

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

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

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
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**

**BOOK OF AUTHORITIES OF BELL CANADA
AND BCE NEXXIA CORPORATION**

Returnable September 13, 2017

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TO: **SERVICE LIST**

TABLE OF CONTENTS

1. *Alary, Re*, 2016 BCSC 2108, 2016 CarswellBC 3189.
2. *Blue Range Resources Corp. (Re)*, 2000 ABCA 285
3. *Ontario v. Canadian Airlines Corp.*, [2000] A.J. 1321 (Q.B.)
4. *Target Canada Co. (Re)*, 2017 ONSC 327

Relevant Orders made in these proceedings

5. The Initial Order dated January 15, 2015.
6. The Claims Procedure Order dated June 11, 2015.
7. The Order amending the Claims Procedure Order dated September 21, 2015.
8. The Order further amending the Claims Procedure Order dated October 30, 2015.
9. The Order permitting the filing of claims outside the dates in the Claims Procedure Order (as amended) dated March 1, 2017.
10. The Endorsement permitting the filing of late claims dated April 12, 2017.

TAB 1

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Alary (Re)*,
2016 BCSC 2108

Date: 20161116
Docket: R142523 VA92
Registry: Vancouver

2016 BCSC 2108 (CanLII)

In Bankruptcy and Insolvency

In the Matter of the Bankruptcy of

**Brigitta Dora Alary
(Summary Administration)**

Before: The Honourable Madam Justice Bruce

Reasons for Judgment

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Smythe Ratcliffe Insolvency Inc.:

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the Royal Trust Company:

M. Scott Kerwin

Place and Date of Hearing:

Vancouver, B.C.
September 22, 2016

Place and Date of Judgment:

Vancouver, B.C.
November 16, 2016

INTRODUCTION

[1] This is an application by Smythe Ratcliffe Insolvency Inc., the Trustee in Bankruptcy for an undischarged bankrupt, Ms. Dora Alary (the “Trustee”), for a declaration as to whether funds held in trust for the benefit of Ms. Alary in a Registered Disability Savings Plan (“RDSP”) are exempt from seizure under s. 67(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3. The respondent in this application is the Royal Bank of Canada as agent for the Royal Trust Company (collectively “the Royal Bank”), which is the trustee of the RDSP in question.

[2] The parties agree that there is no specific provision of the *Bankruptcy and Insolvency Act* or the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), that governs the issue. Instead, the parties agree that I have a discretion to permit the Royal Bank, as trustee, to pay out monies from Ms. Alary’s RDSP in satisfaction of her debts to identified creditors.

SUMMARY OF THE FACTS

[3] The facts are not in dispute. Ms. Alary was born in 1963 and is currently 53 years old. She has one or more severe and prolonged impairments in physical or mental function and was declared by the Government of Canada to be entitled to the disability tax credit under s. 118.3 of the *Income Tax Act* and eligible for an RDSP.

[4] An RDSP is a long-term savings plan designed to assist people with disabilities to save for their future old age needs similar to a Registered Retirement Savings Plan (“RRSP”). Unlike an RRSP, however, the Government of Canada matches contributions to an RDSP and restricts who may contribute to such a plan and how the funds may be disbursed. In particular, only a parent, legal guardian or trust institution may open and contribute to an RDSP and only the beneficiary can access the funds.

[5] Section 146.4 of the *Income Tax Act* governs RDSPs and establishes the conditions that must be satisfied before a plan may be registered. This section of the Act effectively dictates the terms of the trust instrument for the RDSPs. In addition,

RDSPs are governed by the *Canada Disability Savings Act*, S.C. 2007, c. 35, and the *Canada Disability Savings Regulations*, SOR/2008-186, which also mandates the preconditions for registration.

[6] In or about February 2010, Ms. Alary applied to the Royal Bank for an RDSP and asked the bank to submit a plan to the Government of Canada for its registration under the *Income Tax Act*. Ms. Alary's RDSP was approved with the Royal Trust Company designated as the trustee and issuer of the plan. The Royal Bank administers Ms. Alary's plan as agent for the Royal Trust Company. Ms. Alary is the sole beneficiary of the plan and the "holder" within the meaning of s. 146.4 of the *Income Tax Act*.

[7] The only privately contributed funds currently held in Ms. Alary's RDSP are in total \$6,800. This money apparently came from Ms. Alary's parents and was deposited in 2012. The balance of her RDSP is made up of grants from the Government of Canada under the *Canada Disability Savings Act* and some market growth. In total the fund holds in trust \$32,250.

[8] On December 18, 2015, Ms. Alary filed an assignment into bankruptcy owing about \$24,000 in unsecured debt. On December 22, 2015, the Trustee in Bankruptcy wrote to the Royal Bank advising it of the bankruptcy and asserting its interest in the monies held in Ms. Alary's RDSP. On January 5, 2016, the Royal Bank responded that the monies held in the plan were exempt from seizure and did not form part of the property available for distribution to creditors.

[9] The relevant terms of the trust instrument governing Ms. Alary's RDSP are as follows:

1. DEFINED TERMS

...

"Disability Assistance Payment" means any payment from the Plan to the Beneficiary or to the Beneficiary's estate.

...

2. PURPOSE OF THE PLAN

The Trustee agrees to act as trustee of the Plan, and to administer the Assets in accordance with the terms of this Trust Agreement.

The Plan will be operated exclusively for the benefit of the Beneficiary. The Beneficiary's designation is irrevocable and no right of the Beneficiary to receive payments from the Plan is capable of surrender or assignment. For further clarity, an execution, seizure or other payment made to or on behalf of a creditor of the Beneficiary is deemed not for the benefit of the Beneficiary and the Trustee and Agent will not make any such payment without an order issued by a court in Canada requiring the same.

...

7. PAYMENTS FROM THE PLAN

No payments will be made from the Plan other than:

- i) Disability Assistance Payments to or for a Beneficiary; ...

ARGUMENT

[10] The Trustee agrees that all of the grant money contributed to the RDSP by the Government of Canada is exempt from seizure and limits its claim to the monies contributed to the RDSP privately. Further, the Trustee maintains that while there is no specific provision in the relevant legislation that governs the seizure of monies held in RDSPs, from a public policy perspective, and based on a proper interpretation of the *Bankruptcy and Insolvency Act*, the Court should exercise its discretion in favour of an order permitting the Royal Bank to release the funds.

[11] In particular, the Trustee points to s. 67(1) of the *Bankruptcy and Insolvency Act* that exempts other types of registered plans, including RRSPs, but does not expressly exempt RDSPs from seizure. The fact that RDSP funds are not included in this provision implies that they are not exempt property: *Copthorne Holdings Ltd. v. Canada*, 2011 SCC 63 at para. 108.

[12] Further, the Trustee refers to s. 67(1)(c) of the *Bankruptcy and Insolvency Act*, which vests in the trustee in bankruptcy all property of the bankrupt and s. 67(1)(d) of the Act, which grants the trustee the same powers as the bankrupt has over all their property wherever situated.

[13] In terms of public policy, the Trustee argues that while the RDSP is a benefit conferred on the bankrupt by the Government of Canada and federal legislation, the ability to assign oneself into bankruptcy is also a benefit. As such, the bankrupt should not be entitled to rely on both benefits to the unfair advantage of creditors.

[14] In addition, the Trustee says that notwithstanding s. 146.4 of the *Income Tax Act*, s. 128(2)(a) of the Act deems the trustee in bankruptcy to be the agent of the bankrupt for all purposes of the Act. Because the trustee is the agent of the bankrupt, a seizure of the RDSP monies does not amount to a transfer or assignment in contravention of s. 146.4.

[15] Lastly, the Trustee argues that the case law about the exempt status of RRSP monies prior to the amendment of the *Bankruptcy and Insolvency Act* (s. 67(1)), supports the proposition that RDSP monies should be able to be seized in bankruptcy: *Vancouver A & W Drive-Ins Ltd. v. United Food Services Ltd.*, [1981] 38 B.C.L.R. 30 (S.C.).

[16] The Royal Bank argues that the specific terms of the trust instrument are consistent with s. 146.4 of the *Income Tax Act* and were expressly approved by the Government of Canada when it approved the registration of the RDSP. The terms of the trust instrument do not permit any payment that is not for the exclusive benefit of Ms. Alary and payments to creditors are deemed not to be for her benefit. In addition, the trust instrument stipulates that the funds cannot be surrendered or assigned or otherwise dealt with except as disability assistance payments to the beneficiary. These terms, argues the Royal Bank, ensure that no funds can be paid out to a creditor or to a trustee in bankruptcy for the purpose of paying creditors, without a court order to that effect. The Royal Bank also maintains that the principles of trust law support its position because the law mandates the trustee to comply with the terms of the trust instrument: *Swintuch Estate v. Erickson*, 2016 BCSC 1623 at para. 47.

[17] While the Royal Bank agrees that the monies contributed privately to the RDSP would constitute “property” within the meaning of the *Bankruptcy and*

Insolvency Act, it argues that the language of the trust instrument and s. 146.4 of the *Income Tax Act* take priority and exempt the funds from seizure in bankruptcy.

[18] The Royal Bank argues it is an open question whether the monies in the RDSP vest in a trustee in bankruptcy. It argues that *A & W Drive-Ins Ltd.* is not conclusive because the RRSP funds in that case were fully vested in the holder of the fund and thus in the trustee in bankruptcy based on the right of the fund holder to withdraw all of the funds. The restrictions on access to the monies held in an RDSP and the presence of government grant monies, distinguish this type of fund. See, *Yorkshire Trust Company v. 239745 BC Ltd.* (1983), 45 B.C.L.R. 361 (S.C.), where the absence of a right to withdraw the monies in an RRSP precluded creditors from seizing the funds.

[19] Further, the Royal Bank maintains there is authority for the proposition that payments to creditors are not for the “benefit” of the beneficiary of a trust fund: *Lowther v. Bentinck* (1874), L.R. 19 Eq. 166, 44 L.J. Ch. 197; *Re Carley Estate* (1994), 2 E.T.R. (2d) 142 (Ont. Ct. J.); *In re Price* (1887), 34 Ch. D 603; *Re Allen-Meyrick's Will Trusts* [1966] 1 All E.R. 740, and *In re Esteem Settlement*, 2001 JLR 7, aff'd 2001 JLR 540.

[20] In the alternative, the Royal Bank argues that if Ms. Alary's rights to receive the funds in the RDSP vest in the Trustee in Bankruptcy, the Trustee can have no greater rights than Ms. Alary. In this regard, prior to her 59th birthday, Ms. Alary is only entitled to withdraw 10% of the market value of the RDSP each year: Trust Instrument clause 8. In this case, the total permissible withdrawal would be approximately \$3,229. Further, because the withdrawal occurred prior to Ms. Alary's 59th birthday, the terms of the trust instrument and the *Canada Disability Savings Regulations* require that \$3 of grant money be returned to the Government of Canada for every \$1 of private contribution withdrawn. In effect, such a withdrawal would lead to the repayment of most of the grant monies. The Royal Bank argues that this is a huge penalty to the disabled beneficiary and one not contemplated by the Government of Canada when it enacted the *Canada Disability Savings Act*.

DECISION

[21] The question in this case involves a balancing between s. 67(1)(c) of the *Bankruptcy and Insolvency Act*, which defines the property of the bankrupt available for distribution to creditors, and the provisions of the *Income Tax Act* that define RDSPs and the terms of the trust instrument governing distribution of trust funds.

[22] “Property” is defined in s. 67(1)(c) as including, “all property wherever situated of the bankrupt at the date of the bankruptcy or that may be acquired by or devolve on the bankrupt before their discharge, including any refund owing to the bankrupt under the *Income Tax Act*.” Whereas specific types of retirement savings plans are expressly excluded from the definition of “property” in s. 67(1)(c), the RDSP is not one of the enumerated plans.

[23] In contrast, s. 146.4 of the *Income Tax Act* stipulates that an RDSP must be operated exclusively for the benefit of the plan’s beneficiary and none of the benefits can be surrendered or assigned. Further, in this case the approved language of the trust instrument precludes any payment out to creditors as such payments are expressly defined as not for the benefit of the beneficiary under the plan.

[24] In my view, these seemingly conflicting statutory provisions can be reconciled. Although s. 67(1)(c) of the *Bankruptcy and Insolvency Act* vests in the trustee in bankruptcy any property interest held by the bankrupt, the trustee can take no greater interest than the bankrupt in such property. In *Re: Lifshen* (1977), 78 D.L.R. (3d) 444 (Sask. Q.B.), MacLeod J. held that the funds held in RRSPs vested in a trustee in bankruptcy (prior to their exemption from the Act). However, the plan in question accorded the beneficiary the right to redeem funds upon request. In contrast, Ms. Alary’s right to receive funds from her RDSP is strictly limited by the trust instrument. In particular, no funds can be paid out to creditors or to her for the purpose of satisfying creditors. Because Ms. Alary’s interest in the funds is limited in this manner, the Trustee’s interest in and ability to deal with the funds is similarly restricted.

[25] Neither Ms. Alary, nor the Trustee, may demand the release of funds in the RDSP for the purpose of satisfying creditors.

[26] Despite the limitations on the rights of the Trustee, based on the limited interest possessed by Ms. Alary in the funds within the RDSP, the trust instrument permits the Court to exercise a discretion to release funds to satisfy creditors. There are no enumerated factors governing the exercise of discretion by the Court. However, there is guidance in s. 183(1) of the *Bankruptcy and Insolvency Act*, which grants the Court jurisdiction in bankruptcy to apply both law and equity in the resolution of proceedings before it.

[27] A review of the authorities reveals the following factors relevant to the exercise of discretion in bankruptcy and insolvency proceedings. Generally, the Court should be guided by what is just and equitable in the particular circumstances from the perspective of the creditors and the bankrupt. The exercise of discretion should properly balance the interests of the parties and any prejudice. The Court's exercise of discretion must be reasonable. It must not erode confidence in, or frustrate the purposes of, the insolvency legislation. Lastly, the Court should endeavour to provide certainty to other commercial parties when addressing a similar situation. See, *Bennett on Bankruptcy*, 13th edition (Toronto, CCH Canadian Limited, 2011) at p. 564; *Cole (Re)*, [1995] B.C.J. No. 1280 at para. 94 (S.C.); and Madam Justice Jackson & Dr. Jannis Sarra, "Selecting the Judicial Tool to get the Job Done: An Examination of Statutory Interpretation, Discretionary Power and Inherent Jurisdiction in Insolvency Matters", in Jannis Sarra ed., *Annual Review of Insolvency Law: 2007* (Toronto: Thomson Carswell, 2008) at 41.

[28] Applying these factors to Ms. Alary's circumstances, I find that it is not fair and equitable to permit moneys from the RDSP to be paid for the benefit of creditors. Permitting funds to be paid out from the plan at this time (prior to Ms. Alary's 59th birthday), would result in a substantial depletion of the trust fund far beyond the monies available to creditors. A release of funds at this time would cause three dollars for each one dollar paid out to be refunded to the Government. In this

case, Ms. Alary would be required to forgo approximately \$13,000, which represents a substantial percentage of the total funds in the trust, in order to reduce her indebtedness by \$3,229. This result causes significant prejudice to Ms. Alary while according minimal benefit to her creditors.

[29] There is no evidence that Ms. Alary contributed monies to the RDSP in order to defeat her creditors. Nor is there evidence that the funds were pledged as security for credit. Moreover, there are no general concerns about fraud or deceit on the part of Ms. Alary that would dictate the exercise of the court's discretion in favour of the Trustee.

