA (“AMSKOR”) MAKES APPLICATION FOR, AMONG OTHER THINGS:

- (a) a declaration that Target Corporation (“**Target US**”) has an obligation to perform the terms of the Current Supply Agreement (as hereinafter defined);
- (b) a mandatory Order that Target US perform all of the terms of the Current Supply Agreement as more particularly described in paragraph 2(h) below;
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- (e) costs of this Application together with applicable taxes; and
- (f) such further and other relief as counsel may advise and this Court may permit.

2. THE GROUNDS FOR THE APPLICATION ARE:

Background and Original Supply Agreement

- (a) Amskor has been a supplier to Target Canada Corporation (“**Target Canada**” and together with Target US are collectively, “**Target**”) since Target Canada’s entry into the Canadian market in or about March 2013 (the “**Original Supply Arrangement**”);

- 4 -

- (b) The Original Supply Arrangement was an informal arrangement wherein Target Canada would order product from Amskor on an as needed basis and Amskor would deliver same. Initially, payment for product was received by cheque from Target US; however over time, Amskor began receiving payment by way of wire transfer;
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- 5 -

- (i) Target Canada and Target US would be jointly and severally liable for all obligations under the new arrangement;
 - (ii) That the new arrangement would be for a five-year term; and
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- (f) There were comprehensive negotiations regarding this new arrangement and initially, Target was resistant to including Target US as a party to the agreement. However, from Amkor's perspective this was an integral part of the draft agreement, as:
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- (g) The inclusion of Target US as a party to the agreement was escalated within Target to legal counsel, who initially removed Target US from the draft agreement. Amkor insisted on Target US being a party under the new agreement and ultimately Target agreed. The agreement between Target and Amkor is dated April 15, 2014 (the "**Current Supply Agreement**") and together with the Original Supply Agreement are the "**Supply Agreements**") and is signed by Neeru Nandrajog ("**Neeru**") on behalf of Target (who at all material times was held out to have authority to enter into the Current Supply Agreement on behalf of Target) and Saeid Korhani on behalf of Amkor;

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- 6 -

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 - (A) 15% of net net purchases by Target up to \$5,000,000 per year (each contract year beginning on May 1st and ending on April 30th); and
 - (B) 20% of net net purchases by Target for purchase amounts in excess of \$5,000,000 per year (each contract year beginning on May 1st and ending on April 30th).
 - (iv) Target to guarantee Amskor the following space allocations within their various stores:
 - (A) 12 feet of space allocation in the National In-Line Program of the Area Rug Section at all Target "large format" stores;
 - (B) 8 feet of space allocation in the National In-Line Program of the Utility Section at all Target "large format" stores; and
 - (C) 4 feet of space allocation in the National In-Line Program of the Area Rug Section in all Target "small stores".
 - (v) Target to promote Amskor's products and programs in its advertising at least once a quarter; and
 - (vi) The Current Supply Agreement is to be construed in accordance with the laws of the Province of Ontario;
- (i) The negotiations regarding the Supply Agreements were conducted with representatives of both Target Canada and Target US largely within Ontario and the Current Supply Agreement specifically states that the laws of Ontario apply;
- (j) In addition to the specific terms listed, Target required Amskor to provide a further \$75,000 chargeback on execution of the Current Supply

- 7 -

Agreement. Amskor agreed and the \$75,000 payment was made by way of deduction from invoices for product delivered under the Original Supply Agreement (said deduction being in addition to Vendor Income Payment that already formed part of the Original Supply Agreement);

(k) Furthermore, during the Current Supply Agreement (and in spite of the fact that the Current Supply Agreement was supposed to fix the Vendor Income Payments to the amounts listed therein), Target repeatedly requested that Amskor provide additional financial incentives and rebates. Amskor often acceded to these requests on the repeated promises made by Target of additional store openings in Canada and eventually, the ability to sell its products in the Target US market;

(l) Throughout its interactions with Target, Amskor would correspond with both representatives of Target US and Target Canada;

(m) Further, as recently as September 2014 (i.e. less than 5 months after the Current Supply Agreement came into force), Amskor was advised that Target US was already considering purchase of Amskor product for its US stores.

Target Canada CCAA Proceeding

(n) Target and Amskor operated under the terms of the Current Supply Agreement from its inception in April 2014 until Target Canada filed for creditor protection pursuant to the *Companies' Creditors Arrangement Act* R.S.C. 1985 c. C-36 as amended (the "CCAA") on January 15, 2015;

- 8 -

- (o) As a result of the CCAA proceeding, there is a stay of proceedings against Target Canada. While the CCAA proceeding also provides a limited stay of proceedings in favour of Target US, that stay does not apply to instances where Target US has a direct contractual relationship with a supplier in Canada;
- (p) Following Target Canada's filing for CCAA protection, Amskor attempted to contact representatives of Target US to engage in discussions about how it wished to proceed with the Current Supply Agreement. The only response Amskor received to its correspondence was an e-mail from Aaron Alt of Target US advising that the matter had been forwarded to Target US' legal department. Amskor has not received a response from Target US' counsel or any further communication from Target US;

Losses from Failure to Honour the Current Supply Agreement

- (q) Amskor is currently holding approximately \$6,888,807 in rugs and utility mats ordered by Target (the "**Ordered Product**"). The Ordered Product was procured at Target's behest due to its strict "just in time" shipping policy, which required Amskor to have product readily available for pick up at any time. This product was created to Target's strict specifications and is difficult, if not impossible, to resell to third parties without significant price reductions;

- 9 -

- (r) In addition to the product ordered but not paid for by Target, Amskor has incurred \$626,726 in storage and shipping costs related to the Ordered Product, which amounts continue to accrue;
- (s) During the relationship Target demanded additional rebates and chargebacks from Amskor to assist with clearance sales of product that Target had previously purchased, but had not sold and now deemed "old stock" (referred to by the parties as "**Contract Markdown Support**"). While not obligated to provide Contract Markdown Support under either the Original Supply Agreement or the Current Supply Agreement, Amskor did so as it was advised that it would have a long and prosperous relationship with Target Canada and Target US. In total, Amskor provided \$301,794 in Contract Markdown Support;
- (t) Target also periodically requested additional rebates and chargebacks to assist with new store openings (the "**New Store Rebates**"). While not required to provide the New Store Rebates, Amskor did so for the same reasons it provided the Contract Markdown Support. Amskor provided Target with \$104,578 in New Store Rebates;
- (u) Furthermore, Amskor has over \$325,477 in unpaid receivables owing by Target under the Current Supply Agreement;
- (v) Amskor has incurred, and continues to incur substantial losses relating to, among other things, infrastructure, staffing, equipment purchases and upgrades, and additional procuring raw materials, all necessitated by its

- 10 -

contractual obligations under the Supply Agreements and Target's requirement for "just in time" service

- (w) Finally, Amskor has been, and continues to be, deprived of the benefits it had negotiated and agreed to in the Current Supply Agreement which had at least 2 years and 3 months remaining at the time of the CCAA and could have been as long as 4 years and 3 months had the option for 2 additional years been exercised;
- (x) Rules 14.05(3)(d), 14.05(3)(g), 17.02(a), 17.02(c), and 17.02(f) of the *Rules of Civil Procedure*;
- (y) Section 99 of the *Courts of Justice Act*; and
- (z) Such further and other relief as counsel may advise and this Court may permit.

3. THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE APPLICATION:

- (a) Affidavit of Saeid Korhani, to be sworn; and
- (b) such further and other evidence

- 11 -

May __, 2015

LERNERS LLP
130 Adelaide Street West, Suite 2400
Toronto, ON M5H 3P5

Domenico Magisano (LSUC #: 45725E)
Tel: 416.601.4121
Fax: 416.601.4123

Lawyers for the Applicant

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
TARGET CANADA CO., et al

**ONTARIO
SUPERIOR COURT OF JUSTICE-COMMERCIAL
LIST**

Proceeding commenced at Toronto

NOTICE OF APPLICATION

LERNERS LLP
130 Adelaide Street West, Suite 2400
Toronto, ON M5H 3P5

Domenico Magisano LS#: 45725
Tel: 416.601.4121
Fax: 416.601.4123

Lawyers for the Applicant

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 TARGET CANADA CO., et al

Court File No. CV-15-10832-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER

LERNERS LLP
130 Adelaide Street West, Suite 2400
Toronto, ON M5H 3P5

Lisa Munro LS#: 36006R
Tel: 416.601.2360
Fax: 416.601.2416

Domenico Magisano LS#: 45725
Tel: 416.601.4121
Fax: 416.601.4123

Lawyers for Amskor Corporation

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 TARGET CANADA CO., et al

Court File No. CV-15-10832-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at Toronto

CONSENT

LERNERS LLP
130 Adelaide Street West, Suite 2400
Toronto, ON M5H 3P5

Lisa Munro LS#: 36006R
Tel: 416.601.2360
Fax: 416.601.2416

Domenico Magisano LS#: 45725
Tel: 416.601.4121
Fax: 416.601.4123

Lawyers for Amskor Corporation

TAB 3

Court File No. *Cv 15-10987-00 CL*

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

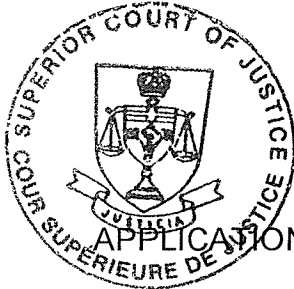
AMSKOR CORPORATION o/a CAM of America

Applicant

- and -

TARGET CORPORATION

Respondent



APPLICATION UNDER Rule 14.05(3)(d) and (g) of the *Rules of Civil Procedure*
R.R.O. 1990 Reg. 194 (as amended)

NOTICE OF APPLICATION

TO THE RESPONDENTS:

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 on a date to be set by a Judge of the Commercial List at a 9:30am chambers appointment at the Court House, 330 University Ave., Toronto, Ontario.

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 the 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

- 2 -

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 June 3, 2015

Issued by _____

Local registrar

A. Anissimova
Registrar

Address of court office 330 University Avenue
7th Floor
Toronto, Ontario M5G 1R7

TO: Target Corporation
1000 Nicollet Mall
Minneapolis, Minnesota
55403
United States of America

APPLICATION

1. THE APPLICANT AMSKOR CORPORATION o/a CAM OF AMERICA (“AMSKOR”) MAKES APPLICATION FOR, AMONG OTHER THINGS:

- (a) a declaration that Target Corporation (“**Target US**”) has an obligation to perform the terms of the Current Supply Agreement (as hereinafter defined);
- (b) a mandatory Order that Target US perform all of the terms of the Current Supply Agreement as more particularly described in paragraph 2(h) below;
- (c) an Order directing a trial of an issue with respect to damages;
- (d) pre judgement and post judgement interest, calculated in accordance with the *Courts of Justice Act* R.S.O. 1990 c. C.43 as amended
- (e) costs of this Application together with applicable taxes; and
- (f) such further and other relief as counsel may advise and this Court may permit.

2. THE GROUNDS FOR THE APPLICATION ARE:

Background and Original Supply Agreement

- (a) Amskor has been a supplier to Target Canada Corporation (“**Target Canada**”) and together with Target US are collectively, “**Target**”) since Target Canada’s entry into the Canadian market in or about March 2013 (the “**Original Supply Arrangement**”);

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- (b) The Original Supply Arrangement was an informal arrangement wherein Target Canada would order product from Amskor on an as needed basis and Amskor would deliver same. Initially, payment for product was received by cheque from Target US; however over time, Amskor began receiving payment by way of wire transfer;
- (c) Target generally requires its suppliers to contribute towards Target's marketing of products and other ancillary expenses. This contribution is often referred to as a "Vendor Income Payment" and, in Amskor's case, was paid by Amskor to Target by way of a set-off against invoices delivered. During the Original Supply Arrangement, Amskor was required to remit three percent of its total invoices to Target Canada as its Vendor Income Payment;
- (d) In addition to the Vendor Income Payment, Amskor was required to provide further lump sum incentives to Target Canada on an as requested basis. These lump sum payments were used to compensate Target Canada for marketing and promotions it was implementing at its stores;

The Current Supply Agreement

- (e) In early 2014, Target approached Amskor regarding a more comprehensive supply arrangement. Specifically, Target wanted a more defined, and higher, Vendor Income Payment arrangement from Amskor. Amskor was not adverse to Target's request but wanted added commitments from Target in return. Specifically, Amskor required that:

- 5 -

- (i) Target Canada and Target US would be jointly and severally liable for all obligations under the new arrangement;
 - (ii) That the new arrangement would be for a five-year term; and
 - (iii) That Target would commit to minimum buy amounts from Amskor.

- (f) There were comprehensive negotiations regarding this new arrangement and initially, Target was resistant to including Target US as a party to the agreement. However, from Amskor's perspective this was an integral part of the draft agreement, as:
 - (i) Amskor understood it would eventually have opportunities to expand to the Target US market; and
 - (ii) Given that Target Canada was a nascent corporate entity, Amskor wanted the comfort that Target US would honour and support this new arrangement.

- (g) The inclusion of Target US as a party to the agreement was escalated within Target to legal counsel, who initially removed Target US from the draft agreement. Amskor insisted on Target US being a party under the new agreement and ultimately Target agreed. The agreement between Target and Amskor is dated April 15, 2014 (the "**Current Supply Agreement**") and together with the Original Supply Agreement are the "**Supply Agreements**") and is signed by Neeru Nandrajog ("**Neeru**") on behalf of Target (who at all material times was held out to have authority to enter into the Current Supply Agreement on behalf of Target) and Saeid Korhani on behalf of Amskor;

- (h) The salient terms of the Current Supply Agreement are as follows:

- 6 -

- (i) initial three-year term that can be extended at Target's sole discretion for an additional two years;
 - (ii) Amskor to remit \$5,000,000 in Vendor Income Payments over 5 years in up to \$1,000,000 yearly increments (the "**Yearly Payments**");
 - (iii) The Yearly Payments to be made to Target on a quarterly basis and deducted from Amskor invoices as follows:
 - (A) 15% of net net purchases by Target up to \$5,000,000 per year (each contract year beginning on May 1st and ending on April 30th); and
 - (B) 20% of net net purchases by Target for purchase amounts in excess of \$5,000,000 per year (each contract year beginning on May 1st and ending on April 30th).
 - (iv) Target to guarantee Amskor the following space allocations within their various stores:
 - (A) 12 feet of space allocation in the National In-Line Program of the Area Rug Section at all Target "large format" stores;
 - (B) 8 feet of space allocation in the National In-Line Program of the Utility Section at all Target "large format" stores; and
 - (C) 4 feet of space allocation in the National In-Line Program of the Area Rug Section in all Target "small stores".
 - (v) Target to promote Amskor's products and programs in its advertising at least once a quarter; and
 - (vi) The Current Supply Agreement is to be construed in accordance with the laws of the Province of Ontario;
- (i) The negotiations regarding the Supply Agreements were conducted with representatives of both Target Canada and Target US largely within Ontario and the Current Supply Agreement specifically states that the laws of Ontario apply;
- (j) In addition to the specific terms listed, Target required Amskor to provide a further \$75,000 chargeback on execution of the Current Supply

- 7 -

Agreement. Amskor agreed and the \$75,000 payment was made by way of deduction from invoices for product delivered under the Original Supply Agreement (said deduction being in addition to Vendor Income Payment that already formed part of the Original Supply Agreement);

- (k) Furthermore, during the Current Supply Agreement (and in spite of the fact that the Current Supply Agreement was supposed to fix the Vendor Income Payments to the amounts listed therein), Target repeatedly requested that Amskor provide additional financial incentives and rebates. Amskor often acceded to these requests on the repeated promises made by Target of additional store openings in Canada and eventually, the ability to sell its products in the Target US market;
- (l) Throughout its interactions with Target, Amskor would correspond with both representatives of Target US and Target Canada;
- (m) Further, as recently as September 2014 (i.e. less than 5 months after the Current Supply Agreement came into force), Amskor was advised that Target US was already considering purchase of Amskor product for its US stores.