[30] The underlying purpose of the RDSP is to ensure that severely disabled persons are able to save for their retirement. In the case of disabled persons, there is an even greater societal interest in preserving the integrity of such trust funds than in the case of an RRSP. Clearly, a severely disabled person has less ability to work and save for their old age. In my view, an RDSP is designed to protect this small and significantly disadvantaged and vulnerable group in our society. Without access to such funds, the older disabled person may no longer be able to live with dignity or even satisfy their basic needs.

[31] In light of the purpose underlying the creation of an RDSP, I find that refusing to exercise my discretion to permit trust monies to be paid out for the benefit of creditors on the facts of this case would not erode public confidence in the bankruptcy scheme. These plans can only be created with the approval of the Canada Revenue Agency and there are strict guidelines for the identification of eligible beneficiaries, who can make contributions to the plans, and how the funds may be distributed. In these circumstances, there are few opportunities for abuse by the beneficiary.

[32] Balancing the relevant factors, I find it is not appropriate to exercise my discretion to permit trust funds to be paid out for the benefit of Ms. Alary's creditors. Accordingly, the Royal Bank is not permitted to release funds from Ms. Alary's RDSP to the Trustee.

[33] Neither party has sought costs. Thus no costs order is granted.

“Bruce J.”

TAB 2

Enron Canada Corp. v. National Oil-Well Canada Ltd., 2000 ABCA 285

Date: 20001024

Docket: 99-18564/18565

18566/18567/18568/18569/18570/18571 and 18802

IN THE COURT OF APPEAL OF ALBERTA

THE COURT:

THE HONOURABLE MADAM JUSTICE RUSSELL
THE HONOURABLE MR. JUSTICE SULATYCKY
THE HONOURABLE MR. JUSTICE WITTMANN

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985 c.
C-36, as amended
AND IN THE MATTER OF BLUE RANGE RESOURCES CORPORATION

BETWEEN:

ENRON CANADA CORP., and THE CREDITOR'S COMMITTEE

Appellants (Appellants)

- and -

NATIONAL OIL-WELL CANADA LTD. et al.

Respondents (Respondents)

Appeal from the Decision of
THE HONOURABLE MR. JUSTICE LOVECCHIO
Dated the 9th day of November, 1999

REASONS FOR JUDGMENT RESERVED

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE WITTMANN
CONCURRED IN BY THE HONOURABLE MADAM JUSTICE RUSSELL
AND CONCURRED IN BY THE HONOURABLE MR. JUSTICE SULATYCKY

COUNSEL:

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and Scott J. Burrell

(for Enron Canada Corp. and the Creditors' Committee)

S. Collins (for TransAlta Utilities Corporation)

D. W. Dear (for Rigel Oil & Gas Ltd.)

D. Mann (for Barrington Petroleum Ltd. and PetroCanada Oil & Gas)

K. E. Staroszik (for Founders Energy Ltd.)

J. N. Thom (for National-Oilwell Canada Ltd. and Campbell's Industrial Supply Ltd.)

REASONS FOR JUDGMENT OF THE HONOURABLE
MR. JUSTICE WITTMANN

Introduction

[1] The *Companies' Creditors Arrangement Act*, R.S.A. 1985, c. C-36, as amended ("*CCAA*"), permits the compromise and resolution of claims of creditors against an insolvent corporation. In this appeal, as part of the ongoing resolution of the insolvency of Blue Range Resources Corporation ("Blue Range"), this Court has been asked to state the applicable criteria in considering whether to allow late claimants to file claims after a stipulated date in an order ("claims bar order").

[2] In his decision below, the chambers judge determined that in the circumstances of this case it was appropriate to allow the respondents ("late claimants") to file their claims thus entitling them to participate in the *CCAA* distribution.

Facts

[3] Blue Range sought and received court protection from its creditors under the *CCAA* on March 2, 1999. The claims procedure established by PriceWaterhouse Coopers Inc. ("the Monitor"), and approved by the court in a claims bar order, fixed a date of May 7, 1999 at 5:00 p.m. by which all claims were to be filed. Due to difficulties in obtaining the appropriate records, the date was extended in a second order to June 15, 1999 at 5:00 p.m., for the joint venture partners. The relevant orders stated that claims not proven in accordance with the set procedures "shall be deemed forever barred" (A.B.P.01, A.B.P.06). Under this procedure \$270,000,000 in claims were filed.

[4] The respondent creditors in this appeal fall into two categories: first, those who did not file their Notices of Claim before the relevant dates in the claims bar orders, and second, those who filed their initial claims in time but sought to amend their claims after the relevant dates. All of these creditors applied to the chambers judge for relief from the restriction of the date in the claims bar orders and to have their late or amended claims accepted for consideration by the Monitor.

[5] The chambers judge allowed the late and amended claims to be filed. The appellants, Enron Capital Corp. ("Enron") and the Creditor's Committee, seek to have that decision overturned. I granted leave to appeal on January 14, 2000 on the following question:

What criteria in the circumstances of these cases should the Court use to exercise its discretion in deciding whether to allow late claimants to file claims which, if proven, may be recognized, notwithstanding a previous claims bar order containing a claims bar date which would otherwise bar the claim of the late claimants, and applying the criteria to each case, what is the result? (A.B.928).

Judgment Below

[6] The chambers judge found that the applicable section of the *CCAA*, s. 12(2)(iii) did not mandate a claims procedure. He stated that preserving certainty in the *CCAA* process was not a sufficient reason to deny the late claimants a second chance. In his view, taking a strict reading of the claims bar orders would have the effect of denying creditors, who have a logical explanation for their non-compliance with the order, any recovery. While the chambers judge noted that compromise is required by creditors in a *CCAA* proceeding, he did not think it fair that these late claimants be required to compromise 100 per cent of their legitimate claims. In addition, the chambers judge was of the view that process required flexibility and should avoid pitting creditors against one another.

[7] Having decided that flexibility in the process was required, the chambers judge then considered an appropriate test for allowing the filing of late claims. Although encouraged by the appellants to adopt an approach similar to that contained in the *United States Bankruptcy Code, Federal Rules of Bankruptcy Procedure*, for Chapter 11 Reorganization Cases, (“*U.S. Bankruptcy Rules*”) the chambers judge chose to incorporate the test in place under the *Bankruptcy and Insolvency Act* R.S.C. 1985 c. B-3 (“*BIA*”). Specifically, he found that because the situation of Blue Range was essentially a liquidation, the approach used in the *BIA* was appropriate. Under the *BIA*, late claims are permitted under almost any circumstance provided no injustice is done to other creditors. A late filing creditor under the *BIA* may only share in undistributed assets. Therefore, the chambers judge found that the creditors should be allowed to file late claims, or to amend existing claims late.

Standard of Review

[8] It has been recently held by this court that decisions of a *CCAA* supervising judge should only be interfered with in clear cases. Deference to a *CCAA* supervising judge is generally appropriate where the questions before the court deal with management issues and are of necessity matters which must be decided quickly. This issue was addressed by Macfarlane, J.A. in *Pacific National Lease Holding Corp.* (1992), 15 C.B.R. (3d) 265 (B.C.C.A.) (cited with approval by Hunt, J.A. in *Luscar Ltd. v. Smoky River Coal Ltd.*, [1999] A.J. No. 676 (C.A.)) as follows at 272:

...I am of the view that this court should exercise its powers sparingly when it is asked to intervene with respect to questions which arise under the *CCAA*. The process of management which the Act has assigned to the trial court is an ongoing one. In this case a number of orders have been made...

...

Orders depend on a careful and delicate balancing of a variety of interests and of problems. In that context appellate proceedings may well upset the balance, and delay or frustrate the process under the *CCAA*.

The chambers judge was exercising his discretion under the *CCAA* in granting an extension of the claims bar dates. However, the criteria upon which that discretion is to be exercised is a matter of legal principle, and therefore on that issue, the standard of review is correctness.

Analysis

[9] As a preliminary matter I wish to comment on the nature of the order granted and the notices sent out to the individual creditors. The order dated April 6, 1999 stated in paragraph 2:

Claims not proven in accordance with the procedures set out in Schedules “A” and “B” shall be deemed forever barred and may not thereafter be advanced as against Blue Range in Canada or elsewhere. (A.B.P.01)

The first page of Schedule “A” stated in part:

A Claims’ Bar Date of 5:00 p.m. Calgary time on May 7, 1999 has been set by the Alberta Court of Queen’s Bench. All claims received by the monitor or postmarked after the Claims’ Bar Date will be forever extinguished, barred and will not participate in any voting or distributions in the CCAA proceedings.

[Emphasis added] (A.B.P.03).

The language used in Schedule “A” goes beyond the text of the order. Although it may not be of practical significance, barring the right of a claimant to a remedy is fundamentally different from erasing the debt. The court under the *CCAA* has powers to compromise and determine, but only in accordance with the process prescribed in the statute.

[10] It was urged before the court in oral argument by counsel for the appellants that the purpose of the wording of the claims bar orders was to “smoke out” the creditors. I am dubious that the severe wording of the claims bar orders is effective to “smoke out” the creditor who may otherwise lie dormant. The objective of making certain that all legitimate creditors come forward on a timely basis has to be balanced against the integrity and respect for the court process and its orders. Courts should not make orders that are not intended to be enforced in accordance with their terms. All counsel conceded that the court had authority to allow late filing of claims, and that it was merely a matter of what criteria the court should use in exercising that power. It necessarily follows that a claims bar order and its schedule should not purport to “forever bar” a claim without a saving provision. That saving provision could be simply worded with a proviso such as “without leave of the court”, which appears to be not only what was contemplated, but what in fact occurred here.

The Appropriate Criteria

[11] The appellants advocated the adoption of the criteria under the *U.S. Bankruptcy Rules*, Chapter 11, while the respondents favoured either the application of the tests under the *BIA* or some blending of the two standards.

[12] Rule 9006 of the *U.S. Bankruptcy Rules* deals with the extension of time in these circumstances. The relevant portion of the Rule states:

9006 (b)(1) ... when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

The key phrase in this section is “excusable neglect”. In *Pioneer Investment Services Company v. Brunswick Associates v. Brunswick Associates Limited Partnership et al.* 507 U.S. 380, 113 S.Ct. 1489 (1993) the U.S. Supreme Court dealt with the interpretation of this phrase. In *Pioneer*, the creditor’s attorney, due to disruptions in his legal practice and confusion over the form of notice, failed to file a Notice of Claim in time. The U.S. Supreme Court noted that excusable neglect may extend to “inadvertent delays” (at pg 391) and went on to identify the relevant considerations when determining whether or not a delay is excusable. The Court said at 395:

Because Congress has provided no other guideposts for determining what sorts of neglect will be considered “excusable”, we conclude that the determination is at bottom an equitable one, taking account of all relevant circumstances surrounding the party’s omission. These include, as the Court of Appeals found, the danger of prejudice to the debtor, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith.

The American authorities also seem to reflect that the burden of meeting all of these elements, including showing the absence of prejudice, lies with the party seeking to file the late claim: e.g. *In re Specialty Equipment Companies Inc.*, 159 B.R. 236 (1993).

[13] The Canadian approach under the *BIA* has been somewhat different. Canadian courts have been willing to allow the filing of late or amended claims under the *BIA* when the claims are delayed due to inadvertence, (which would include negligence or neglect), or incomplete information being available to the creditors, see: *Re Mount Jamie Mines (Quebec) Ltd.* (1980),

110 D.L.R. (3rd) 80 (Ont. S.C.). The Canadian standard under the *BIA* is, therefore, less arduous than that applied under the *U.S. Bankruptcy Rules*.

[14] I accept that some guidance can be gained from the *BIA* approach to these types of cases but I find that some concerns remain. An inadvertence standard by itself might imply that there need be almost no explanation whatever for the failure to file a claim in time. In my view inadvertence could be an appropriate element of the standard if parties are able to show, in addition, that they acted in good faith and were not simply trying to delay or avoid participation in *CCAA* proceedings. But I also take some guidance from the *U.S. Bankruptcy Rules* standard because I agree that the length of delay and the potential prejudice to other parties must be considered. To this extent, I accept a blended approach, taking into consideration both the *BIA* and *U.S. Bankruptcy Rules* approaches, bolstered by the application of some of the concepts included in other areas, such as late reporting in insurance claims, and delay in the prosecution of a civil action.

[15] In *Lindsay v. Transtec Canada Ltd.* (1994), 28 C.B.R. (3d) 110 (B.C.S.C.), the applicant was an unsecured creditor of Alberta Pacific Terminals Ltd. (“APCL”). Transtec Canada Ltd. was indebted to the applicant and APCL had guaranteed the obligation. APCL sought protection under the *CCAA*. Through oversight, the applicant Lindsay was not sent the relevant *CCAA* materials by APCL and was not included in the *CCAA* proceedings. He did not, therefore, have the opportunity to vote on the plan of arrangement. It is clear, however, that Lindsay at some point during the *CCAA* proceedings became aware of them, and at various stages had his lawyers contact APCL’s lawyers to inquire about the process. Despite this knowledge he did not pursue the matter. Lindsay then came to the court seeking permission to sue APCL as a guarantor, potentially recovering considerably more than those creditors who participated in the *CCAA* process.

[16] After reviewing all of the facts, Huddart, J. found that “Lindsay (or solicitors on his behalf) made considered, deliberate, decisions not to notify Alberta-Pacific of his claim until after the approval order and then not until after the closing of the share purchase agreement” (para 19). She then went on to conclude that Lindsay preferred not to participate in the *CCAA* process and chose to take his chances later on.

[17] In deciding how to exercise her discretion, Huddart, J. applied the following factors: “the extent of the creditor’s actual knowledge and understanding of the proceedings; the economic effect on the creditor and debtor company; fairness to other creditors; the scheme and purpose of the *CCAA* and the terms of the plan” (para 56). On these criteria, Huddart, J. found that it would not be equitable to allow Lindsay to pursue a claim as he was well aware of what was going on in the *CCAA* proceedings, chose not to participate, and his late action would cause serious prejudice both to the debtor company and to the other creditors.

[18] While *Lindsay* is clearly distinguishable on its facts from the within appeal, the case does highlight the issues of the conduct of the late claimants and the potential prejudice to other creditors and the debtor. *Lindsay* was the classic creditor “lying in the weeds”, waiting for the appropriate moment to pounce. He did not act in good faith and his conduct was potentially prejudicial to other creditors and the debtor company. By avoiding the *CCAA* proceedings, *Lindsay* was attempting to gain an advantage not available to other creditors.

[19] There is further support for a blended approach in several other areas of the law where courts have had to deal with the impact of delays and late filings. In particular, I have considered the courts’ treatment of delays in the prosecution of actions and the late filing of notices of claim to insurers.

[20] In *Lethbridge Motors Co. v. American Motors (Can.) Ltd.* (1987), 53 Alta. L.R. (2d) 326 (C.A.) the court had to decide whether or not to allow an action to continue where no steps had been taken by the plaintiff for five years. In deciding that the action could continue, Laycraft, C.J.A. relied on the following test from the English Court of Appeal in *Allen v. Sir Alfred McAlpine & Sons Ltd.* [1968] 1 All E.R. 543 where Salmon L.J. said at 561:

In order for the application to succeed the defendant must show:

(i) that there has been inordinate delay. It would be highly undesirable and indeed impossible to attempt to lay down a tariff - so many years or more on one side of the line and a lesser period on the other. What is or is not inordinate delay must depend on the facts of each particular case. These vary infinitely from case to case, but it should not be too difficult to recognise inordinate delay when it occurs.

(ii) that this inordinate delay is inexcusable. As a rule, until a credible excuse is made out, the natural inference would be that it is inexcusable.

(iii) that the defendants are likely to be seriously prejudiced by the delay. This may be prejudice at the trial of issues between themselves and the plaintiff, or between each other, or between themselves and the third parties. In addition to any inference that may properly be drawn from the delay itself, prejudice can sometimes be directly proved. As a rule, the longer the delay, the greater the likelihood of serious prejudice at the trial.

Relying on this test, as well as additional refinements, the Court found that the fundamental rule was that it was “necessary for a defendant to show serious prejudice before the court will exercise its jurisdiction to strike out an action for want of prosecution” (at pg. 331). The onus of showing serious prejudice has now been substantially altered as the result of amendments to the Alberta Rules of Court in 1994. Rule 244(4) now states that proof of inordinate and inexcusable

delay constitutes *prima facie* evidence of serious prejudice: *Kuziw v. Kucheran Estate*, 2000 ABCA 226 (Online: Alberta Courts).

[21] Similar questions can arise in an insurance context where an insured is required to file a proof of loss or other notice of claim within a certain time period under a contract of insurance. For example, s. 205 of the *Insurance Act* R.S.A. 1980, c. I-5 states:

205 [w]here there has been imperfect compliance with a statutory condition as to the proof of loss to be given by the insured or other matter or thing required to be done or omitted by the insured with respect to the loss and the consequent forfeiture or avoidance of the insurance in whole or in part and the Court considers it inequitable that the insurance should be forfeited or avoided on that ground, the Court may relieve against forfeiture or avoidance on such terms as it considers just.

[22] Similar wording is also found in ss. 211 and 385 of the *Insurance Act* and similar legislation exists throughout the common law provinces.

[23] When deciding whether to grant relief from forfeiture in an insurance context the Alberta courts have generally adopted a two part test, see: *Hogan v. Kolisnyk* (1983), 25 Alta L.R. (2d) 17 (Q.B.). In *Hogan* the court found it appropriate to look first at the conduct of the insured to determine whether the insured is guilty of fraud or wilful misconduct. Second, the court considered whether the insurer had been seriously prejudiced by the imperfect compliance with the statutory provision (at 35). The “noncomplying” party can show that there was no prejudice by showing that the innocent party had actual knowledge of the events in question and was thereby able to investigate the situation.

[24] Considering whether the insurer has suffered any prejudice, the court in *Hogan* quoted from a decision of Stevenson, D.C.J. in *Schoeler (W.) Trucking Ltd. v. Market Ins. Co. of Can.* (1980), 9 Alta L.R. (2d) 232 at 237 where Stevenson, D.C.J. said “[t]he root of the question is whether or not it (the insurer) would have acted any differently if it had been given notice of the loss when it should have been given notice”. In *312630 British Columbia Ltd. v. Alta. Surety Co.* (1995), 10 B.C.L.R. (3d) 84 (C.A) the B.C. Court of Appeal set out a more recent formulation of the test, namely whether the insurer by reason of the late notice had lost a realistic opportunity to do anything that it might otherwise have done.

[25] These authorities arise in a clearly different context from that which I am dealing with in this case, but they demonstrate that there is a somewhat consistent approach in a variety of areas of the law when dealing with the impact of late notice or delays in particular processes.

[26] Therefore, the appropriate criteria to apply to the late claimants is as follows:

1. Was the delay caused by inadvertence and if so, did the claimant act in good faith?
2. What is the effect of permitting the claim in terms of the existence and impact of any relevant prejudice caused by the delay?
3. If relevant prejudice is found can it be alleviated by attaching appropriate conditions to an order permitting late filing?
4. If relevant prejudice is found which cannot be alleviated, are there any other considerations which may nonetheless warrant an order permitting late filing?

[27] In the context of the criteria, "inadvertent" includes carelessness, negligence, accident, and is unintentional. I will deal with the conduct of each of the respondents in turn below and then turn to a discussion of potential prejudice suffered by the appellants.

National-Oilwell Canada Ltd. ("National")

[28] National, and National as the successor in interest to Dosco Supply, a division of Westburne Industrial Enterprises Ltd. ("Dosco") indicate that their claims were filed late due to the unexpected illness and resulting lengthy absence of their credit manager who was in charge of the Blue Range accounts receivable. National submitted the National and Dosco notices of claims on June 7, 1999 (AB V, pgs 538 and 542). National's claim is \$58,211.00 and Dosco's claim is \$390,369.13. National and Dosco clearly acted in good faith and provided the Notices of Claim as soon as the relevant personnel became aware of the situation.

Campbell's Industrial Supply Ltd. ("Campbell's")

[29] Campbell's initial claim in the amount of \$14,595.22 was filed prior to the date in the relevant claims bar order. Campbell's then amended its claim on June 25, 1999 and again on July 8, 1999 to \$23,318.88. The claim was amended after the relevant date as a result of a representative from Blue Range informing Campbell's that its claim should include invoices sent to Trans Canada Midstream, Berkley Petroleum, Big Bear Exploration and Blue Range Resources Corporation (A.B. 495-496). In addition, there appears to have been some delay due to the Notices of Claim not being sent to the correct Campbell's office. Campbell's acted in good faith throughout and it is in fact arguable that any delay in the proper filing of its claims was actually due to errors on the part of Blue Range rather than its own doing.

TransAlta Utilities Corporation ("TransAlta")

[30] TransAlta did not comply with the dates in the claims bar orders. It contends that it did not receive the claims package prior to the relevant dates. It is apparent from the evidence that the claims package was sent to TransAlta at its accounts receivable office, rather than the registered office for service (A.B.432-434). TransAlta was permitted to file its total claim of \$120,731.00 by order of the chambers judge dated September 7, 1999. There is no evidence that TransAlta was attempting to circumvent the CCAA process. On the contrary, as soon as the

appropriate personnel became aware of the situation, TransAlta took the necessary steps to have its Notice of Claim filed.

Petro-Canada Oil and Gas (“PCOG”)

[31] PCOG filed extensive claims material with the Monitor prior to the relevant dates showing several unsecured claims. The Monitor’s draft third interim report indicated that four of PCOG’s claims should properly have been classified as secured. The mistake by PCOG was the result of a misapprehension of how operator’s liens functioned under the CAPL Operating Procedures incorporated into the contracts giving rise to the claims. PCOG then sought to amend its claims and have them changed from unsecured to secured status (A.B. 554), on July 7, 1999. The change in status would result in claims of \$137,981.30 being amended from unsecured to secured. There was no lack of good faith.

Barrington Petroleum Ltd. (“Barrington”)

[32] Barrington was acquired by Sunoma Energy Corp (“Sunoma”) in about September, 1998. An affidavit filed by Sunoma’s controller indicates that the financial records of Barrington were found to have been in complete disarray. Barrington’s initial Notice of Claim in the amount of \$223,940.06 was submitted prior to the relevant date. Barrington received a Notice of Dispute of Claim which approved the claim to the extent of \$57,809.37, but disputed the remainder. On reviewing the issue, Barrington’s controller determined that Blue Range was correct, but at the same time she identified additional invoices of which she had been unaware (A.B.549-551). On discovering the additional invoices, Barrington then submitted an amended Notice of Claim on July 22, 1999 and an objection to the Notice of Dispute of Claim. Barrington acted in good faith.

Rigel Oil & Gas Ltd. (“Rigel”)

[33] The full amount of Rigel’s Notice of Claim was \$146,429.68. This Claim was filed prior to the relevant date and the amount was approved by Blue Range. After the relevant date, on August 12, 1999, Rigel moved to amend and to allege that, despite Blue Range’s claims to the contrary, its claim was secured, rather than unsecured. The only issue for Rigel on appeal is if their claim is properly secured can it be accepted because it was not claimed as secured until August 12, 1999.

Halliburton Group Canada Inc. (“Haliburton”)

[34] Halliburton was in the process of attempting to collect on accounts receivable owed by Big Bear Exploration Ltd. through May and June, 1999. They subsequently became aware, after the relevant date, that a claim in the amount of \$11,309.90 was in fact against Blue Range, and should properly have been filed as a Notice of Claim in the *CCAA* proceedings (A.B. 497-499). On making this discovery, Halliburton wrote to the Monitor on July 14, and July 26, 1999 requesting that its claim be included in the *CCAA* proceeding. The Monitor disputed this claim as having been filed too late (A.B. 498). It appears that Halliburton acted in good faith.

Founders Energy Ltd. (“Founders”)

[35] Founders filed its claim prior to the relevant date, but, due to an oversight, claimed as an unsecured rather than a secured creditor. After filing its initial Notice of Claim, Founders received a Notice of Dispute from Blue Range. Within the 15 day appeal period, but outside the claims bar date, Founders then filed an amended Notice of Claim claiming a secured interest in the sum of \$365,472.39, on July 26, 1999.

Prejudice

[36] The timing of these proceedings is a key element in determining whether any prejudice will be suffered by either the debtor corporation or other creditors if the late and late amended claims are allowed. The total of all late and amended claims of the late claimants, secured and unsecured, is approximately \$1,175,000. As set out above, in the initial claims bar order, the relevant date was 5:00 p.m. May 7, 1999. This date was extended for joint venture partners to 5:00 p.m. on June 15, 1999. The Plan of Arrangement, sponsored by Canadian Natural Resources Ltd. ("CNRL"), was voted on and passed on July 23, 1999. Status as a creditor, the classification as secured or unsecured, and the amount of a creditor's claim, are relevant to voting: s.6 *CCAA*.

[37] Enron and the Creditor's Committee claim that they would be prejudiced if the late claims were allowed because, had they known late claims might be permitted without rigorous criteria for allowance, they might have voted differently on the Plan of Arrangement. Enron in particular submits that it would have voted against the CNRL Plan of Arrangement, thus effectively vetoing the plan, if it had known that late claims would be allowed. This bald assertion after the fact was not sufficient to compel the chambers judge to find this would in fact have been Enron's response. Nowhere else in the evidence is there any indication that late claimants being allowed would have impacted the voting on the different proposed Plans of Arrangement. In addition, materiality is relevant to the issue of prejudice. The relationship of \$1,175,000 (which is the total of late claims) to \$270,000,000 (which is the total of claims filed within time) is .435 per cent.

[38] Also, the contrary is indicated in the Third Interim Report of the Monitor where it is shown in Schedule D-1 (A.B.269) that \$2 million was held as an estimate of unsecured disputed claims. Therefore, when considering which Plan of Arrangement to vote for, Enron, and all of the creditors, would have been aware that \$2 million could still be legitimately allowed as unsecured claims, and would have been able to assess that potential effect on the amount available for distribution.

[39] Further, the late claimants were well known to the Monitor and all of the other creditors. The evidence discloses that officials at Enron received an e-mail from the Monitor on May 18, 1999 indicating that there were several creditors who had filed late, after the first deadline of May 7, and the Monitor thought that even though they were late the court would likely allow them (A.B.1040). Finally, all of the late claimants were on the distribution list as having potential claims. (A.B. 9-148). It cannot be said that these late claimants were lying in the weeds

waiting to pounce. On the contrary, all parties were fully aware of who had potential claims, especially Enron and the Creditors Committee.

[40] In a *CCAA* context, as in a *BIA* context, the fact that Enron and the other Creditors will receive less money if late and late amended claims are allowed is not prejudice relevant to this criterion. Re-organization under the *CCAA* involves compromise. Allowing all legitimate creditors to share in the available proceeds is an integral part of the process. A reduction in that share can not be characterized as prejudice: *Re Cohen* (1956), 36 C.B.R. 21 (Alta. C.A.) at 30-31. Further, I am in agreement with the test for prejudice used by the British Columbia Court of Appeal in *312630 British Columbia Ltd.* It is: did the creditor(s) by reason of the late filings lose a realistic opportunity to do anything that they otherwise might have done? Enron and the other creditors were fully informed about the potential for late claims being permitted, and were specifically aware of the existence of the late claimants as creditors. I find, therefore, that Enron and the Creditors will not suffer any relevant prejudice should the late claims be permitted.

Summary of Criteria

[41] In considering claims filed or amended after a claims bar date in a claims bar order, a *CCAA* supervising judge should proceed as follows:

1. Was the delay caused by inadvertence and if so, did the claimant act in good faith?
2. What is the effect of permitting the claim in terms of the existence and impact of any relevant prejudice caused by the delay?
3. If relevant prejudice is found can it be alleviated by attaching appropriate conditions to an order permitting late filing?
4. If relevant prejudice is found which cannot be alleviated, are there any other considerations which may nonetheless warrant an order permitting late filing?

Conclusion

[42] Applying the criteria established, I find that the conclusion reached by the chambers judge ought not to be disturbed, and the late claims filed by the respondents should be permitted under the *CCAA* proceedings. The appeal is dismissed.

APPEAL HEARD on June 15, 2000

REASONS FILED at Calgary, Alberta,
this 24th day of October, 2000

WITTMANN J.A.

I concur: _____
RUSSELL J.A.

I concur: _____
SULATYCKY J.A.

TAB 3

Indexed as:

Ontario v. Canadian Airlines Corp.

**IN THE MATTER OF the Companies' Creditors Arrangement
Act, R.S.C. 1985, C. C-36
AND IN THE MATTER OF Canadian Airlines Corporation and
Canadian Airlines International Ltd.
Between
The Province of Ontario, applicant, and
Canadian Airlines Corporation and Canadian Airlines
International Ltd., respondents**

[2000] A.J. No. 1321

276 A.R. 273

101 A.C.W.S. (3d) 11

Action No. 0001-05071

Alberta Court of Queen's Bench
Judicial District of Calgary

Paperny J.

Heard: November 3, 2000.
Judgment: filed November 7, 2000.

(27 paras.)

Counsel:

Larry B. Robinson, for the applicant.
Chris Simard, for the respondents.

REASONS FOR JUDGMENT

1 PAPERNY J.:-- This is an application by the province of Ontario ("Ontario") to extend the time within which to file its distribution dispute notice ("Dispute Notice"). I granted the application with reasons to follow. These are those reasons.

I. Facts

2 Canadian Airlines International Ltd. ("Canadian") has followed a practice of self-assessing its tax liabilities and has made installment payments of tax under two Ontario statutes, the Retail Sales Tax Act and the Corporations Tax Act. Pursuant to an ongoing auditing process, Ontario has assessed Canadian for taxes owing under these two statutes. The assessments date back as far as 1981. Following the assessments, Canadian filed eight notices of objection and appeals are ongoing. Canadian has provided Ontario with three separate letters of credit to secure the assessments under appeal. The letters of credit have been renewed at least once.

3 Ontario estimates the total assessments at approximately \$2 million. This may be subject to adjustment due to ongoing audits and the failure of Canadian to have completed its 1999 and 2000 tax returns. Canadian has disputed these assessments from the outset and as stated in the affidavit of Nhan Le, Canadian's Director of Taxation, is of the view that its liability to Ontario for these taxes is contingent and negligible. In short, the tax liability of Canadian to Ontario has been in dispute for several years.

4 Canadian received court protection under the Companies' Creditors Arrangement Act on March 24, 2000.

5 Canadian included Ontario in its list of "Affected Unsecured Claims" and quantified Ontario's claim at zero. Contrary to paragraph 27 of the March 24, 2000 order, Ontario was not served with a copy.