Target Canada CCAA Proceeding

- (n) Target and Amskor operated under the terms of the Current Supply Agreement from its inception in April 2014 until Target Canada filed for creditor protection pursuant to the *Companies' Creditors Arrangement Act* R.S.C. 1985 c. C-36 as amended (the "CCAA") on January 15, 2015;

- (o) As a result of the CCAA proceeding, there is a stay of proceedings against Target Canada. While the CCAA proceeding also provides a limited stay of proceedings in favour of Target US, that stay does not apply to instances where Target US has a direct contractual relationship with a supplier in Canada;
- (p) Following Target Canada's filing for CCAA protection, Amskor attempted to contact representatives of Target US to engage in discussions about how it wished to proceed with the Current Supply Agreement. The only response Amskor received to its correspondence was an e-mail from Aaron Alt of Target US advising that the matter had been forwarded to Target US' legal department. Amskor has not received a response from Target US' counsel or any further communication from Target US;

Losses from Failure to Honour the Current Supply Agreement

- (q) Amskor is currently holding approximately \$6,888,807 in rugs and utility mats ordered by Target (the "**Ordered Product**"). The Ordered Product was procured at Target's behest due to its strict "just in time" shipping policy, which required Amskor to have product readily available for pick up at any time. This product was created to Target's strict specifications and is difficult, if not impossible, to resell to third parties without significant price reductions;

- 9 -

- (r) In addition to the product ordered but not paid for by Target, Amskor has incurred \$626,726 in storage and shipping costs related to the Ordered Product, which amounts continue to accrue;
- (s) During the relationship Target demanded additional rebates and chargebacks from Amskor to assist with clearance sales of product that Target had previously purchased, but had not sold and now deemed “old stock” (referred to by the parties as “**Contract Markdown Support**”). While not obligated to provide Contract Markdown Support under either the Original Supply Agreement or the Current Supply Agreement, Amskor did so as it was advised that it would have a long and prosperous relationship with Target Canada and Target US. In total, Amskor provided \$301,794 in Contract Markdown Support;
- (t) Target also periodically requested additional rebates and chargebacks to assist with new store openings (the “**New Store Rebates**”). While not required to provide the New Store Rebates, Amskor did so for the same reasons it provided the Contract Markdown Support. Amskor provided Target with \$104,578 in New Store Rebates;
- (u) Furthermore, Amskor has over \$325,477 in unpaid receivables owing by Target under the Current Supply Agreement;
- (v) Amskor has incurred, and continues to incur substantial losses relating to, among other things, infrastructure, staffing, equipment purchases and upgrades, and additional procuring raw materials, all necessitated by its

- 10 -

contractual obligations under the Supply Agreements and Target's requirement for "just in time" service

- (w) Finally, Amskor has been, and continues to be, deprived of the benefits it had negotiated and agreed to in the Current Supply Agreement which had at least 2 years and 3 months remaining at the time of the CCAA and could have been as long as 4 years and 3 months had the option for 2 additional years been exercised;
- (x) Rules 14.05(3)(d), 14.05(3)(g), 17.02(a), 17.02(c), and 17.02(f) of the *Rules of Civil Procedure*;
- (y) Section 99 of the *Courts of Justice Act*; and
- (z) Such further and other relief as counsel may advise and this Court may permit.

3. THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE APPLICATION:

- (a) Affidavit of Saeid Korhani, to be sworn; and
- (b) such further and other evidence

- 11 -

June 3, 2015

LERNERS_{LLP}
130 Adelaide Street West, Suite 2400
Toronto, ON M5H 3P5

Domenico Magisano (LSUC #: 45725E)
Tel: 416.601.4121
Fax: 416.601.4123

Lawyers for the Applicant

AMSKOR CORPORATION and TARGET CORPORATION
Applicant Respondent

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

NOTICE OF APPLICATION

LERNERS LLP
130 Adelaide Street West
Suite 2400
Toronto, ON
M5H 3P5

Domenico Magisano (LSUC #: 45725E)
Tel: 416.601.4121
Fax: 416.601.4123

Lawyers for the Applicant

TAB 4

PROOF OF CLAIM FORM FOR CLAIMS AGAINST THE TARGET CANADA ENTITIES¹

1. Name of Target Canada Entity or Entities (the "Debtor"):

Debtor: TARGET CANADA CO

2(a) Original Claimant (the "Claimant")

Legal Name of Claimant AMSKOR CORPORATION

Address 23 Lesmill Road

SUITE 210

City Toronto Prov /State Ontario

Postal/Zip Code M3B-5P6

Name of Contact Domenico Magisano

Title counsel to Claimant

Phone # 416 601 4121

Fax # 416 601 4123

email dmagisano@lerner.ca

2(b) Assignee, if claim has been assigned

Legal Name of Assignee N/A

Address _____

City _____ Prov /State _____

Postal/Zip Code _____

Name of Contact _____

Phone # _____

Fax # _____

email: _____

¹ Target Canada Co., Target Canada Health Co., Target Canada Mobile GP Co., Target Canada Pharmacy (BC) Corp., Target Canada Pharmacy Corp., Target Canada Pharmacy (SK) Corp., Target Canada Property LLC, Target Canada Pharmacy Franchising LP, Target Canada Mobile LP, And Target Canada Property LP (collectively, the "Target Canada Entities").

3. Amount of Claim

The Debtor was and still is indebted to the Claimant as follows:

Currency	Amount of Claim (including interest up to and including January 14, 2015)	Unsecured Claim	Secured Claim
Canadian Dollar	\$ 23,284,093.40	<input checked="" type="checkbox"/>	<input type="checkbox"/>
United States Dollar	\$ 4,257,313.85	<input checked="" type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>

4. Documentation

Provide all particulars of the Claim and supporting documentation, including amount, and description of transaction(s) or agreement(s), or legal breach(es) giving rise to the Claim, including any claims assignment/transfer agreement or similar document, if applicable, and amount of invoices, particulars of all credits, discounts, etc. claimed, description of the security, if any, granted by the affected Debtor to the Claimant and estimated value of such security.

5. Certification

I hereby certify that:

1. I am the Claimant or authorized representative of the Claimant.
2. I have knowledge of all the circumstances connected with this Claim.
3. The Claimant asserts this Claim against the Debtor as set out above.
4. Complete documentation in support of this claim is attached.

Signature: _____	Witness: _____
Name: _____	(signature)
Title: _____	(print)
Dated at _____ this _____ day of _____, 2015	

6. Filing of Claim

This Proof of Claim must be received by the Monitor on or before 5:00 p.m. (Toronto time) on August 31, 2015 by prepaid ordinary mail, registered mail, courier, personal delivery or electronic transmission at the following address:

Alvarez & Marsal Canada Inc., Target Canada Monitor
Royal Bank Plaza, South Tower
200 Bay Street, Suite 2900, P.O. Box 22
Toronto, ON Canada M5J 2J1
Attention: Greg Karpel
Email: targetcanadaclaims@alvarezandmarsal.com
Fax No.: 416-847-5201

For more information see www.alvarezandmarsal.com/targetcanada, or contact the Monitor by telephone (1-844-864-9548)

CLAIMANT'S GUIDE TO COMPLETING THE PROOF OF CLAIM FORM FOR CLAIMS AGAINST THE TARGET CANADA ENTITIES¹

This Guide has been prepared to assist Claimants in filling out the Proof of Claim form for Claims against the Target Canada Entities. If you have any additional questions regarding completion of the Proof of Claim, please consult the Monitor's website at www.alvarezandmarsal.com/targetcanada or contact the Monitor, whose contact information is shown below.

Additional copies of the Proof of Claim may be found at the Monitor's website address noted above.

Please note that this is a guide only, and that in the event of any inconsistency between the terms of this guide and the terms of the Claims Procedure Order made on June 11, 2015 (the "Claims Procedure Order"), the terms of the Claims Procedure Order will govern.

SECTION 1 – DEBTOR

1. The full name of the Target Canada Entity or Entities against which the Claim is asserted must be listed (see footnote 1 for complete list of Target Canada Entities).

SECTION 2(a) – ORIGINAL CLAIMANT

2. A separate Proof of Claim must be filed by each legal entity or person asserting a claim against the Target Canada Entities, or any of them.
3. The Claimant shall include any and all Claims it asserts against the Target Canada Entities, or any of them, in a single Proof of Claim.
4. The full legal name of the Claimant must be provided.
5. If the Claimant operates under a different name or names, please indicate this in a separate schedule in the supporting documentation.
6. If the Claim has been assigned or transferred to another party, Section 2(b) must also be completed.
7. Unless the Claim is assigned or transferred, all future correspondence, notices, etc. regarding the Claim will be directed to the address and contact indicated in this section.

¹ Target Canada Co., Target Canada Health Co., Target Canada Mobile GP Co., Target Canada Pharmacy (BC) Corp., Target Canada Pharmacy Corp., Target Canada Pharmacy (Ontario) Corp., Target Canada Pharmacy (SK) Corp., Target Canada Property LLC, Target Canada Pharmacy Franchising LP, Target Canada Mobile LP, and Target Canada Property LP (collectively, the "Target Canada Entities").

SECTION 2(b) – ASSIGNEE

8. If the Claimant has assigned or otherwise transferred its Claim, then Section 2(b) must be completed.
9. The full legal name of the Assignee must be provided.
10. If the Assignee operates under a different name or names, please indicate this in a separate schedule in the supporting documentation.
11. If the Monitor in consultation with the Target Canada Entities is satisfied that an assignment or transfer has occurred, all future correspondence, notices, etc. regarding the Claim will be directed to the Assignee at the address and contact indicated in this section.

SECTION 3 - AMOUNT OF CLAIM OF CLAIMANT AGAINST DEBTOR

12. Indicate the amount the Target Canada Entity or Entities was and still is indebted to the Claimant in the Amount of Claim column, including interest up to and including January 14, 2015.

Currency

13. The amount of the Claim must be provided in the currency in which it arose.
14. Indicate the appropriate currency in the Currency column.
15. If the Claim is denominated in multiple currencies, use a separate line to indicate the Claim amount in each such currency. If there are insufficient lines to record these amounts, attach a separate schedule indicating the required information.
16. If necessary, currency will be converted in accordance with the Claims Procedure Order.

Unsecured Claim

- Check this box ONLY if the Claim recorded on that line is an unsecured claim.

Secured Claim

- Check this box ONLY if the Claim recorded on that line is a secured claim.

SECTION 4 - DOCUMENTATION

Attach to the Proof of Claim form all particulars of the Claim and supporting documentation, including amount, and description of transaction(s) or agreement(s), or legal breach(es) giving rise to the Claim, including any claim assignment/transfer agreement or similar document, if applicable and amount of invoices, particulars of all credits, discounts, etc. claimed, description of the security, if any, granted by the affected Target Canada Entity to the Claimant and estimated value of such security.

SECTION 5 - CERTIFICATION

The person signing the Proof of Claim should:

- (a) be the Claimant or authorized representative of the Claimant.
- (b) have knowledge of all the circumstances connected with this Claim.
- (c) assert the Claim against the Debtor as set out in the Proof of Claim and certify all supporting documentation is attached.
- (d) have a witness to its certification.

By signing and submitting the Proof of Claim, the Claimant is asserting the Claim against the Target Canada Entity or Entities.

SECTION 6 - FILING OF CLAIM

The Proof of Claim must be received by the Monitor on or before 5:00 p.m. (Toronto time) on August 31, 2015 (the “Claims Bar Date”) by prepaid ordinary mail, registered mail, courier, personal delivery or electronic transmission at the following address:

**Alvarez & Marsal Canada Inc., Target Canada Monitor
Royal Bank Plaza, South Tower
200 Bay Street, Suite 2900, P.O. Box 22
Toronto, ON Canada M5J 2J1
Attention: Greg Karpel**

**Email: targetcanadaclaims@alvarezandmarsal.com
Fax No.: 416-847-5201**

Failure to file your Proof of Claim so that it is actually received by the Monitor on or before 5:00 p.m., on the Claims Bar Date will result in your claim being barred and you will be prevented from making or enforcing a Claim against the Target Canada Entities. In addition, you shall not be entitled to further notice in and shall not be entitled to participate as a creditor in the Target Canada Entities’ CCAA proceedings.

TAB 5

CITATION: Target Canada Co. (Re), 2016 ONSC 316
 COURT FILE NO.: CV-15-10832-00CL
 DATE: 2016-01-15

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: 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 TARGET CANADA CO., TARGET CANADA
 HEALTH CO., TARGET CANADA MOBILE GP CO., TARGET CANADA
 PHARMACY (BC) CORP., TARGET CANADA PHARMACY (ONTARIO)
 CORP., TARGET CANADA PHARMACY CORP., TARGET CANADA
 PHARMACY (SK) CORP., and TARGET CANADA PROPERTY LLC.

BEFORE: Regional Senior Justice Morawetz

COUNSEL: *Jeremy Dacks, Shawn Irving and Tracy Sandler* for Target Canada Co., Target
 Canada Health Co., Target Canada Mobile GP Co., Target Canada Pharmacy
 (BC) Corp., Target Canada Pharmacy (Ontario) Corp., Target Canada Pharmacy
 Corp., Target Canada Pharmacy (SK) Corp., and Target Canada Property LLC
 (the "Applicants")

Linda Galessiere and Gus Camelino for 20 VIC Management Inc. (on behalf of
 various landlords), Morguard Investments Limited (on behalf of various
 landlords), Calloway Real Estate Investment Trust (on behalf of Calloway REIT
 (Hopedale) Inc.), Calloway REIT (Laurentian Inc.), Crombie REIT, Triovest
 Realty Advisors Inc. (on behalf of various landlords), Brad-Lea Meadows Limited
 and Blackwood Partners Management Corporation (on behalf of Surrey CC
 Properties Inc.)

Laura M. Wagner and Mathew P. Gottlieb for KingSett Capital Inc.

Yannick Katirai and Daniel Hamson for Eleven Points Logistics Inc.

Daniel Walker for M.E.T.R.O. (Manufacture, Export, Trade, Research Office)
 Incorporated / Kerson Invested Limited

Jay A. Schwartz, Robin Schwill for Target Corporation

Miranda Spence for CREIT

Jay Carfagnini, Jesse Mighton, Alan Mark and Melaney Wagner for Alvarez &
 Marsal Canada Inc. in its capacity as Monitor

James Harnum for Employee Representative Counsel

Harvey Chaiton for the Directors and Officers of the Applicants

Stephen M. Raicek and *Mathew Maloley* for Faubourg Boisbriand Shopping Centre Limited and Sun Life Assurance Company of Canada

Vern W. DaRe for Doral Holdings Limited and 430635 Ontario Inc.

Stuart Brotman for Sobeys Capital Incorporated

Catherine Francis for Primaris Reit

Kyla Mahar for Centerbridge Partners and Davidson Kempner

William V. Sasso, Pharmacist Representative Counsel

Varoujan C. Arman for Nintendo of Canada Ltd., Universal Studios Canada Inc., Thyssenkrupp Elevator (Canada) Limited, RPI Consulting Group Inc.

Brian Parker for Montez (Cornerbrook) Inc., Admns Meadowlands Investment Corp, and Valiant Rental Inc.

Roger Jaipargas for Glentel Inc., Bell Canada and BCE Nexxia

Nancy Tourgis for Issi Inc.

HEARD: December 21, 2015 & December 22, 2015

SUPPLEMENTARY WRITTEN SUBMISSIONS: December 30, 2015, January 6, 2016 and January 8, 2016

ENDORSEMENT

[1] The Applicants Target Canada Co., Target Canada Health Co., Target Canada Mobile GP Co., Target Canada Pharmacy (BC) Corp, Target Canada Pharmacy (Ontario) Corp, Target Canada Pharmacy Corp, Target Canada Pharmacy (Sk) Corp, and Target Canada Property LLC (“Target Canada”) bring this motion for an order, *inter alia*:

- (a) accepting the filing of a Joint Plan Compromise and Arrangement in respect of Target Canada Entities (defined below) dated November 27, 2015 (the “Plan”);

- (b) authorizing the Target Canada Entities to establish one class of Affected Creditors (as defined in the Plan) for the purpose of considering and voting on the Plan (the “Unsecured Creditors’ Class”);
- (c) authorizing the Target Canada Entities to call, hold and conduct a meeting of the Affected Creditors (the “Creditors’ Meeting”) to consider and vote on a resolution to approve the Plan, and approving the procedures to be followed with respect to the Creditors’ Meeting;
- (d) setting the date for the hearing of the Target Canada Entities’ motion seeking sanction of the Plan should the Plan be approved by the required majority of Affected Creditors of the Creditors Meeting.