6 Ontario did not receive a copy of the March 24, 2000 order until it received it as part of the voting package sent out in accordance with my April 7, 2000 order in these proceedings. The package was mailed on April 25, 2000, the last possible day under the terms of the April 7, 2000 order and arrived in the mail room of the Corporations Tax Branch of the Revenue Division of Ontario on May 2, 2000, three days before the Claims Bar Date set in that order. The Revenue Division has nine branches. According to the affidavit of Rosita Vinkovic, Senior Collections Officer for the Bankruptcy and Insolvency Unit in the Collections and Compliance Branch of the Ministry of Finance, the normal procedure is for insolvency related documents to be mailed directly to the Insolvency Unit, not to the Corporations Tax Branch. According to Ms. Vinkovic, a notice to this effect was published by the Minister of Finance in a 1997 newsletter of the Canadian Insolvency Practitioners' Association. Canadian did not cross-examine Ms. Vinkovic on her affidavit and does not challenge this practice in its own evidence.

7 The voting package did not make its way to the Insolvency Unit until May 18, 2000. Despite extensive inquiries, Ms. Vinkovic has been unable to determine the reason for this delay. The collection officer in the Insolvency Unit that received the package on May 18, 2000 did not have an opportunity to review it in its entirety until May 23, 2000, the first business day after the long weekend (and the date that a second package was sent by the monitor to the Ministry of Finance public inquiry desk and directly routed to the Insolvency Unit).

8 As Senior Collections Officer, Ms. Vinkovic was assigned to handle the matter on May 25, 2000. She immediately noted the May 5, 2000 Claims Bar Date and a proof of claim along with copies of the letters of credit were faxed to the monitor that same day. The amount claimed was expressed as preliminary due to the ongoing audit, which was lengthy due to the extent of Canadian's operations and its failure to timely respond to requests for information and documents. The monitor initially advised Ms. Vinkovic that the claim would not be accepted as it was past the Claims Bar Date, but changed its position upon being advised of the related security.

9 On June 19, 2000, nearly one month later, Ontario received a letter from Canadian's counsel advising that its claim would not be accepted because it was submitted after the Claims Bar Date. Ms. Vinkovic was away on vacation from June 23, 2000 until July 10th. On her return on the 10th she read the June 19th letter and immediately sent a request for assistance to Joel Weintraub, Senior Legal Counsel in the Legal Services Branch. Mr. Weintraub contacted the Alberta firm that had handled a similar claim for the BC government and a request was sent to the Assistant Deputy Attorney General for Ontario to authorize the retention of outside counsel. Mr. Robinson advised that he was retained September 14, 2000 and immediately advised Canadian's counsel of his intention to bring this motion but that it would take some time to prepare the necessary material and have it sworn. A notice of motion to extend the time to file a proof of claim in these proceedings was filed by Mr. Robinson on September 26, 2000.

II. Discussion

10 The Alberta Court of Appeal has recently developed an approach that CCAA supervising judges should follow in considering claims filed or amended after a claims bar date, as follows:

1. Was the delay caused by inadvertence, and if so, did the claimant act in good faith?

2. What is the effect of permitting the claim in terms of the existence and impact of any relevant prejudice caused by the delay?
3. If relevant prejudice is found can it be alleviated by attaching appropriate conditions to an order to permitting late filing?
4. If relevant prejudice is found which cannot be alleviated, are there any other considerations which may nonetheless warrant an order permitting late filing? (*Enron Canada Corp. v. National Oil-Well Canada Ltd.*, [2000] A.J. No. 1232, 2000 ABCA 285 at paragraph 41)

11 Canadian argued that the Court of Appeal in *Enron* restricted the use of these criteria to liquidation-style CCAA proceedings and that therefore the test is not applicable here. This is a narrow interpretation. In my view the Court of Appeal was providing guidelines generally applicable to late claims in CCAA proceedings. Even if the Court of Appeal did intend to direct its criteria only to liquidation-style CCAA proceedings, I would in any case find the principled approach of the Court of Appeal to be an excellent framework for the exercise of my discretion; I applied similar criteria in my June 28, 2000 reasons in these proceedings allowing the government of British Columbia to file a late claim.

12 On the facts of this case, the prejudice to the funder of the plan, Air Canada, will necessarily need to be considered. However, the criteria described by the Court of Appeal in *Enron* do not in my view rule out, but instead embrace addressing the interests of such a party. The *Enron* criteria are consistent with the rationale of the CCAA to consider and attempt to balance the interests of all affected parties, the character of which will vary with each case and type of plan involved. Emphasis on those interests and the appropriate weight to be given to each will also necessarily vary. In my view the criteria in *Enron* allow for this type of analysis. Accordingly I now turn to application of these criteria.

1. Delay due to inadvertence and presence of good faith

13 In *Enron*, Wittmann J.A. held that "inadvertence" includes carelessness, negligence, accident and is unintentional. The distinction to be drawn is that between a careless claimant and one who "lies in the weeds" hoping to gain an advantage.

14 Ontario is not in this latter category. It was not served with the initial order. The voting package was mailed on the last possible day to the wrong office, arriving just three days prior to the Claims Bar Date. I can fairly infer from the circumstances that the internal procedures in the government of Ontario failed in having the package re-routed to the proper place in a timely fashion. Once it arrived at the correct destination, however, steps were taken promptly by the responsible officer to file the claim and the monitor received it by fax on May 25, 2000, the very day that the responsible officer was assigned to handle the matter.

15 Canadian did not notify Ontario of its decision to reject its claim until June 19th, 2000. Vacations intervened and a request by the Insolvency Unit for assistance from internal government counsel to deal with this rejection was made within about two weeks. This led to a request to the Assistant Deputy Attorney General of Ontario for permission to hire outside Alberta counsel to handle the matter. It is reasonable to assume that this authorization process would have taken some time and counsel confirmed that this was the case.

16 I have difficulty concluding that the delay here was due to anything but inadvertence. Canadian conceded that there was no evidence of deliberate intent by Ontario to avoid participating in the CCAA process. There is no suggestion or evidence that Ontario was intentionally attempting to circumvent the CCAA process or gain some advantage over other creditors, unlike the applicant in *Lindsay v. Transtec Canada Inc.* (1994), 28 C.B.R.(3d) 110 (B.C.S.C.). The position of Ontario is not unlike that of TransAlta Utilities Corporation as described in *Enron* at paragraph 30 (appeal book references omitted):

It is apparent from the evidence that the claims package was sent to TransAlta at its accounts receivable office, rather than the registered office for service... There is no evidence that TransAlta was attempting to circumvent the CCAA process. On the contrary, as soon as the appropriate personnel became aware of the situation, TransAlta took the necessary steps to have its Notice of Claim filed.

17 Further, there is a similarity to the late claim filed by Campbell's Industrial Supply Ltd. also referred to in *Enron* at paragraph 29 where Wittmann J.A. noted that it was arguable that errors on the part of the debtor company resulted in the late filing. In this case, Canadian contributed to the delay by failing to serve Ontario with the initial order, not mailing the voting package until the last possible day, mailing it to the wrong office and waiting nearly a month to advise Ontario that its late claim was rejected.

2. Any relevant prejudice caused by the delay

18 Canadian argues that the most critical factor in this and any re-organization (as opposed to a liquidation) case is the economic effect on the funder of the reorganization. I note that the second criteria of "any relevant prejudice" is broadly drawn and not restricted by the Court of Appeal to the interests of creditors and the debtor company. I agree that in consideration of this criteria in this case I must focus on the prejudice to Air Canada.

19 I would firstly note that despite being served with this application, Air Canada chose not to attend and make submissions or present evidence of prejudice.

20 Applying the test for prejudice adopted by the Court of Appeal in Enron, the question here is whether by reason of the late filing by Ontario, Air Canada lost a realistic opportunity to do anything that it might otherwise have done. There is no evidence to suggest this. As with the creditors in Enron, Air Canada and Canadian were specifically aware of the existence of Ontario's claim; Ontario was listed on the Affected Unsecured Claims list. The tax dispute with Ontario was longstanding and Canadian has filed eight notices of objection. Letters of credit have been posted as security for the assessments under appeal. Air Canada is the funder of the plan and has been directly involved in Canadian management and operations since early this year. This knowledge effectively negates any allegation of prejudice. As Wittmann J.A. concluded with respect to the late claimants in Enron, it cannot be said that Ontario was "lying in the weeds waiting to pounce" (paragraph 39).

21 Canadian referred to "procedural prejudice" in the costs associated with determination of the dispute and with potentially having to pay a dividend to Ontario. However, this prejudice too is negated by the knowledge of Ontario's claim. Air Canada and Canadian would have been well aware of the potential that the matter would need to be resolved, with concomitant costs, either by the tax courts in Ontario or the claims officer in these proceedings.

22 Wittmann J.A. held in Enron that the materiality of the late claims is also relevant to prejudice. In that case, the late claims totalled \$1,175,000 as compared to the total timely claims pool of \$270,000,000. In this case, the evidence of Air Canada's Chief Financial Officer at the fairness hearing was that Air Canada's funding cost amounted to approximately 3 billion dollars, including the anticipated dividend on creditors' claims. The possibility of paying 14 cents on the dollar on a further \$2 million (which assumes Ontario will be entirely successful on its claim, which Canadian suggests is not likely) in relation to Air Canada's total cost cannot be described as material.

23 Having concluded that there is no relevant prejudice to Canadian or Air Canada, I need not review the final two criteria in the Enron test.

24 Even if I were to couch my analysis as a consideration of the equities between Air Canada and Ontario, as Canadian would have me do in following what they submit is the applicable test as set out in Lindsay, I would not find that the equities lie in Air Canada's favour. This analysis is largely encompassed in my review of the first two Enron criteria. Canadian adds that, as in Lindsay, if not for Air Canada's funding, the unsecured creditors would have received only 1-3 cents on the dollar and accordingly, Air Canada is entitled to certainty at some point in the process. It submits that Ontario's failure to act in a timely manner should subordinate its interest to the interest of certainty to the funding party, who will have to absorb the entirety of Ontario's claim. Canadian argues that the interests of Air Canada must be supreme in this non-liquidation scenario.

25 The problem with this argument is that unlike the "white knight" in Lindsay, for the reasons I have already described it cannot be fairly said that Air Canada was unaware of Ontario's claim. I emphasize that it is not a surprise claim by a creditor hoping to gain an advantage by delaying action; there is no suggestion of bad faith and certainly there was nothing to be gained by waiting. Under the circumstances, which are distinct from those in Lindsay, it is not unfair to the funder of this plan to deal with Ontario's claim. Certainty, while always desirable, is not as compelling in this case as in Lindsay due to the knowledge surrounding Ontario's claim. Canadian and Air Canada were well aware of the claim and are now attempting to use the delay to avoid having to resolve the dispute with Ontario and potentially paying a further dividend.

26 Ontario shall have seven days from the date of these reasons to amend and submit its claim. It shall be entitled to make any further amendments necessitated by the late filing of Canadian's 1999 and 2000 returns.

27 Each party shall bear its own costs of this application.

PAPERNY J.

TAB 4

CITATION: Target Canada Co. (Re), 2017 ONSC 327
COURT FILE NO.: CV-15-10832-00CL
DATE: 2017-03-01

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 G.B. Morawetz

COUNSEL: *Marco Cedrone* and *Alex Ilchenko*, for Kulwinder Rai,

Robin B. Schwill and *Dina Milivojevic*, for Target Corporation

Lisa S. Corne, for Lou Pharma Corp. and Naser Ghasemlou and Fruits & Passion
Boutiques Inc.

Jay Carfagnini and *Jesse Mighton* for Alvarez & Marsal Canada Inc., Monitor

David Ullman and *Alexandra Teotorescu*, for Capital Brands LLC

Jeremy Dacks, for the Target Canada Entities

ENDORSEMENT

[1] Alvarez & Marsal Canada Inc., in its capacity as Court appointed Monitor (the "Monitor") of the Applicant, brought this motion for advice and directions regarding the treatment of a number of claimants who have not filed timely claims in accordance with the claims procedure order issued in these proceedings, but who now seek to have their claims admitted for determination in the claims process.

[2] The Monitor specifically requests guidance on the following issues:

- (a) Should any of the known late claimants be permitted to file proof of claims in the claims process?
- (b) If so, and if such claims are determined to be allowed (in whole or in part), which distributions are such claimants entitled to participate in?

- (c) How is the Monitor to address any as-of-yet unknown late claims that may come forward in the future, bearing in mind the need for certainty and finality for the Estate and for all Stakeholders?

Background

[3] The Target Canada Entities (the “TCE”) were granted protection under the *Companies’ Creditors Arrangement Act* (“CCAA”) pursuant to the initial order dated January 15, 2015 (the “Initial Order”). The Initial Order appointed the Monitor.

[4] On June 11, 2015, the court issued the claims procedure order setting out the procedures to be followed for the filing and determination of claims against the TCE and their former directors and officers (the “Claims Procedure Order”), and the procedures set out therein, (the “Claims Process”).

[5] Pursuant to the Claims Procedure Order, the claims bar date for creditors asserting pre-filing claims was August 31, 2015, and for claimants with restructuring period claims, the bar date was the later of:

- (i) 45 days after the date on which the Monitor sent a claims package with respect to a restructuring period claim, and
- (ii) August 31, 2015.

[6] More than 1700 proofs of claim were filed with the Monitor in accordance with the Claims Procedure Order.

[7] On May 25, 2016, a creditors’ meeting was held (the “Creditors’ Meeting”) where Affected Creditors voting pursuant to the meeting order issued April 13, 2016 (the “Meeting Order”) unanimously voted to approve Applicant’s Joint Amended and Restated Plan of Compromise and Arrangement dated April 13, 2016 (the “Plan”).

[8] Among other things, the Plan includes broad releases in favour of Target Corporation and Target Brands in respect of claims not filed in the Claims Process.

[9] The Sanction and Vesting Order issued June 2, 2016 provides that the Plan, including the releases provided therein, shall become effective on the Plan Implementation Date.

[10] Plan implementation occurred on June 28, 2016.

[11] The Sanction and Vesting Order specifically provides:

“Any Affected Claim (...) for which a Proof of Claim has not been filed at the Claims Bar Date in accordance with the Claims Procedure Order, whether or not the holder of such Affected Claim (...) has received personal notification of the

claims process established by the Claims Procedure Order, shall be and are hereby forever barred, extinguished and released with prejudice”.

[12] In the Twenty-Seventh Report of the Monitor dated May 11, 2016, the Monitor indicated that it would no longer accept Proof of Claim filed following the Creditors’ Meeting.

[13] Since the Creditors’ Meeting, the Monitor has been contacted by a number of putative claimants seeking to file Proofs of Claim for adjudication under the Claims Process. In each case, the Monitor declined to permit the filing of such late claims.

[14] In September 2016, the Monitor was contacted by counsel on behalf of Capital Brands Inc., (“CBI”) a former supplier of the TCE, who indicated that a motion would be brought seeking to have the court approve the late filing of a Proof of Claim.

[15] Out of fairness to other late claimants who contacted the Monitor, but whose request to file late claims was declined, the Monitor indicated that the relief sought by CBI should be addressed through a motion for advice and direction where other claimants seeking to file late claims could have an opportunity to make submissions in an orderly process.

[16] In an Endorsement dated October 18, 2016 (the “October 18 Endorsement”), I directed that the Monitor’s motion for advice and directions be heard on November 29, 2016 (the “November 29 Motion”).

[17] The October 18 Endorsement set out the following processes pertaining to the November 29 Motion:

- (i) The Monitor is to serve a report regarding late claims by October 31, 2016;
- (ii) CBI is to file its responding materials by November 4, 2016; and
- (iii) Any other claimant seeking to late-file a claim is to serve and file responding materials, including an evidentiary record sufficient for the CCAA court to make a determination that the allowance of such claim at this late stage is appropriate in the circumstances, prior to the November 29 Motion, in accordance with the *Rules of Civil Procedure*.

First and Second Interim Distribution

[18] On June 29 and 30, 2016, the TCE, in consultation with the Monitor, issued the initial distribution totalling approximately \$672.5 million (the “Initial Distribution”). The Initial Distribution represented approximately 55.34% of affected creditors’ proven claims.

[19] On October 19 and 20, 2016, the TCE, in consultation with the Monitor, issued a Second Interim Distribution in the amount of approximately \$87 million (the “Second Distribution”). The Second Distribution represented approximately 12.65% of affected creditors’ proven claims.

The Second Distribution was, subject to further order of the court, without prejudice to the rights of the putative late claimants in respect of this motion.

[20] As of October 31, 2016, the date of the Thirty-Second Report of the Monitor, approximately 68% of affected creditors' proven claims had been distributed.

[21] Following the Second Distribution, approximately \$3.5 million is being held in the TCE cash pool for scheduled vendor payments. An additional amount of approximately \$97.4 million is being held in reserve in the TCE disputed claims reserve account pending the resolution of disputed claims, including, in particular, the claims of the 27 remaining unresolved pharmacist franchisees and CRA.

[22] The Monitor has reported that current reserves are sufficient to satisfy distributions to the known late claimants, should they be permitted to file their claims, and such claims are ultimately accepted as proven by the Monitor (or the Claims Officer) in the amounts known to the Monitor at this time, without materially disturbing the estimated range of the coverage to affected creditors (being approximately 78% to 82%).

[23] In determining the motion, one must also take into account the terms of the October 18 Endorsement which are set out at [17] above. Specifically, (iii) sets out the process to be followed by any claimant seeking to file a late claim. The October 18 Endorsement specifically provides that any other claimant seeking to late file a claim is to serve and file responding materials, including an evidentiary record sufficient for the CCAA court to make a determination that the allowance of such claim at this late stage is appropriate in the circumstances (emphasis added).

[24] The test to evaluate whether a court will accept creditor claims after the passing of the claims bar date is articulated in *Blue Range Resource Corp. Re*, 2000 ABCA 285 ("Blue Range").

[25] The question put before the court in *Blue Range* (para. 5) was as follows:

"What criteria in the circumstances of these cases should the court use to exercise its discretion in deciding whether to allow late claimants to file claims which, if proven, may be recognized, notwithstanding a previous claims bar order containing a claims bar date which would otherwise bar the claim of the late claimants, and applying the criteria to each case, what is the result?"

[26] The judgment of the court in *Blue Ridge* was delivered by Wittmann J.A. (as he then was). The relevant portions read as follows:

[14] I accept that some guidance can be gained from the *BIA* approach to these types of cases but I find that some concerns remain. An inadvertence standard by itself might imply that there need be almost no explanation whatever for the failure to file a claim in time. In my view, inadvertence could be an appropriate element of the standard if parties are able to show, in addition, that they acted in.

good faith and were not simply trying to delay or avoid participation in CCAA proceedings. But I also take some guidance from the *US Bankruptcy Rules* Standard because I agree that the length of delay and the potential prejudice to other parties must be considered. To this extent, I accept a blended approach, taking into consideration both the *BIA* and the *US Bankruptcy Rules* approaches, bolstered by the application of some of the concepts included into other areas, such as late reporting in insurance claims, and delay in the prosecution of a civil action.

...

[26] Therefore, the appropriate criteria to apply to the late claimants is as follows:

1. Was the delay caused by inadvertence and if so, did the claimant act in good faith?
2. What is the effect of permitting the claim in terms of the existence and impact of any relevant prejudice caused by the delay?
3. If relevant prejudice is found, can it be alleviated by attaching appropriate conditions to an order permitting late filing?
4. If relevant prejudice is found which cannot be alleviated, are there any other considerations which may nonetheless warrant an order permitting late filing?

[27] In the context of the criteria, “inadvertent” includes carelessness, negligence, accident, and is unintentional. ...”

[27] On the subject of prejudice, the Blue Range decision is also instructive. At [40] the court stated:

“In a *CCAA* context, as in a *BIA* context, the fact that Enron and the other Creditors will receive less money if late and late amended claims are allowed is not prejudice relevant to this criterion. Re-organization under the *CCAA* involves compromise. Allowing all legitimate creditors to share in the available process is an integral part of the process. A reduction in that share cannot be characterized as prejudice: *Cohen, Re* (1956), 36 C.B.R. 21 (Alta. C.A.) at 30-31. Further, I am in agreement with the test for prejudice used by the British Columbia Court of Appeal in *312630 British Columbia Ltd*. It is: did the creditor(s) by reason of the late filings lose a realistic opportunity to do anything that they otherwise might have done? Enron and the other creditors were fully informed about the potential for late claims being permitted, and were specifically aware of the existence of the late claimants as creditors. I find, therefore, that Enron and the Creditors will not suffer any relevant prejudice should the late claims be permitted.

[28] There are certain similarities between Blue Range and Target Canada. Both entities filed under the CCAA, and both Blue Range and Target Canada were essentially liquidations. In addition, in both cases, the plans of arrangement had already been voted upon by the creditors and sanctioned by the court.

[29] In accordance with the terms of the October 18 Endorsement, certain claimants have filed materials in connection with the motions. Their reasons for not having filed timely claims are summarized as follows:

- (a) Fruits & Passion Boutiques Inc. (“Fruits & Passion”): Fruits & Passions claim that it did not file a timely claim because it did not receive the Claims Package that was mailed to it in late June 2015, perhaps because Fruits & Passion moved its head office in the summer of 2015. Fruits & Passion asserted its claim within a reasonable time after receiving notice of its claim bar date.
- (b) Lou Pharma Corp. (“Lou Pharma”): Lou Pharma claims that it did not file a timely claim because Mr. Ghasemlou (Lou Pharma’s sole shareholder, officer and director) was in Iran for all of June and July 2015 and most of August 2015 and consequently was not aware of the Claims Procedure Order or Claims Bar date, did not receive the Claims Package, was not familiar with legal processes in Canada generally and has not previously had exposure to a claims process in any insolvency or restructuring proceeding.
- (c) Kulwinder Kaur Rai: Ms. Rai’s claim is for damages arising from a slip and fall at a Target Shopping Centre in Surrey, B.C. A paralegal at the law firm representing Ms. Rai claims that a timely claim was not filed because of Mr. Rai’s counsel’s view that the CCAA proceeding did not apply to Mr. Rai’s claims “because an insurer has already responded to the claim in British Columbia”.
- (d) CBI: CBI claims that it assumed it had filed a timely claim because:
 - i. It received regular offers from claims traders to purchase CBI claim against Target Canada;
 - ii. It was listed on the list of creditors posted on the Monitor’s website and it assumed, based on its understanding of U.S. bankruptcy procedure, that being listed on the list of creditors meant that its claim was deemed to be filed; and
 - iii. It was not aware of the disclaimer on the Monitor’s website about the nature of the list of creditors.

CBI also states that it is “still unsure” that the proof of claim was not filed and relies on the turnover in its accounting department to justify its ignorance with respect to the status of the proof of claim.

- (e) Mohammad Alam: Mr. Alam commenced an action for damages as a result of injuries allegedly sustained by him on August 16, 2014 while a patron/invitee at a Target Shopping Centre located in Ajax, Ontario.

Mr. Alam retained counsel on August 21, 2014. Counsel to Mr. Alam sent a notice of claim to the defendant, Target, on August 27, 2014. The following day, August 28, 2014, Mr. Alam received a letter from Sedgwick Claims Management Services Canada Inc. advising that they had been assigned to handle the incident on behalf of Target Corporation and its insurer, ACE American Insurance Company.

On August 2, 2016, Counsel to Mr. Alam contacted the adjuster for the defendant Target Canada to inquire about the status of Target Canada.

Since the loss occurred on August 16, 2014, counsel to Mr. Alam maintains the limitation date for maintaining the claim is August 16, 2016.

On August 12, 2016, the Statement of Claim was issued against the defendants, Target Corporation, Target Canada Co. o/a Target Canada and 151516 Ontario Inc.

Mr. Alam takes the position the he relied on the wording of paragraph 54 of the Claims Procedure Order which reads as follows:

“THIS COURT ORDERS that nothing in this Order shall prejudice the rights ... or prevent or bar any person from seeking recourse against or payment from the Target Canada Entities insurance that exists to protect or indemnify ... or other Persons, whether such recourse or payment is sought directly by the Person asserting a Claim from the insurer or any Target Canada Entity; provided, however, that nothing in this Order shall create any rights in favour of such Person under any policies of insurance nor shall anything in this Order limit, remove, modify or alter a defence to such Claim available to the insurer pursuant to the provisions of any insurance policy or at law; and further provided that any Claim or portion thereof for which the Person receives a payment directly from, or confirmation that she is covered by, the Target Canada Entities insurance ... or other liability insurance policy or policies that exist to protect or indemnify the Directors or Officers or other persons shall not be recoverable as against a Target Canada Entity or Director or Officer as applicable.

[30] The claims of Fruits & Passion, Lou Pharma, Kulwinder Kai Rai, CBI and Mohammed Alam were supported by uncontroverted evidence that establishes, in my view, that their failure to file timely claims was caused by inadvertence and there was no suggestion that these claimants were not acting in good faith. Further, there is no evidence to suggest that these claimants were seeking to delay or otherwise avoid participating in the CCAA process. Indeed, it would have been contrary to their interest not to participate in the CCAA process.

[31] Turning now to the effect of permitting the claims in terms of the existence and the impact of any relevant prejudice caused by the delay. The second, third and fourth factors of the Blue Range test deal with any prejudice to other creditors if late claims are admitted. In this case, the Monitor reports that even if the late claimants are permitted to file their claims and such claims are ultimately accepted as proven in the amounts known to the Monitor at this time, there will be no change in the estimated range of the distribution to affected creditors (being approximately 78% - 82%).

[32] A relevant question is whether other creditors lost a realistic opportunity to do anything that they otherwise might have done.

[33] From the outset, it was clear that this was a liquidation plan. Target Canada followed a court approved process to liquidate its assets. The proceeds from the liquidation were being made available to creditors in accordance with their legal priorities.

[34] Simply put, unsecured creditors are sharing *pro rata* in any assets of Target Canada available for distribution after satisfying secured creditors, preferred creditors and valid trust claims. There was no other choice available to unsecured creditors.

[35] There is, however, one significant variable that would affect the distribution to unsecured creditors. It concerns the status of the claim of the parent company, Target Corporation.

[36] Target Corporation, as Plan Sponsor (as defined in the Plan), made significant economic contributions to the CCAA proceedings and the Plan. These contributions included the following:

- a. Funding a trust established for the benefit of the employees of Target Canada in the amount of \$95 million;
- b. Making available debtor-in-possession financing to Target Canada to allow Target Canada to meet payroll and other obligations;
- c. Providing ongoing shared services to facilitate the orderly wind-down of the Applicant's operations; and
- d. Subordinating well in excess of \$3.1 billion in inter-company debt against Target Canada.

[37] Target Corporation submits that they made these contributions to the Plan and relied upon obtaining the releases provided for in the Plan. Specifically, pursuant to the Plan, Target Corporation and its subsidiaries (including Target Brands Inc.) (“Target Brands”) were released from all claims (subject to certain exceptions which are not relevant for the purpose of this motion) existing or taking place on or prior to the later of the Plan Implementation Date and the date on which actions were taken to implement the Plan, that were arising out of or in connection with the Claims, the Business whether or however conducted, the Plan, the CCAA proceedings, or any Claims that were barred or extinguished by the Claims Procedure Order.

[38] Target Corporation also submits that it relied upon the anticipated recovery on its remaining unsecured claims which it did not subordinate, based on the Monitor’s illustrative recovery.

[39] Finally, Target Corporation takes the position that it would not have sponsored the Plan on the terms to which it agreed without being able to rely on the finality and enforceability of the release and discharge of claims provided for in the Sanction Order. This evidence is set out in the affidavit of Cory Haaland, sworn November 22, 2016.

[40] Target Corporation has been named as defendant in three of the late claims and Target Brands has been named as defendant in one of the late claims. Each of these late claims was initiated after the Sanction Order was granted and the Plan implementation occurred. From the standpoint of Target Corporation, each late claim against Target Corporation or Target Brands has already been released pursuant to the terms of the Plan, as approved by the Sanction Order.

[41] Given the evidence of Target Corporation that they would not have sponsored the Plan on terms to which it agreed without being able to rely on the finality and enforceability of the release and discharge of claims provided for in the Plan, as approved by the Sanction Order, I am satisfied that Target Corporation and Target Brands have established that they would be prejudiced if such late claims were permitted to be filed to the extent that such claims are being made as against Target Corporation and Target Brands. Further, I am satisfied that given the contributions of Target Corporation and the fact that the Plan has been sanctioned and distributions have already been made to creditors, the relevant prejudice to Target Corporation and Target Brands cannot be alleviated by attaching any appropriate conditions to an order permitting late filings.

[42] I conclude that Fruits & Passion, Lou Pharma, Kulwinder Kaur Rai, CBI and Mohammed Alam have satisfied the test as set out in *Blue Range*.

[43] Accordingly, an order is granted permitting Fruits & Passion, Lou Pharma, Kulwinder Kaur Rai, CBI and Mohammad Alam, to file their claims. The Monitor is directed to review and value them and, to the extent that the claims are proven, against Target Canada, these claimants are entitled to participate in a distribution.

[44] To the extent that the claims are made against Target Corporation or Target Brands, the Monitor is directed not to accept such claims. The claims as against Target Corporation and Target Brands have been barred and the release is effective.

[45] Two other claimants made submissions at the November 29 Motion, but did not file an evidentiary record.

- (a) Erin Wolf Bloom: Ms. Wolf-Bloom commenced a lawsuit against Target Canada Co. and Target Brands, Inc. as a result of injuries which Ms. Bloom alleges persist following her purchase of a Target brand shampoo known as “Up and Up”.

The Statement of Claim has not been served as Ms. Bloom has been advised by the Monitor that no claims are permitted against Target-related companies.

Ms. Bloom’s position is that she is not a creditor of the TCE as she has a claim against the insurer and ought to be allowed to effect service of her Statement of Claim and to prove her claim for payment under the third-party liability insurance in place.

- (b) Wazir Chand & Co. PVT Ltd.: In response to receiving the Motion Record, Wazir Chand sent an email to the Monitor on November 3, 2016 in which they state that they are resubmitting the details of outstanding claims against Target Canada totalling U.S. \$10,747.90.

The email also references attachments of scanned copies of three invoices, respective purchase orders and the relative 3FCRs in support of their claim.

In response, on November 21, 2016 counsel to the Monitor requested further information from Wazir Chand, specifically an explanation as to why Wazir Chand did not file a proof of claim with the Monitor, noting that a claims package was sent to Wazir Chand in June 2015.

In reply, by email dated November 23, 2016, Wazir Chand indicates that they never received any communication whereby a proof of claim was required. This was the reason provided as to why Wazir Chand could not send the proof of claims earlier.