[2] On January 13, 2016, the Record was endorsed as follows: “The Plan is not accepted for filing. The Motion is dismissed. Reasons to follow.”

[3] These are the reasons.

[4] The Applicants and Partnerships listed on Schedule “A” to the Initial Order (the “Target Canada Entities”) were granted protection from their creditors under the *Companies’ Creditors Arrangement Act* (“CCAA”) pursuant to the Initial Order dated January 15, 2015 (as Amended and Restated, the “Initial Order”). Alvarez & Marsal Canada Inc. was appointed in the Initial Order to act as the Monitor.¹

[5] The Target Canada Entities, with the support of Target Corporation as Plan Sponsor, have now developed a Plan to present to Affected Creditors.

[6] The Target Canada Entities propose that the Creditors’ Meeting will be held on February 2, 2016.

[7] The requested relief sought by Target Canada is supported by Target Corporation, Employee Representative Counsel, Centerbridge Partners, L.P. and Davidson Kempner,

¹ Capitalized terms not defined herein have the same meaning as set out in the Plan.

CREIT, Glentel Inc., Bell Canada and BCE Nexxia, M.E.T.R.O. Incorporated, Eleven Points Logistics Inc., Issi Inc. and Sobeys Capital Incorporated.

[8] The Monitor also supports the motion.

[9] The motion was opposed by KingSett Capital, Morguard Investments Limited, Morguard Investment REIT, Smart REIT, Crombie REIT, Triovest, Faubourg Boisbriand and Sun Life Assurance, Primaris REIT, and Doral Holdings Limited (the "Objecting Landlords").

Background

[10] In February 2015, the court approved the Inventory Liquidation Process and the Real Property Portfolio Sale Process ("RPPSP") to enable the Target Canada Entities to maximize the value of their assets for distribution to creditors.

[11] By the summer of 2015, the processes were substantially concluded and a claims process was undertaken. The Target Canada Entities began to develop a plan that would distribute the proceeds and complete the orderly wind-down of their business.

[12] The Target Canada Entities discussed the development of the Plan with representatives of Target Corporation.

[13] The Target Canada Entities negotiated a structure with Target Corporation whereby Target Corporation would subordinate significant intercompany claims for the benefit of remaining creditors and would make other contributions under the Plan.

[14] Target Corporation maintained that it would only consider subordinating these intercompany claims and making other contributions as part of a global settlement of all issues relating to the Target Canada Entities including a settlement and release of all Landlord Guarantee Claims where Target Corporation was the Guarantor.

[15] The Plan as structured, if approved, sanctioned and implemented will

- (i) complete the wind-down of the Target Canada Entities;

- (ii) effect a compromise, settlement and payment of all Proven Claims; and
- (iii) grant releases of the Target Canada Entities and Target Corporation, among others.

[16] The Plan provides that, for the purposes of considering and voting on the plan, the Affected Creditors will constitute a single class (the “Unsecured Creditors’ Class”).

[17] In the majority of CCAA proceedings, motions of this type are procedural in nature and more often than not they proceed without any significant controversy. This proceeding is, however, not the usual proceeding and this motion has attracted significant controversy. The Objecting Landlords have raised concerns about the terms of the Plan.

[18] The Objecting Landlords take the position that this motion deals with not only procedural issues but substantive rights. The Objecting Landlords have two major concerns.

Objection # 1 – Breach of paragraph 19A of the Amended and Restated Order

[19] First, in February 2015, an Amended and Restated Order was sought by Target Canada. Paragraph 19A was incorporated into the Amended and Restated Order, which provides that the claims of any landlord against Target Corporation relating to any lease of real property (the “Landlord Guarantee Claims”) shall not be determined in this CCAA proceeding and shall not be released or affected in any way in any plan filed by the Applicants.

[20] Paragraph 19A provides as follows:

19A. THIS COURT ORDERS that, without in any way altering, increasing, creating or eliminating any obligation or duty to mitigate losses or damages, the rights, remedies and claims (collectively, the “Landlord Guarantee Claims”) of any landlord against Target US pursuant to any indemnity, guarantee, or surety relating to a lease of real property, including, without limitation, the validity, enforceability or quantum of such Landlord Guarantee Claims: (a) shall be determined by a judge of the Ontario Superior Court of Justice (Commercial List), whether or not the within proceeding under the CCAA continue (without altering the applicable and operative governing law of such indemnity, guarantee or surety) and notwithstanding the provisions of any federal or provincial statutes with respect to procedural matters relating to the Landlord Guarantee Claims; provided that any landlord holding such guarantees, indemnities or sureties that has not consented to the foregoing may, within fifteen (15) days of the making of this Order, bring a motion to have the matter of the venue for

the determination of its Landlord Guarantee Claim adjudicated by the Court; (b) shall not be determined, directly or indirectly, in the within CCAA proceedings; (c) shall be unaffected by any determination (including any findings of fact, mixed fact and law or conclusions of law) of any rights, remedies and claims of such landlords as against Target Canada Entities, whether made in the within proceedings under the CCAA or in any subsequent proposal or bankruptcy proceedings under the BIA, other than that any recoveries under such proceedings received by such landlords shall constitute a reduction and offset to any Landlord Guarantee Claims; and (d) shall be treated as unaffected and shall not be released or affected in any way in any Plan filed by the Target Canada Entities, or any of them, under the CCAA, or any proposal filed by the Target Canada Entities, or any of them, under the BIA.

[21] The evidence of Target Canada in support of the requested change consisted of the Affidavit of Mark Wong, who stated at the time:

“A component of obtaining the consent of the Landlord Group for approval of the Real Property Portfolio Sales Process (“RPPSP”) was the agreement of The Target Canada Entities to seek approval of certain changes to the initial order in the form of an amended and restated initial order...[T]hese proposed changes were the subject of significant negotiation between the Landlord Group and The Target Canada Entities, with the assistance and input of the Monitor and Target Corporation.”

[22] The Monitor, in its second report dated February 9, 2015, stated:

(3.4) Counsel to the Landlord Group advised that the Real Property Portfolio Sales Process proceeding on a consensual basis as described below is conditional on the proposed changes to the initial order.

(3.5) The Monitor recommends approval of the amended and restated initial order as it reflects;

(a) revisions negotiated as among The Target Canada Entities, the Landlord Group and Target U.S. (in conjunction with revisions to the Real Property Portfolio Sales Process), with the assistance of the Monitor; and

(b) a fair and reasonable balancing of interests.

[23] Thus, Objecting Landlords contend that the agreement resulting in Paragraph 19A of the Amended and Restated Initial Order was not just a condition of the Landlord Group's agreement to the RPPSP – it was also a condition of the Landlord Group withdrawing both its opposition to the CCAA process and its intention to commence a bankruptcy application to put the Applicants into bankruptcy at the come back hearing.

[24] The Objecting Landlords contend that the Applicants now seek to file a plan that releases the Landlord Guarantee Claims. This, in their view, is a clear breach of paragraph 19A, which Target Canada sought and the Monitor supported.

Objection # 2 – Breach of paragraph 55 of the Claim Procedure Order

[25] Second, the Objecting Landlords contend that the Plan violates the Claims Procedure Order and the CCAA. They argue that the Claims Procedure Order was also settled after prolonged negotiations between the Target Canada Entities and their creditors, including the landlords and that this order sets out a comprehensive claims process for determining all claims, including landlords' claims.

[26] The Objecting Landlords contend that Paragraph 55 of the Claims Procedure Order expressly excludes Landlord Guarantee Claims and provides that nothing in the Claims Procedure Order shall prejudice, limit, or otherwise affect any claims, including under any guarantee, against Target Corporation or any predecessor tenant. Paragraph 55 also ends with the *proviso* that “[f]or greater certainty, this Order is subject to and shall not derogate from paragraph 19A of the Initial Order.”