[46] The claims of Ms. Wolf Bloom and Wazir Chand have not been supported by any evidence as required by the November 18 Endorsement. The Monitor is directed to advise Ms. Wolf Bloom and Wazir Chand that if they intend to pursue their claims, they are required to file some evidence as to why they did not file a timely proof of claim with the Monitor. If and when such evidence is filed, the Monitor can request direction from the court, taking into account the reasons set out in this endorsement.

[47] The second issue is to provide the Monitor with directions with respect to distributions in which late claimants are entitled to participate. The Monitor has made two distributions, pursuant to court order. These distributions are not to be disturbed.

[48] The Monitor has approximately \$97.4 million being held in reserve. The Monitor has reported that these reserves are sufficient to satisfy distributions to the known late claimants, if these claims are ultimately accepted as proven by the Monitor.

[49] Accordingly, I direct, to the extent that the claims of the late claimants are proven, that the Monitor effect distributions from this reserve. The distributions to these late claimants should be made in amounts sufficient to provide them with the equivalent of the First and Second Interim Distributions. These distributions should be made prior to any further distribution being made to all unsecured creditors.

[50] Finally, the Monitor has asked for direction as to how to address any as of yet unknown claims that may come forward in the future, bearing in mind the need for certainty and finality for the Estate and for all stakeholders.

[51] Consistent with my reasons, the Monitor is directed not to accept any further claims as against Target Corporation or Target Brands.

[52] With respect to claims as against Target Canada, the allowance of any such claims will be determined, taking into account, among other things, all notices sent to creditors respecting distributions, notice of the November 29 Motion and the *Blue Range* principles as set out above.

[53] Further, consistent with these reasons, any distributions already made to unsecured creditors are not to be disturbed.

Regional Senior Justice G.B. Morawetz

Date: March 1, 2017

TAB 5



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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) THURSDAY, THE 15TH
REGIONAL SENIOR JUSTICE)
MORAWETZ) DAY OF JANUARY, 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 (the "**Applicants**")

INITIAL ORDER

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Mark J. Wong sworn January 14, 2015 and the Exhibits thereto (the "**Wong Affidavit**") and the pre-filing report dated January 14, 2015 of Alvarez & Marsal Canada Inc. ("**A&M**") in its capacity as Proposed Monitor of the Applicants (the "**Pre-Filing Report**"), and on hearing the submissions of counsel for the Applicants and the partnerships listed on Schedule "A" hereto (the "**Partnerships**", and collectively with the Applicants, the "**Target Canada Entities**"), Target Corporation, A&M, the Directors and Employee Representative Counsel, and on reading the consent of A&M to act as the Monitor,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. THIS COURT ORDERS AND DECLARES that the Applicants are companies to which the CCAA applies. Although not Applicants, the Partnerships shall enjoy the benefits of the protections and authorizations provided by this Order.

PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that the Applicants, individually or collectively, shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "**Plan**"), between, *inter alia*, one or more of the Target Canada Entities and one or more classes of their applicable secured and/or unsecured creditors as the Applicants deem appropriate.

4. THIS COURT ORDERS that the amounts owing by Target Canada Co. ("**TCC**") to Nicollet Enterprise 1 S.à r.l. shall be subordinated and postponed to the proven claims of the unsecured creditors of TCC.

POSSESSION OF PROPERTY AND OPERATIONS

5. THIS COURT ORDERS that the Target Canada Entities shall remain in possession and control of their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Target Canada Entities shall continue to carry on business in a manner consistent with the preservation of the value of their business (the "**Business**") and Property. The Target Canada Entities shall each be authorized and empowered to continue to retain and employ the employees, advisors, consultants, agents, experts, appraisers, valuers, brokers, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further

Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. THIS COURT ORDERS that the Target Canada Entities shall be entitled to continue to utilize the central cash management system currently in place as described in the Wong Affidavit or, with the consent of the Monitor and the DIP Lender (as defined herein), replace it with another substantially similar central cash management system (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System (including, without limitation, Royal Bank of Canada, The Toronto-Dominion Bank, Bank of America and JPMorgan Chase Bank, National Association (“**JPMorgan**”)) shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Target Canada Entities of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Target Canada Entities, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. THIS COURT ORDERS that the Target Canada Entities (other than Target Canada Property LLC and Target Canada Property LP) (collectively, the “**DIP Entities**”) shall segregate all cash and non-cash receipts arising out of or in connection with the sale of the following Property of the DIP Entities (the “**DIP Property**”), which receipts shall be held in trust by the DIP Entities as follows:

- (a) net cash proceeds of any sale or other disposition (including as a result of casualty or condemnation) by the DIP Entities of any DIP Property other than inventory (whether such inventory is sold or disposed of through return to the vendor or wholesaler, the liquidation of the inventory by a liquidation agent if appointed by the Court in connection with the Liquidation Agent Solicitation Process (as defined herein) or otherwise), which shall be held in trust for and on behalf of the DIP Lender (as defined herein) and applied, except as otherwise agreed by the DIP Lender in

writing as follows, pursuant to and in accordance with the Term Sheet (as defined herein):

- (i) first, to pay accrued and unpaid interest on, and expenses in respect of, the DIP Obligations (as defined herein);
- (ii) second, to repay any principal amounts or other DIP Obligations outstanding; and
- (iii) third, the balance to be paid to the DIP Entities.

8. THIS COURT ORDERS that the Target Canada Entities shall be entitled but not required to pay the following expenses whether incurred prior to, on or after this Order to the extent that such expenses are incurred and payable by the Target Canada Entities:

- (a) all outstanding and future wages, salaries, employee benefits (including, without limitation, employee medical, dental and similar benefit plans or arrangements), vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements, and all other payroll processing expenses;
- (b) all outstanding or future amounts owing in respect of customer rebates, refunds, discounts or other amounts on account of similar customer programs or obligations;
- (c) all outstanding or future amounts related to honouring gift cards issued before or after the date of this Order;
- (d) the fees and disbursements of any Assistants retained or employed by the Target Canada Entities at their standard rates and charges;
- (e) with the consent of the Monitor, amounts owing for goods or services actually supplied to the Target Canada Entities prior to the date of this Order by:
 - (i) logistics or supply chain providers, including customs brokers and freight forwarders and security and armoured truck carriers;
 - (ii) providers of credit, debit and gift card processing related services; and

- (iii) other third party suppliers up to a maximum aggregate amount of \$10,000,000, if, in the opinion of the Target Canada Entities, the supplier is critical to the Orderly Wind-down (as defined herein); and
- (f) any and all sums due and owing to Amex Bank of Canada and JPMorgan in respect of credit cards issued to management and employees of the Target Canada Entities.

9. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, the Target Canada Entities shall be entitled but not required to pay all reasonable expenses incurred by them in carrying on the Business in the ordinary course during the Orderly Wind-down after this Order, and in carrying out the provisions of this Order and any other Order of this Court, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Target Canada Entities following the date of this Order.

10. THIS COURT ORDERS that the Target Canada Entities shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from the Target Canada Entities' employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services taxes, harmonized sales taxes or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Target Canada Entities in connection with the sale of goods and services by the Target Canada Entities, but only where such Sales Taxes are accrued or collected after the date of this Order, or

where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order;

- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business, workers' compensation or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Target Canada Entities; and
- (d) taxes under the *Income Tax Act* (Canada) or other relevant taxing statute giving rise to any statutory deemed trust amounts in favour of the Crown in right of Canada or any Province thereof or any political subdivision thereof or any other taxation authority.

11. THIS COURT ORDERS that, except as specifically permitted herein, the Target Canada Entities are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by any one of the Target Canada Entities to any of their creditors as of the date of this Order; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of the Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business or pursuant to this Order or any other Order of the Court.

ORDERLY WIND-DOWN

12. THIS COURT ORDERS that the Target Canada Entities shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the term sheet (the "**Term Sheet**") governing the DIP Facility (as defined herein), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their respective businesses or operations, and to dispose of redundant or non-material assets not exceeding \$1,000,000 in any one transaction or \$5,000,000 in the aggregate;
- (b) terminate the employment of such of their employees or temporarily lay off such of their employees as the relevant Target Canada Entity deems appropriate;

- (c) pursue all offers for sales of material parts of the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any sale (except as permitted by paragraph 12(a)) above;
- (d) in consultation with, and with the oversight of, the Monitor, engage in discussions with and solicit proposals and agreement(s) from third parties in respect of the liquidation of the inventory, furniture, equipment and fixtures located in and/or forming part of the Property (the "**Liquidation Agent Solicitation Process**") and return to Court for approval of such agreement(s); and
- (e) to apply to this Court for such approval, vesting or other Orders as may be necessary to consummate sale transactions for all or any part of the Property,

all of the foregoing to permit the Target Canada Entities to proceed with an orderly wind-down of the Business (the "**Orderly Wind-down**").

REAL PROPERTY LEASES

13. THIS COURT ORDERS that until a real property lease is disclaimed or resiliated in accordance with the CCAA, the Target Canada Entities shall pay, without duplication, all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts normally payable to the landlord under its lease, but for greater certainty, excluding accelerated rent) or as otherwise may be negotiated between the applicable Target Canada Entity and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

14. THIS COURT ORDERS that the Target Canada Entities shall provide each of the relevant landlords with notice of the relevant Target Canada Entity's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the relevant Target Canada Entity's entitlement to remove any such fixture under the provisions of the lease, such fixture

shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the relevant Target Canada Entity, or by further Order of this Court upon application by the Target Canada Entities on at least two (2) days' notice to such landlord and any such secured creditors. If any of the Target Canada Entities disclaims or resiliates the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer or resiliation of the lease shall be without prejudice to the relevant Target Canada Entity's claim to the fixtures in dispute.

15. THIS COURT ORDERS that if a notice of disclaimer or resiliation is delivered pursuant to Section 32 of the CCAA by any of the Target Canada Entities, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the relevant Target Canada Entity and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer or resiliation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Target Canada Entities in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

16. THIS COURT ORDERS that, notwithstanding anything to the contrary in any real property lease or elsewhere, the Target Canada Entities shall have no obligation to stock or re-stock and/or operate from any of its locations and/or remodel, fixture or open any new or renovated stores during these proceedings.

STAY OF PROCEEDINGS

17. THIS COURT ORDERS that until and including February 13, 2015, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Target Canada Entities or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the written consent of the Target Canada Entities and the Monitor, or with leave of this Court, and any and

all Proceedings currently under way against or in respect of the Target Canada Entities or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

18. THIS COURT ORDERS that during the Stay Period, no Person having any agreements or arrangements with the owners, operators, managers or landlords of commercial shopping centres or other commercial properties (including retail, office and industrial (warehouse) properties) in which there is located a store, office or warehouse owned or operated by the Target Canada Entities shall take any Proceedings or exercise any rights or remedies under such agreements or arrangements that may arise upon and/or as a result of the making of this Order, the declarations of insolvency by the Target Canada Entities or as a result of any steps taken by the Target Canada Entities pursuant to this Order and, without limiting the generality of the foregoing, no Person shall terminate, accelerate, suspend, modify, determine or cancel any such arrangement or agreement or be entitled to exercise any rights or remedies in connection therewith.

19. THIS COURT ORDERS that during the Stay Period, no Proceeding shall be commenced or continued against or in respect of Target Corporation and its direct and indirect subsidiaries (other than the Target Canada Entities) (collectively, "**Target US**") arising out of or in connection with any right, remedy or claim of any Person (as defined herein) against Target US in connection with any indebtedness, indemnity, liability or obligation of any kind whatsoever of Target US under contract, statute or otherwise, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by indemnity, guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including the right or ability of any Person to advance a claim for contribution, indemnity or otherwise, with respect to any matter, action, cause or chose in action, whether existing at present or commenced in future, which indebtedness, indemnity, liability or obligation is derivative of the primary liability of the Target Canada Entities except with the written consent of the Target Canada Entities and Target US and the Monitor, or with leave of this Court; provided that this paragraph shall not apply to any present or future bank providing the Cash Management System (including, without limitation, Royal Bank of Canada, The Toronto-Dominion Bank, Bank of America and

JPMorgan) in connection with any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

NO EXERCISE OF RIGHTS OR REMEDIES

20. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “Persons” and each being a “Person”) against or in respect of the Target Canada Entities or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the prior written consent of the Target Canada Entities and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Target Canada Entities to carry on any business which the Target Canada Entities are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien, and provided further that this paragraph shall not apply to any present or future bank providing the Cash Management System (including, without limitation, Royal Bank of Canada, The Toronto-Dominion Bank, Bank of America and JPMorgan) in connection with any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

NO INTERFERENCE WITH RIGHTS

21. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence or permit in favour of or held by the Target Canada Entities, except with the written consent of the relevant Target Canada Entity and the Monitor, or leave of this Court. Without limiting the foregoing, no right, option, remedy, and/or exemption in favour of the relevant Target Canada Entity shall be or shall be deemed to be negated, suspended, waived and/or terminated as a result of this Order.

CONTINUATION OF SERVICES

22. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Target Canada Entities or statutory or regulatory mandates for the supply

of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, cash management services, payroll and benefits services, pharmaceutical services, insurance, warranty services, transportation services, freight services, security and armoured truck carrier services, utility, customs clearing, warehouse and logistics services or other services to the Business or the Target Canada Entities, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Target Canada Entities, and that the Target Canada Entities shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Target Canada Entities in accordance with normal payment practices of the Target Canada Entities or such other practices as may be agreed upon by the supplier or service provider and each of the Target Canada Entities and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

23. THIS COURT ORDERS that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Target Canada Entities. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

KEY EMPLOYEE RETENTION PLAN

24. THIS COURT ORDERS that the Key Employees Retention Plan (the “**KERP**”), as described in the Wong Affidavit, is hereby approved and the Target Canada Entities are authorized to make payments contemplated thereunder in accordance with the terms and conditions of the KERP.

25. THIS COURT ORDERS that the key employees referred to in the KERP shall be entitled to the benefit of and are hereby granted a charge (the “**KERP Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$6.5 million to secure

amounts owing to such key employees under the KERP. The KERP Charge shall have the priority set out in paragraphs 63 and 65 herein.

EMPLOYEE TRUST

26. THIS COURT ORDERS that the creation of the Employee Trust, as defined and described in the Wong Affidavit, is hereby approved on substantially the terms and conditions set out in the Employee Trust Agreement, including without limitation the appointments of Hon. John D. Ground as trustee and the Monitor as administrator (the “**Administrator**”) of the Employee Trust and authorizes and directs the Monitor to act in such capacity.

27. THIS COURT ORDERS that TCC is authorized to process or cause to be processed all amounts received from the Employee Trust, including making payments to the Beneficiaries (as defined in the Employee Trust Agreement), subject to and in accordance with the terms and conditions of the Employee Trust Agreement.

28. THIS COURT ORDERS that the amounts received by TCC from the Employee Trust in the hands of TCC and when paid to any payment processor shall be deemed to be held in trust for and on behalf of the Beneficiaries, subject to and in accordance with the Employee Trust Agreement and shall not constitute property of TCC, including, without limitation, under the CCAA and the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) and shall not be subject to the claims of any person other than as provided under the Employee Trust Agreement.

29. THIS COURT ORDERS that the creation, establishment, funding and administration of the Employee Trust shall not, in whole or in part, directly or indirectly, (a) cause Target US to be or be deemed to be, or (b) in any way be relied upon to claim or assert that Target US is or is deemed to be, either (i) an employer or (ii) a common or related employer under contract, statute, common law or otherwise of any employee of the Target Canada Entities.