[27] The Objecting Landlords take the position that, in clear breach of Paragraph 55 and of the Claims Procedure Order generally, the Plan provides for a set formula to determine landlord claims, including claims against Target Corporation under its guarantees. KingSett further contends that the formula not only purports to determine landlords' claims for distribution purposes, it also purports to determine their claims for voting purposes, with no ability to challenge either. KingSett contends that this violates the terms of the Claims Procedure Order that was sought by the Applicants and supported by the Monitor.

[28] In summary, the Objecting Landlords take the position that the foregoing issues are crucial threshold issues and are not merely “procedural” questions and as such the court has to determine whether it can accept a plan for filing if that plan in effect permits Target Canada to renege on their agreements with creditors, violate court orders and the CCAA.

[29] In my view the issues raised by the Objecting Landlords are significant and they should be determined at this time.

Position of Target Canada

[30] Target Canada takes the position that the threshold for the court to authorize Target Canada to hold the creditors meeting is low and that Target Canada meets this threshold.

[31] Target Canada submits that the Plan has been the subject of numerous discussions and/or negotiations with Target Corporation (leading to a structure based on Target Corporation serving as Plan Sponsor), the Monitor and a wide variety of stakeholders. Target Canada states that if approved, the Plan will effect a compromise, settlement and payment of all proven claims in the near term in a manner that maximizes and accelerates stakeholder recovery.

[32] Target Corporation, as Plan Sponsor and a creditor of Target Canada, has agreed to subordinate approximately \$5 billion in intercompany claims to the claims of other Affected Creditors. Based on the Monitor’s preliminary analysis, the Plan provides for recoveries for Affected Creditors generally in the range of 75% to 85% of their proven claims.

[33] Target Canada contends that recent case law supports the jurisdiction of the CCAA court to provide that third party claims be addressed within the CCAA and leaves it open to a debtor company to address such claims in a plan.

[34] The Plan provides that Affected Creditors will vote on the Plan as a single unsecured class. Target Canada submits that this is appropriate on the basis that all Affected Creditors have the required commonality of interest (i.e. an unsecured claim) in relation to the claims against Target Canada and the Plan will compromise and release all of their claims.

[35] Target Canada is of the view that fragmentation of these creditors into separate classes would jeopardize the ability to achieve a successful plan.

[36] The Plan values the Landlord Restructuring Period Claims of landlords whose leases have been disclaimed by applying a formula (“Landlord Formula Amount”) derived from the formula provided under s. 65.2 (3) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (“BIA” and “BIA Formula”). The Landlord Formula Amount enhances the BIA Formula by permitting recovery of an additional year of rent. Target Corporation intends to contribute funds necessary to pay this enhancement (the “Landlord Guarantee Top-Up Amounts”) Target Canada contends that the use of the BIA Formula to value landlord claims for voting and distribution purposes has been approved in other CCAA proceedings.

[37] With respect to the Landlord Formula Amount to calculate the Landlord Restructuring Period Claims, the formula provides for, in effect, Landlord Restructuring Period Claims to be valued at the lesser of either:

- (i) rent payable under the lease for the two years following the disclaimer plus 15% of the rent for the remainder of the lease term; or
- (ii) four years rent.

[38] Target Canada further contends that the court has the jurisdiction to modify the Initial Order on Plan Implementation to permit the Target Canada Entities to address Landlord Guarantee Claims in the Plan and that it is appropriate to do so in these circumstances. This justification is based on the premise that the landscape of the proceedings has been significantly altered since the filing date, particularly in light of the material contributions that Target Corporation prepared to make as Plan Sponsor in order to effect a global resolution of issues. Further, they argue that Landlord Guarantee Creditors are appropriately compensated under the Plan for their Landlord Guarantee Claims by means of the Landlord Guarantee Creditor Top-Up amounts, which will be funded by Target Corporation. As such, Landlord Guarantee Creditors will be paid 100% of their Landlord Restructuring Period Claims, valued in accordance with the Landlord Formula Amount.

[39] The Applicants contend that they seek to achieve a fair and equitable balance in the Plan. The Applicants submit that questions as to whether the Plan is in fact balanced, and fair and reasonable towards particular stakeholders, are matters best assessed by Affected Creditors who will exercise their business judgment in voting for or against the Plan. Until Affected Creditors have expressed their views, considerations of fairness are premature and are not matters that are required to be considered by the court in granting the requested Creditors' Meeting. If the Plan is approved by the requisite majority of the Affected Creditors, the court will then be in a position to fully evaluate the fairness and reasonableness of the Plan as a whole, with the benefit of the business judgment of Affected Creditors as reflected in the vote of the Creditors' Meeting.

[40] The significant features of the Plan include:

- (i) the Plan contemplates that a single class of Affected Creditors will consider and vote on the plan.
- (ii) the Plan entitles Affected Creditors holding proven claims that are less than or equal to \$25,000 ("Convenience Class Creditors") to be paid in full;
- (iii) the Plan provides that all Landlord Restructuring Period Claims will be calculated using the Landlord Formula Amount derived from the BIA Formula;
- (iv) As a result of direct funding from Target Corporation of the Landlord Guarantee Creditor Top-Up amounts, Landlord Guarantee Creditors will be paid the full value of their Landlord Restructuring Period Claims;
- (v) Intercompany Claims will be valued at the amount set out in the Monitor's Intercompany Claims Report;
- (vi) If approved and sanctioned, the Plan will require an amendment to Paragraph 19A of the Initial Order which currently provides that the Landlord Guarantee Claims are to be dealt with outside these CCAA proceedings. The Plan provides that this amendment will be addressed at the sanction hearing once it has been determined whether the Affected Creditors support the Plan.

(vii) In exchange for Target Corporations' economic contributions, Target Corporation and certain other third parties (including Hudson's Bay Company and Zellers, which have indemnities from Target Corporation) will be released, including in relation to all Landlord Guarantee Claims.

[41] If the Plan is approved and implemented, Target Corporation will be making economic contributions to the Plan. In particular:

- (a) In addition to the subordination of the \$3.1 billion intercompany claim that Target Corporation agreed to subordinate at the outset of these CCAA proceedings, on Plan Implementation Date, Target Corporation will cause Property LLP to subordinate almost all of the Property LLP ("Propco") Intercompany Claim which was filed against Propco in an additional amount of approximately \$1.4 billion;
- (b) In turn, Propco will concurrently subordinate the Propco Intercompany Claim filed against TCC in an amount of approximately \$1.9 billion (adjusted by the Monitor to \$1.3 billion);
- (c) Target Corporation will contribute funds necessary to pay the Landlord Guarantee Creditor Top-Up Amounts.

[42] Target Canada points out that in discussions with Target Corporation to establish the structure for the Plan, Target Corporation maintained that it would only consider subordinating these remaining intercompany claims as part of a global settlement of all issues relating to the Target Canada Entities, including all Landlord Guarantee Claims.

[43] The issue on this motion is whether the requested Creditors' Meeting should be granted. Section 4 of the CCAA provides:

4. Where a compromise or arrangement is proposed between a debtor company and its unsecured creditors or any class of them, the court may, on the application in a summary way of the company, or any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of shareholders of the company, to be summoned in such manner as the court directs.

[44] Counsel cites *Nova Metal Products* for the proposition that the feasibility of a plan is a relevant significant factor to be considered in determining whether to order a meeting of creditors. However, the court should not impose a heavy burden on a debtor company to establish the likelihood of ultimate success at the outset (*Nova Metal Products v. Comiskey (Trustee of)* (1990), 41 O.A.C. 282 (C.A.)).

[45] Counsel submit that the court should order a meeting of creditors unless there is no hope that the plan will be approved by the creditors or, if approved, the plan would not for some other reason be approved by the court (*ScoZinc Ltd., Re*, 2009 NSSC 163, 55 C.B.R. (5th) 205).

[46] Counsel also submits that the court has described the granting of the Creditors' Meeting as essentially a "procedural step" that does not engage considerations of whether the debtors' plan is fair and reasonable. Thus, counsel contends, unless it is abundantly clear the plan will not be approved by its creditors, the debtor company is entitled to put its plan before those creditors and to allow the creditors to exercise their business judgment in determining whether to support or reject it.

[47] Target Canada takes the position that there is no basis for concluding that the Plan has, no hope of success and the court should therefore exercise its discretion to order the Creditors Meeting.

[48] Counsel to Target Canada submits that the flexibility of the CCAA allows the Target Canada Entities to apply a uniform formula for valuing Landlord Restructuring Period Claims for voting and distribution purposes, including Landlord Guarantee Claims, in the interests of ensuring expeditious distributions to all Affected Creditors

[49] Counsel contends that if each Landlord Restructuring Period Claim had to be individually calculated based on the unique facts applicable to each lease, including future prospects for mitigation and uncertain collateral damage, the resulting disputes would embroil disputes between landlords and the Target Canada Entities in lengthy proceedings. Counsel contends that the issue relating to the Landlord Guarantee Claims is more properly a matter of

the overall fairness and reasonableness of the Plan and should be addressed at the sanction hearing.

[50] The Plan also contemplates releases for the benefit of Target Corporation and other third parties to recognize the material economic contribution that have resulted in favourable recoveries for Affected Creditors. These releases, Target Canada contends, satisfy the well established test for the CCAA court to approve third party releases. (*ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.*, (2008) 42 C.B.R. (5th) 90 (Ont. S.C.J. [Commercial List], affirmed 2008 ONCA 587, (sub nom. *Re Metcalfe & Mansfield Alternative Investments II Corp.*))

[51] Likewise, the issue of Third Party Claims and Third Party Releases is a matter that can be addressed at sanction.

[52] With respect to the amendment to Paragraph 19A of the Initial Order, counsel submits that since the date of the Initial Order, and since this paragraph was included in the Initial Order, the landscape of the restructuring has shifted considerably, most notably in the form of the economic contributions that are being offered by Target Corporation, as Plan Sponsor.

[53] The Target Entities propose that on Plan Implementation, Paragraph 19A of the Initial Order will be deleted. Counsel submits that the court has the jurisdiction to amend the Initial Order through its broad jurisdiction under s. 11 of the CCAA to make any order that it considers appropriate in the circumstances and further, the court would be exercising its discretion to amend its own order, on the basis that it is just and appropriate to do so in these particular circumstances. Counsel submits that the requested amendment is essential to the success of the Plan and to maximize and expedite recoveries for all stakeholders. Further, the notion that a post-filing contract cannot be amended despite subsequent events fails to do justice to the flexible and “real time” nature of a CCAA proceeding.

[54] As such, counsel contends that no further information is necessary in order for the landlords to determine whether the Plan is fair and reasonable and they are in a position to vote for or against the Plan.

Position of the Objecting Landlords

[55] At the outset of this proceeding, Target Canada, Target Corporation and Target Canada's landlords agreed that Landlord Guarantee Claims would not be affected by any Plan. In exchange, several landlords with Landlord Guarantee Claims agreed to withdraw their opposition to Target Canada proceeding with the liquidation under the CCAA and the RPPSP.

[56] Counsel to the landlords submit that 10 months after having received the benefit of the landlords not opposing the RPPSP and the continuation of the CCAA, Target Canada seeks the court's approval to unequivocally renege on the agreement that violates the Amended Order by filing a Plan that compromises Landlord Guarantee Claims.

[57] The Objecting Landlords also contend that the proposed plan violates the Amended Order and the Claims Procedure Order by purporting to value the landlords' claims, including all Landlord Guarantee Claims, using a formula.

[58] Objecting Landlords take the position that they have claims against Target Canada as a result of its disclaimer of long term leases, guaranteed by Target Corporation, in excess of the amount that the Plan values these claim. One example is the claim of KingSett. KingSett insists they have a claim of at least \$26 million which has been valued for Plan purposes at \$4 million plus taxes.

[59] The Objecting Landlords submit that the court cannot and should not allow a plan to be filed that violates the court's orders and agreements made by the Applicant. Further, if the motion is granted, the CCAA will no longer allow for a reliable process pursuant to which creditors can expect to negotiate with an Applicant in good faith. Counsel contends that the amendment of the Initial Order to buttress the agreement between the parties not to compromise the Landlord Guarantee Claims was intended to strengthen, not weaken, the landlords' ability to enforce Target Canada and Target Corporation's contractual obligation not to file a plan that compromises Landlord Guarantee Claims and it would be a perverse outcome for the court to hold otherwise.

[60] With respect to claims procedure, the Claims Procedure Order provides in Paragraph 32 that a claim that is subject to a dispute “shall” be referred to a claims officer of the court for adjudication. The Objecting Landlords submit that the Claims Procedure Order reaffirms the agreement between Target Canada, Target Corporation and the Landlord Group with respect to Landlord Guarantee Claims; they refer to Paragraph 55 which specifically provides that nothing in the order shall prejudice, limit, bar, extinguish or otherwise affect any rights or claims, including under any guarantee or indemnity, against Target Corporation or any predecessor tenant.

[61] Counsel for the Objecting Landlords submit that the Plan provides the basis for Target Corporation to avoid its obligation to honour guarantees to landlords, which Target Corporation agreed would not be compromised as part of the CCAA proceedings. Counsel contends that the Plan seeks to use the leverage of the “Plan Sponsor” against the creditors to obtain approval to renege on its obligations. This, according to counsel, amounts to an economic decision by Target Corporation in its own financial interest.

[62] In support of its proposition that the court cannot accept a plan’s call for a meeting where the plan cannot be sanctioned, counsel references *Crystallex International Corp., Re*, 2013 ONSC 823, 2013 CarswellOnt 3043 [Commercial List]. Counsel submits that the court should not allow the Applicants to file a plan that from the outset cannot be sanctioned because it violates court orders or is otherwise improper.

[63] In this case, counsel submits that the Plan cannot be accepted for filing because it violates Paragraph 19A of the Amended Order and Paragraph 55 of the Claims Procedure Order. The Objecting Landlords stated as follows:

Paragraph 19A of the Amended Order is unequivocal. Landlord Guarantee Claims:

- (a) shall not be determined, directly or indirectly, in the CCAA proceeding;
- (b) shall be unaffected by any determination of claims of landlords against Target Canada; and,

(c) shall be treated as unaffected and shall not be released or affected in any way in any Plan filed by Target Canada under the CCAA.

Likewise, the Claims Procedure Order, as amended, clearly provides that:

(a) disputed creditors' claims shall be adjudicated by a Claims Officer or the Court;

(b) creditors have until February 12, 2016 to object to intercreditor claims; and,

(c) the claims process shall not affect Landlord Guarantee Claims and shall not derogate from paragraph 19A of the Amended Order.

There is no dispute that the Plan that Target Canada now seeks to file violates these terms of the Amended Order and the Claims Procedure Order...

[64] With respect to the issue of Paragraph 19A, counsel submits that this provision benefits Target Canada's creditors who have guarantees from Target Corporation. Further, under the plan, these creditors gain nothing from subordination of Target Corporation's intercompany claim, which only benefits creditors who did not obtain guarantees from Target Corporation. Counsel referred to *Alternative Fuel Systems Inc., Re*, 2003 ABQB 745, 20 Alta. L.R. (4th) 264, aff'd 2004 ABCA 31, 346 A.R. 28, where both courts emphasized the importance of following a claims procedure and complying with ss. 20(1)(a)(iii) to determine landlord claims.

[65] Accordingly, counsel submits that barring landlord consent at the claims process stage of the CCAA proceeding, the court cannot unilaterally impose a cookie cutter formula to determine landlord claims at the plan stage.

Analysis

[66] Target Canada submits that the threshold for the court to authorize Target Canada to hold the creditors meeting is low and that Target Canada meets this threshold.

[67] In my view, it is not necessary to comment on this submission insofar as this Plan is flawed to the extent that even the low threshold test has not been met.

[68] Simply put, I am of the view that this Plan does not have even a reasonable chance of success, as it could not, in this form, be sanctioned.

[69] As such, I see no point in directing Target Canada to call and conduct a meeting of creditors to consider this Plan, as proceeding with a meeting in these circumstances would only result in a waste of time and money.

[70] Even if the Affected Creditors voted in favour of the Plan in the requisite amounts, the court examines three criteria at the sanction hearing:

- (i) Whether there has been strict compliance with all statutory requirements;
- (ii) Whether all materials filed and procedures carried out were authorized by the CCAA;
- (iii) Whether the Plan is fair and reasonable.

(See *Re Quintette Coal Ltd.* (1992), 13 C.B.R. (3d) 146 (B.C.S.C.); *Re Dairy Corp. of Canada Ltd.*, [1934] O.R. 436 (Ont. S.C.); *Olympia & York Developments Ltd. v. Royal Trust Co.* (1993), 17 C.B.R. (3d) 1 (Ont. Gen. Div.); *Re Northland Properties Ltd.* (1988), 73 C.B.R. (N.S.) 175 (B.C.S.C.) at p. 182, *aff'd* (1989), 73 C.B.R. (N.S.) 195 (B.C.C.A.); *Re BlueStar Battery Systems International Corp.* (2000), 25 C.B.R. (4th) 216 (Ont. S.C.J. [Commercial List])).

[71] As explained below, the Plan cannot meet the required criteria.

[72] It is incumbent upon the court, in its supervisory role, to ensure that the CCAA process unfolds in a fair and transparent manner. It is in this area that this Plan falls short. In considering whether to order a meeting of creditors to consider this Plan, the relevant question to consider is the following: Should certain landlords, who hold guarantees from Target Corporation, a non-debtor, be required, through the CCAA proceedings of Target Canada, to

release Target Corporation from its guarantee in exchange for consideration in the Plan in the form of the Landlord Formula Amount?

[73] The CCAA proceedings of Target Canada were commenced a year ago. A broad stay of proceedings was put into effect. Target Canada put forward a proposal to liquidate its assets. The record establishes that from the outset, it was clear that the Objecting Landlords were concerned about whether the CCAA proceedings would be used in a manner that would affect the guarantees they held from Target Corporation.

[74] The record also establishes that the Objecting Landlords, together with Target Canada and Target Corporation, reached an understanding which was formalized through the addition of paragraph 19A to the Initial and Restated Order. Paragraph 19A provides that these CCAA proceedings would not be used to compromise the guarantee claims that those landlords have as against Target Corporation.

[75] The Objecting Landlords take the position that in the absence of paragraph 19A, they would have considered issuing bankruptcy proceedings as against Target Canada. In a bankruptcy, landlord claims against Target Canada would be fixed by the BIA Formula and presumably, the Objecting Landlords would consider their remedies as against Target Corporation as guarantor. Regardless of whether or not these landlords would have issued bankruptcy proceedings, the fact remains that paragraph 19A was incorporated into the Initial and Restated Order in response to the concerns raised by the Objecting Landlords at the motion of the Target Corporation, and with the support of Target Corporation and the Monitor.

[76] Target Canada developed a liquidation plan, in consultation with its creditors and the Monitor, that allowed for the orderly liquidation of its inventory and established the sale process for its real property leases. Target Canada liquidated its assets and developed a plan to distribute the proceeds to its creditors. The proceeds are being made available to all creditors having Proven Claims. The creditors include trade creditors and landlords. In addition, Target Corporation agreed to subordinate its claim. The Plan also establishes a Landlord Formula Amount. If this was all that the Plan set out to do, in all likelihood a meeting of creditors would be ordered.

[77] However, this is not all that the plan accomplishes. Target Canada proposes that paragraph 19A be varied so that the Plan can address the guarantee claims that landlords have as against Target Corporation. In other words, Target Canada has proposed a Plan which requires the court to completely ignore the background that led to paragraph 19A and the reliance that parties placed in paragraph 19A.

[78] Target Canada contends that it is necessary to formulate the plan in this matter to address a change in the landscape. There may very well have been changes in the economic landscape, but I fail to see how that justifies the departure from the agreed upon course of action as set out in paragraph 19A. Even if the current landscape is not favourable for Target Corporation, this development does not justify this court endorsing a change in direction over the objections the Objecting Landlords.

[79] This is not a situation where a debtor is using the CCAA to compromise claims of creditor. Rather, this is an attempt to use the CCAA as a means to secure a release of Target Corporation from its liabilities under the guarantees in exchange for allowing claims of Objecting Landlords in amounts calculated under the Landlord Formula Amount. The proposal of Target Canada and Target Corporation clearly contravenes the agreement memorialized and enforced in paragraph 19A.

[80] Paragraph 19A arose in a post-CCAA filing environment, with each interested party carefully negotiating its position. The fact that the agreement to include paragraph 19A in the Amended and Restated Order was reached in a post-filing environment is significant (see *The Trustees of the Labourers' Pension Fund of Central and Eastern Canada v. Sino-Forest Corporation*, 2015 ONSC 4004, 27 C.B.R. (6th) 134 at paras. 33-35). In my view, there was never any doubt that Target Canada and Target Corporation were aware of the implications of paragraph 19A and by proposing this Plan, Target Canada and Target Corporation seek to override the provisions of paragraph 19A. They ask the court to let them back out of their binding agreement after having received the benefit of performance by the landlords. They ask the court to let them try to compromise the Landlord Guarantee Claims against Target Corporation after promising not to do that very thing in these proceedings. They ask the court to let them eliminate a court order to which they consented without proving that they having

any grounds to rescind the order. In my view, it is simply not appropriate to proceed with the Plan that requires such an alteration.

[81] The CCAA process is one of building blocks. In this proceedings, a stay has been granted and a plan developed. During these proceedings, this court has made number of orders. It is essential that court orders made during CCAA proceedings be respected. In this case, the Amended Restated Order was an order that was heavily negotiated by sophisticated parties. They knew that they were entering into binding agreements supported by binding orders. Certain parties now wish to restate the terms of the negotiated orders. Such a development would run counter to the building block approach underlying these proceedings since the outset.

[82] The parties raised the issue of whether the court has the jurisdiction to vary paragraph 19A. In view of my decision that it is not appropriate to vary the Order, it is not necessary to address the issue of jurisdiction.

[83] A similar analysis can also be undertaken with respect to the Claims Procedure Order. The Claims Procedure Order establishes the framework to be followed to quantify claims. The Plan changes the basis by which landlord claims are to be quantified. Instead of following the process set forth in the Claims Procedure Order, which provides for appeal rights to the court or claims officer, the Plan provides for quantification of landlord claims by use of Landlord Formula Amount, proposed by Target Canada.

[84] In my view, it is clear that this Plan, in its current form, cannot withstand the scrutiny of the test to sanction a Plan. It is, in my view, not appropriate to change the rules to suit the applicant and the Plan Sponsor, in midstream.

[85] It cannot be fair and reasonable to ignore post-filing agreements concerning the CCAA process after they have been relied upon by counter-parties or to rescind consent orders of the court without grounds to do so.

[86] Target Canada submits that the foregoing issues can be the subject of debate at the sanction hearing. In my view, this is not an attractive alternative. It merely postpones the inevitable result, namely the conclusion that this Plan contravenes court orders and cannot be


considered to be fair and reasonable in its treatment of the Objecting Landlords. In my view, this Plan is improper (see *Crystallex*).

Disposition

[87] Accordingly, the Plan is not accepted for filing and this motion is dismissed.

[88] The Monitor is directed to review the implications of this Endorsement with the stakeholders within 14 days and is to schedule a case conference where various alternatives can be reviewed.

[89] At this time, it is not necessary to address the issue of classification of creditors' claim, nor is it necessary to address the issue of non-disclosure of the RioCan Settlement.


Regional Senior Justice G.B. Morawetz

Date: January 15, 2016

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at **TORONTO**

**RESPONDING MOTION RECORD OF AMSKOR
CORPORATION
(MOTION TO ACCEPT FILING OF THE AMENDED
PLAN
AND AUTHORIZE CREDITORS' MEETING)
(RETURNABLE APRIL 13, 2016)**

LERNERS LLP
130 Adelaide Street West, Suite 2400
Toronto, ON M5H 3P5

Lisa Munro (LSUC#: 36006R)
Tel: 416.601.2360
Fax: 416.601.2416
E-mail: lmunro@lernalers.ca

Domenico Magisano (LSUC #: 45725E)
Tel: 416.601.4121
Fax: 416.601.4123
E-mail: dmagisano@lernalers.ca

Lawyers for Amskor Corporation