30. THIS COURT ORDERS that:

- (a) each Beneficiary shall be deemed to release the Releasees (as defined in the Employee Trust Agreement) on the payment of a distribution from the Employee Trust in respect of such Beneficiary’s Eligible Employee Claim (as defined in the

Employee Trust Agreement), to the extent of such distribution (the “**Payment Release**”); and

- (b) each Beneficiary shall be deemed to release the Releasees in respect of the full amount of the Beneficiary’s Eligible Employee Claim 60 days after the final payment to such Beneficiary under the Employee Trust or such later date as the Monitor in its sole discretion may designate, provided that the Beneficiary has not, on or before such date, provided notice of dispute to the Monitor and Employee Representative Counsel (as defined herein) substantially in the manner and form attached as Schedule “B”; provided further that in the event of any insufficiency of Trust funds to cover an individual’s total Eligible Employee Claim, only the Payment Release shall be effective and there shall be no deemed full and final release of the full Eligible Employee Claim.

EMPLOYEE REPRESENTATIVE COUNSEL

31. THIS COURT ORDERS that Koskie Minsky LLP (“**Employee Representative Counsel**”) is hereby appointed as counsel for all employees other than officers and directors (the “**Employees**”) of the Target Canada Entities in these proceedings, any proceeding under the BIA or in any other proceeding respecting the insolvency of the Applicants which may be brought before this Honourable Court (the “**Insolvency Proceedings**”), for any issues affecting the Employees in the Insolvency Proceedings including, without limitation, with respect to the Employee Trust Agreement and the Claims Process (as defined in the Employee Trust Agreement).

32. THIS COURT ORDERS that the Employee Representative Counsel shall commence the process of identifying no more than 7 Employees to be nominated as Court-appointed representatives (the “**Employee Representatives**”) as soon as practicable. The Employee Representatives, once appointed, shall represent the Employees in the Insolvency Proceedings, including, without limitation, for the purpose of settling or compromising claims by the Employees in the Insolvency Proceedings.

33. THIS COURT ORDERS that notice of the appointment of Employee Representative Counsel shall be provided to the Employees by:

- (a) referring thereto in a letter to be sent to the Employees, other than former employees, by Target Canada Entities, no later than January 19, 2015;
- (b) postings in each place of work;
- (c) notice on the Monitor's Website (as defined herein) and on the Representative Counsel's website; and
- (d) referring thereto in the notices provided for in paragraph 69 below.

34. THIS COURT ORDERS that the Target Canada Entities shall provide to Employee Representative Counsel, without charge:

- (a) the names, last known address and last known email addresses (if any) of all the Employees as well as applicable data regarding their entitlements, subject to a confidentiality agreement and to only be used for the purposes of these proceedings; and
- (b) upon request of Employee Representative Counsel, such documents and data as may be relevant to matters relating to the issues in these proceedings, including documents and data pertaining to the various benefits, termination allowance plans, severance and termination payments and other arrangements for group health, life insurance, retirement and severance payments, including up to date financial information regarding the funding and investments of any of these arrangements.

35. THIS COURT ORDERS that all reasonable fees and disbursements as may have been incurred by the Employee Representative Counsel prior to the date of this Order or which shall be incurred by the Employee Representative Counsel shall be paid by the Target Canada Entities on a weekly basis, forthwith upon the rendering of accounts to the Target Canada Entities. In the event of any disagreement regarding such fees, such matters may be remitted to this Court for determination.

36. THIS COURT ORDERS that Employee Representative Counsel is authorized to take all steps and to do all acts necessary or desirable to carry out the terms of this Order, including

dealing with any Court, regulatory body or other government ministry, department or agency, and to take all such steps as are necessary or incidental thereto.

37. THIS COURT ORDERS that Employee Representative Counsel shall have no liability as a result of its appointment or the fulfilment of its duties in carrying out the provisions of this Order save and except for any gross negligence or wilful misconduct on its part.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

38. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Target Canada Entities with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Target Canada Entities whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Target Canada Entities, if one is filed, is sanctioned by this Court or is refused by the creditors of the Target Canada Entities or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

39. THIS COURT ORDERS that the Target Canada Entities shall jointly and severally indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Target Canada Entities after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

40. THIS COURT ORDERS that the directors and officers of the Target Canada Entities shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$64 million, as security for the indemnity provided in paragraph 39 of this Order. The Directors' Charge shall have the priority set out in paragraphs 63 and 65 herein.

41. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 39 of this Order.

APPROVAL OF ADVISOR AGREEMENTS

42. THIS COURT ORDERS that the agreement dated January 14, 2015 engaging Lazard Freres & Co. LLC ("**Lazard**") as financial advisor to TCC in connection with the sales process for the real property assets held by the Target Canada Entities (the "**Real Property Portfolio Sales Process**") in the form attached as a confidential appendix to the Pre-Filing Report (the "**Financial Advisor Agreement**"), and the retention of Lazard under the terms thereof, is hereby ratified and approved and the Target Canada Entities are authorized and directed to make the payments contemplated thereunder in accordance with the terms and conditions of the Financial Advisor Agreement.

43. THIS COURT ORDERS that Confidential Appendix "A" to the Pre-Filing Report shall be and is hereby sealed, kept confidential and shall not form part of the public record.

44. THIS COURT ORDERS that the agreement dated January 14, 2015 engaging Northwest Atlantic (Canada) Inc. ("**Northwest**") to provide real estate advisory services, including any required brokerage services, to TCC in respect of the Real Property Portfolio Sales Process in the form attached as Exhibit V to the Wong Affidavit (the "**Real Estate Advisor Agreement**"), and the retention of Northwest under the terms thereof, is hereby ratified and approved and the Target Canada Entities are authorized and directed to make the payments contemplated thereunder in accordance with the terms and conditions of the Real Estate Advisor Agreement.

45. THIS COURT ORDERS that Lazard and Northwest shall consult with and report to the Monitor on a regular basis in connection with the Real Property Portfolio Sales Process.

APPOINTMENT OF MONITOR

46. THIS COURT ORDERS that Alvarez & Marsal Canada Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Target Canada Entities with the powers and obligations set out in the CCAA or set forth herein and that the Target Canada Entities and their direct and indirect shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Target Canada Entities pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

47. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Target Canada Entities' receipts and disbursements;
- (b) assist with the wind-down of the Business and operations of the Target Canada Entities;
- (c) liaise with Assistants with respect to all matters relating to the Property, the Business and such other matters as may be relevant to the proceedings herein;
- (d) oversee and consult with Lazard and Northwest with respect to the Real Property Portfolio Sales Process;
- (e) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, the Shared Services, the Orderly Wind-down and such other matters as may be relevant to the proceedings herein;
- (f) assist the Target Canada Entities, to the extent required by the Target Canada Entities, in their dissemination to the DIP Lender and its counsel of financial and other information as agreed to between the Target Canada Entities and the DIP Lender

which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;

- (g) advise the Target Canada Entities in their preparation of the Target Canada Entities' cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis in accordance with the Term Sheet;
- (h) advise the Target Canada Entities in their development of the Plan and any amendments to the Plan;
- (i) assist the Target Canada Entities, to the extent required by the Target Canada Entities, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (j) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Target Canada Entities, to the extent that is necessary to adequately assess the Target Canada Entities' business and financial affairs or to perform its duties arising under this Order;
- (k) oversee and consult with the Target Canada Entities, any liquidation agent selected through the Liquidation Agent Solicitation Process and any Assistants retained (including brokers), to the extent required, with any and all wind-down activities and/or any marketing or sale of the Property and the Business or any part thereof;
- (l) administer the Employee Trust, in its role as Administrator thereof, in consultation with the Trustee thereof, TCC and Employee Representative Counsel;
- (m) be at liberty to engage independent legal counsel or such other persons, or utilize the services of employees of its affiliates, as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

- (n) be at liberty to serve as a "foreign representative" of the Applicants in any proceeding outside Canada;
- (o) assist the Target Canada Entities, to the extent required by the Target Canada Entities, with any matters relating to any foreign proceeding commenced in relation to any of the Target Canada Entities, including retaining independent legal counsel, agents, experts, accountants or such other persons as the Monitor deems necessary or desirable respecting the exercise of this power; and
- (p) perform such other duties as are required by this Order or by this Court from time to time.

48. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

49. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

1

50. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Target Canada Entities and the DIP Lender with information provided by the Target Canada Entities in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Target Canada Entities is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Target Canada Entities may agree.

51. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, including for greater certainty in the Monitor's capacity as Administrator of the Employee Trust, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

52. THIS COURT ORDERS that the Monitor, counsel to the Monitor, counsel to the Target Canada Entities and counsel to the Directors shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to or subsequent to the date of this Order by the Target Canada Entities as part of the costs of these proceedings. The Target Canada Entities are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor, counsel for the Target Canada Entities and counsel to the Directors on a weekly basis and, in addition, the Target Canada Entities are hereby authorized to pay to the Monitor, counsel to the Monitor, counsel to the Target Canada Entities and counsel to the Directors retainers in the aggregate amount of \$1,000,000 to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

53. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

54. THIS COURT ORDERS that the Monitor, counsel to the Monitor, counsel to the Target Canada Entities, counsel to the Directors, Employee Representative Counsel, Lazard (with respect to its Monthly Fee set out in the Financial Advisor Agreement) and Northwest shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$6.75 million, as security for their professional fees and disbursements incurred at their respective standard rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 63 and 65 hereof.

55. THIS COURT ORDERS that Lazard shall be entitled to the benefit of and is hereby granted a charge (the "**Financial Advisor Subordinated Charge**") on the Property with respect to its fees under the Financial Advisor Agreement other than its Monthly Fee thereunder (the "**Transaction Fee**"), which charge shall not exceed an aggregate amount of \$3 million, as security for the Transaction Fee. The Financial Advisor Subordinated Charge shall have the priority set out in paragraphs 63 and 65 hereof.

DIP FINANCING

56. THIS COURT ORDERS that the DIP Entities are hereby authorized and empowered to obtain and borrow, on a joint and several basis, under a credit facility from Target Corporation (the "**DIP Lender**") in order to finance the DIP Entities' working capital requirements and other general corporate purposes and allow them to make such other payments as permitted under this Order and the Term Sheet (the "**DIP Facility**"), provided that borrowings under the DIP Facility shall not exceed US\$175 million unless permitted by further Order of this Court.

57. THIS COURT ORDERS that the DIP Facility shall be on the terms and subject to the conditions set forth in the Term Sheet.

58. THIS COURT ORDERS that the DIP Facility and the Term Sheet be and are hereby approved and the DIP Entities are hereby authorized and directed to execute and deliver the Term Sheet.

59. THIS COURT ORDERS that the DIP Entities are hereby authorized and empowered to execute and deliver the promissory note as is contemplated by the Term Sheet (the

“**Promissory Note**”), and the DIP Entities are hereby authorized and directed to pay and perform all of their respective indebtedness, interest, liabilities and obligations to the DIP Lender under and pursuant to the Term Sheet and the Promissory Note as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

60. THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Lender’s Charge**”) on the DIP Property, as security for any and all obligations of the DIP Entities under the DIP Facility, the Term Sheet and the Promissory Note (including on account of principal, interest, fees, expenses and other liabilities) (the aggregate of all such obligations being the “**DIP Obligations**”), which DIP Lender’s Charge shall be in the aggregate amount of the DIP Obligations outstanding at any given time. The DIP Lender’s Charge shall not secure an obligation that exists before this Order is made. The DIP Lender’s Charge shall have the priority set out in paragraphs 63 and 65 hereof.

61. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender’s Charge or the Promissory Note;
- (b) upon the occurrence of an event of default under the Term Sheet, the Promissory Note or the DIP Lender’s Charge, the DIP Lender, upon 3 business days’ prior written notice to the DIP Entities and the Monitor and on application to the Court, may exercise any and all of its rights and remedies against the DIP Entities or the DIP Property under or pursuant to the Term Sheet, the Promissory Note and the DIP Lender’s Charge, including without limitation, to cease making advances to the DIP Entities and set off and/or consolidate any amounts owing by the DIP Lender to the DIP Entities against the obligations of the DIP Entities to the DIP Lender under the Term Sheet, the Promissory Note or the DIP Lender’s Charge, to give notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the DIP Entities and for the appointment of a trustee in bankruptcy of the DIP Entities; and

- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the DIP Entities or the DIP Property.

62. THIS COURT ORDERS AND DECLARES that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise 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, with respect to any advances made under the DIP Facility, the Term Sheet or the Promissory Note.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

63. THIS COURT ORDERS that the priorities of the Administration Charge, the KERP Charge, the Directors' Charge, the Financial Advisor Subordinated Charge and the DIP Lender's Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$6.75 million);

Second – KERP Charge (to the maximum amount of \$6.5 million);

Third – Directors' Charge (to the maximum amount of \$64 million);

Fourth – Financial Advisor Subordinated Charge (to the maximum amount of \$3 million); and

Fifth – DIP Lender's Charge.

64. THIS COURT ORDERS that the filing, registration or perfection of the Administration Charge, the KERP Charge, the Directors' Charge, the Financial Advisor Subordinated Charge, and the DIP Lender's Charge, (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

65. THIS COURT ORDERS that each of the Administration Charge, the KERP Charge, the Directors' Charge and the Financial Advisor Subordinated Charge shall constitute a charge

on the Property and the DIP Lender's Charge shall constitute a charge on the DIP Property and such Charges (other than the DIP Lender's Charge) shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, except for any Person who is a "secured creditor" as defined in the CCAA. For greater certainty, the DIP Lender's Charge shall rank behind all Encumbrances in favour of any Person.

66. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Target Canada Entities shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Administration Charge, the KERP Charge, the Directors' Charge and the Financial Advisor Subordinated Charge, unless the Target Canada Entities also obtain the prior written consent of the Monitor and the beneficiaries of the Administration Charge, the KERP Charge, the Directors' Charge and the Financial Advisor Subordinated Charge, or further Order of this Court.

67. THIS COURT ORDERS that the Administration Charge, the KERP Charge, the Directors' Charge, the Financial Advisor Subordinated Charge, the Term Sheet, the Promissory Note and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Target Canada Entities, or any of them, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Term Sheet or the Promissory Note shall create or be deemed

to constitute a breach by any of the Target Canada Entities of any Agreement to which they are a party;

- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Target Canada Entities entering into the Term Sheet, the creation of the Charges, or the execution, delivery or performance of the Promissory Note; and
- (c) the payments made by the Target Canada Entities pursuant to this Order, the Term Sheet or the Promissory Note, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

68. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the relevant Target Canada Entity's interest in such real property leases.

SERVICE AND NOTICE

69. THIS COURT ORDERS that the Monitor shall (i) without delay, publish in The Globe and Mail (National Edition) and La Presse a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send or cause to be sent, in the prescribed manner, a notice to every known creditor who has a claim against the Target Canada Entities of more than \$1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of individuals who are creditors publicly available.

70. THIS COURT ORDERS that any employee of any of the Target Canada Entities that receives a notice of termination from any of the Target Canada Entities shall be deemed to have received such notice of termination by no more than the seventh day following the date such notice of termination is delivered, if such notice of termination is sent by ordinary mail, expedited parcel or registered mail.

71. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL: <http://www.alvarezandmarsal.com/targetcanada> (the “**Monitor’s Website**”).

72. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Guide is not practicable, the Target Canada Entities and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Target Canada Entities’ creditors or other interested parties at their respective addresses as last shown on the records of the Target Canada Entities and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

73. THIS COURT ORDERS that the Target Canada Entities or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

74. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Target Canada Entities, the Business or the Property.

75. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give

effect to this Order and to assist the Target Canada Entities, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Target Canada Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Target Canada Entities and the Monitor and their respective agents in carrying out the terms of this Order.

76. THIS COURT ORDERS that each of the Target Canada Entities and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including acting as the foreign representative of the Target Canada Entities to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1330, as amended, and to act as foreign representative in respect of any such proceedings and any ancillary relief in respect thereto.

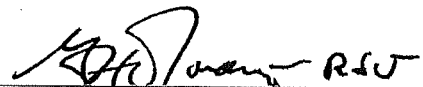
77. THIS COURT ORDERS that any interested party (including the Target Canada Entities and the Monitor) may apply to this Court to vary or amend this Order at the comeback motion scheduled for February 11, 2015, on not less than seven (7) calendar days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

78. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

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

JAN 15 2015

MJ

 R.S.J.

SCHEDULE "A"
PARTNERSHIPS

Target Canada Pharmacy Franchising LP
Target Canada Mobile LP
Target Canada Property LP

SCHEDULE "B"
NOTICE OF DISPUTE REGARDING ELIGIBLE EMPLOYEE CLAIM

I, _____ (insert name and employee number if known), am disputing that I have been paid in full in respect of my Eligible Employee Claim, as such term is defined in the Employee Trust Agreement. ****Please see the Monitor's website at www.alvarezandmarsal.com/targetcanada or Employee Representative Counsel's website at www.kmlaw.ca for further information.****

I am a _____ (insert position) in the Target Canada Co. store located at _____ (insert address/location).

The basis for my objection is:

(insert full particulars regarding dispute, including all facts and calculations on which you are relying)

Based on the foregoing, I claim that I am owed the sum of \$ _____.

Dated at _____ this _____ day of _____, 2015.

Signature: _____

Address: _____

Tel: _____

Email: _____

METHOD OF DELIVERY:

This notice of dispute must be sent to Employee Representative Counsel and to the Monitor at the following addresses:

To Employee Representative Counsel:

Koskie Minsky LLP
20 Queen Street West
Suite 900, Box 52
Toronto, ON M5H 3R3

Attention: Susan Philpott
Fax: (416) 204-2897
Email: targetemployees@kmlaw.ca

To the Monitor at:

Alvarez & Marsal Canada Inc.
Royal Bank Plaza, South Tower
200 Bay Street, Suite 2900
P.O. Box 22
Toronto, ON M5J 2J1

Attention: Target Canada Monitor
Fax: (416) 847-5201
Email: targetcanada.monitor@alvarezandmarsal.com

NOTE: THIS MUST BE SENT TO EMPLOYEE REPRESENTATIVE COUNSEL AND THE MONITOR NO LATER THAN 45 DAYS AFTER YOU RECEIVE YOUR LAST PAYMENT FROM TCC PAYROLL.

**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.**

Applicants

Court File No. **CN-15-10832001**

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

PROCEEDING COMMENCED AT
TORONTO

INITIAL ORDER

OSLER, HOSKIN & HARCOURT LLP
Box 50, 1 First Canadian Place
Toronto, Canada M5X 1B8

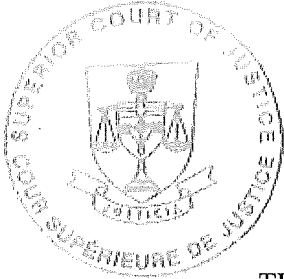
Tracy Sandler (LSUC #: 32443N)
Jeremy Dacks (LSUC #: 41851R)
Shawn Irving (LSUC #: 50035U)
Robert Carson (LSUC #: 57364H)

Tel: (416) 362-2111
Fax: (416) 862-6666

Lawyers for the Applicants

Matter No: 1159785

TAB 6



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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) THURSDAY, THE 11TH
)
REGIONAL SENIOR JUSTICE) DAY OF JUNE, 2015
)
MORAWETZ)

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 (collectively the “Applicants”)

CLAIMS PROCEDURE ORDER

THIS MOTION, made by Alvarez & Marsal Canada Inc., in its capacity as Court-appointed Monitor (the “**Monitor**”) of the Applicants and the Partnerships listed on Schedule “A” (collectively, the “**Target Canada Entities**”, and each individually a “**Target Canada Entity**”), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended (the “**CCAA**”) for an order establishing a claims procedure for the identification and quantification of certain claims against (i) the Target Canada Entities and (ii) the current and former directors and officers of the Target Canada Entities, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Monitor and the Fifteenth Report of the Monitor (the “**Monitor's Fifteenth Report**”), and on hearing the submissions of respective counsel for the Monitor, the Target Canada Entities, Target Corporation and such other counsel

as were present, no one else appearing although duly served as appears from the Affidavit of Service of Jesse Mighton sworn June 5, 2015:

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

DEFINITIONS AND INTERPRETATION

2. THIS COURT ORDERS that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Amended and Restated Initial Order in these proceedings dated January 15, 2015 as further amended, restated, supplemented and/or modified from time to time (the “**Initial Order**”).

3. For the purposes of this Order the following terms shall have the following meanings:

(a) “**Assessments**” means Claims of Her Majesty the Queen in Right of Canada or of any Province or Territory or Municipality or any other taxation authority in any Canadian or foreign jurisdiction, including, without limitation, amounts which may arise or have arisen under any notice of assessment, notice of objection, notice of reassessment, notice of appeal, audit, investigation, demand or similar request from any taxation authority;

(b) “**Business Day**” means a day, other than a Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Toronto, Ontario;

- (c) “**CCAA Proceedings**” means the CCAA proceedings commenced by the Target Canada Entities in the Court under Court File No. CV-15-10832-00CL;
- (d) “**Claim**” means:
 - (i) any right or claim of any Person against any of the Target Canada Entities, whether or not asserted, in connection with any indebtedness, liability or obligation of any kind whatsoever of any such Target Canada Entities in existence on the Filing Date, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any Assessments and any right or ability of any Person to advance a claim for contribution or indemnity or otherwise against any of the Target Canada Entities with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, which indebtedness, liability or obligation is based in whole or in part on facts that existed prior to the Filing Date, including for greater certainty any claim against any of the Target Canada Entities for indemnification by any Director or Officer in respect of a D&O Claim (but excluding any such claim for indemnification that is covered by the Directors’ Charge (as defined in the Initial Order)) (each, a “**Prefiling Claim**”, and collectively, the “**Prefiling Claims**”);

- (ii) any right or claim of any Person against any of the Target Canada Entities in connection with any indebtedness, liability or obligation of any kind whatsoever owed by any such Target Canada Entity to such Person arising out of the restructuring, disclaimer, resiliation, termination or breach by such Target Canada Entity on or after the Filing Date of any contract, lease or other agreement whether written or oral (each, a “**Restructuring Period Claim**”, and collectively, the “**Restructuring Period Claims**”); and

- (iii) any right or claim of any Person against one or more of the Directors and/or Officers howsoever arising, whether or not such right or claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, perfected, unperfected, present, future, known, or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including any Assessments and any right or ability of any Person to advance a claim for contribution, indemnity or otherwise against any of the Directors and/or Officers with respect to any matter, action, cause or chose in action, whether existing at present arising or commenced in the future, for which any Director or Officer is alleged to be, by statute or otherwise by law or equity, liable to pay in his or her capacity as a Director or Officer (each a “**D&O Claim**”, and collectively, the “**D&O Claims**”),

provided however that in any case “**Claim**” shall not include an Excluded Claim, but for greater certainty, shall include any Claim arising through subrogation against any Target Canada Entity or Director or Officer;

- (e) “**Claimant**” means a Person asserting a Prefiling Claim or a Restructuring Period Claim (including in each case, for greater certainty, an Intercompany Claim) against the Target Canada Entities, or any of them, and a Person asserting a D&O Claim against any of the Directors or Officers of any of the Target Canada Entities;
- (f) “**Claims Bar Date**” means 5:00 p.m. on August 31, 2015;
- (g) “**Claims Officer**” means the individuals designated by the Court pursuant to paragraph 41 of this Order;
- (h) “**Claims Package**” means the document package which shall be disseminated by the Monitor to any potential Claimant in accordance with the terms of this Order and shall consist of a copy of this Order (without schedules) and such other materials as the Monitor, in consultation with the Target Canada Entities, may consider appropriate;
- (i) “**Claims Process**” means the procedures outlined in this Order in connection with the assertion of Claims against the Target Canada Entities and/or the Directors and Officers;

- (j) “**Consultative Committee**” means the committee of representatives of creditors of the Target Canada Entities constituted in accordance with the Order for Advice and Directions of the Court dated May 12, 2015;
- (k) “**Court**” means the Ontario Superior Court of Justice (Commercial List);
- (l) “**D&O Claim Instruction Letter**” means the letter containing instructions for completing the D&O Proof of Claim form, substantially in the form attached as Schedule “B” hereto;
- (m) “**D&O Proof of Claim**” means the proof of claim referred to herein to be filed by Claimants in connection with any D&O Claim, substantially in the form attached hereto as Schedule “C” hereto, which shall include all supporting documentation in respect of such D&O Claim;
- (n) “**Director**” means anyone who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, a director or *de facto* director of any of the Target Canada Entities, in such capacity;
- (o) “**Employees**” means all employees of the Target Canada Entities as at the Filing Date and “**Employee**” means any one of them, in such capacity. For the avoidance of doubt, Employee does not include individuals whose employment was terminated for any reason, without regard to any period of notice, prior to the Filing Date;
- (p) “**Employee Letter**” means the letter to be disseminated by the Monitor, in consultation with the Target Canada Entities and Employee Representative

Counsel, to all Employees advising as to their rights and obligations in connection with this Claims Process, which letter shall be substantially in the form attached hereto as Schedule “D”;

- (q) **“Excluded Claim”** means any:
 - (i) Claim secured by the Administration Charge, the KERP Charge, the Directors’ Charge, the Financial Advisor Subordinated Charge, the DIP Lender’s Charge, and the Agent’s Charge and Security Interest (as defined in the Approval Order – Agency Agreement dated February 4, 2015);
 - (ii) Claim enumerated in sections 5.1(2) and 19(2) of the CCAA;
 - (iii) Any Claim of Royal Bank of Canada, The Toronto-Dominion Bank, Bank of America and JPMorgan in connection with the Cash Management System;
- (r) **“Filing Date”** means January 15, 2015;
- (s) **“Intercompany Claim”** means any Claim filed by any of the Target Canada Entities, or any of their affiliated companies, partnerships, or other corporate entities, including Target Corporation or any of its subsidiary or affiliated companies, partnerships, or other corporate entities in accordance with the terms of this Order, but excluding any Claim arising through subrogation or assignment;
- (t) **“Intercompany Claims Bar Date”** means 5:00 p.m. on July 31, 2015;

- (u) **“Meetings”** and each a **“Meeting”** means a meeting of the creditors of the Target Canada Entities called for the purpose of considering and voting in respect of a Plan;
- (v) **“Monitor’s Website”** means www.alvarezandmarsal.com/targetcanada;
- (w) **“Monitor’s Intercompany Claims Report”** shall have the meaning set out in paragraph 35 herein;
- (x) **“Notice to Claimants”** means the notice for publication by the Monitor as described in paragraph 15 herein, substantially in the form attached as Schedule “E” hereto;
- (y) **“Notice of Dispute of Revision or Disallowance”** means the form substantially in the form attached as Schedule “F” hereto;
- (z) **“Notice of Objection”** means a notice filed by a Claimant in respect of an Intercompany Claim as set out in paragraph 37 herein, which Notice of Objection shall:
 - (i) identify the Person or Persons on whose behalf the Notice of Objection is filed;
 - (ii) indicate, to the extent known by the Claimant at such time, the nature of and basis for the objection(s) filed, along with any related documentary or other evidence available to the Claimant at such time in support of such objection(s); and

- (iii) indicate the relief sought in respect of any Intercompany Claim, and set out with reasonable particularity the legal or other basis for such relief;
- (aa) “**Notice of Objection Bar Date**” means September 30, 2015;
- (bb) “**Notice of Revision or Disallowance**” means the form substantially in the form attached as Schedule “G” hereto;
- (cc) “**Officer**” means anyone who is or was or may be deemed to be or have been, whether by statute, operation of law or otherwise, an officer or *de facto* officer of any of the Target Canada Entities, in such capacity;
- (dd) “**Order**” means this Claims Procedure Order;
- (ee) “**Person**” means any individual, firm, corporation, limited or unlimited liability company, general or limited partnership, association, trust (including a real estate investment trust), unincorporated organization, joint venture, government or any agency or instrumentality thereof or any other entity;
- (ff) “**Plan**” means, as further defined in the Initial Order, any proposed plan of compromise or arrangement that may be filed in respect of any or all of the Target Canada Entities pursuant to the CCAA as the same may be amended, supplemented or restated from time to time in accordance the terms thereof;
- (gg) “**Proof of Claim**” means the proof of claim referred to herein to be filed by Claimants in respect of Prefiling Claims and Restructuring Period Claims (including, in each case, an Intercompany Claim), substantially in the form

attached hereto as Schedule "I" hereto, which shall include all supporting documentation in respect of such Claim;

- (hh) **"Proof of Claim Instruction Letter"** means the letter containing instructions for completing the Proof of Claim form, substantially in the form attached as Schedule "H" hereto;
- (ii) **"Restructuring Period Claims Bar Date"** means, in respect of a Restructuring Period Claim, the later of (i) 45 days after the date on which the Monitor sends a Claims Package with respect to a Restructuring Period Claim and (ii) the Claims Bar Date; and
- (jj) **"TCC"** means Target Canada Co..

4. THIS COURT ORDERS that all references as to time herein shall mean local time in Toronto, Ontario, Canada, and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. on such Business Day unless otherwise indicated herein, and any reference to an event occurring on a day that is not a Business Day shall mean the next following day that is a Business Day.

5. THIS COURT ORDERS that all references to the word "including" shall mean "including without limitation", all references to the singular herein include the plural, the plural include the singular, and any gender includes all genders.

GENERAL PROVISIONS

6. THIS COURT ORDERS that any Claim denominated in a foreign currency shall be converted to Canadian dollars at the Bank of Canada noon exchange rate in effect at the Filing Date.

7. THIS COURT ORDERS that notwithstanding any other provisions of this Order, the solicitation by the Monitor or the Target Canada Entities of Proofs of Claim and D&O Proofs of Claim, and the filing by any Claimant of any Proof of Claim or D&O Proof of Claim shall not, for that reason only, grant any person any standing in the CCAA Proceedings or rights under any Plan.

8. THIS COURT ORDERS that, other than in respect of Intercompany Claims and any other Claims of Target Corporation or any of its subsidiary or affiliated companies, partnerships, or other corporate entities, the Monitor is hereby authorized to use reasonable discretion as to the adequacy of compliance with respect to the manner in which any forms delivered hereunder are completed and executed and the time in which they are submitted, and may, where the Monitor is satisfied that a Claim (other than an Intercompany Claim and any other Claims of Target Corporation or any of its subsidiary or affiliated companies, partnerships, or other corporate entities) has been adequately proven, waive strict compliance with the requirements of this Order, including in respect of the completion, execution and time of delivery of such forms; provided that it is recognized and understood that certain of the Intercompany Claims and any other Claims of Target Corporation or any of its subsidiary or affiliated companies, partnerships, or other corporate entities will be contingent in nature and therefore will not contain particulars of such Claims that are not yet known as at the time they are filed.

9. THIS COURT ORDERS that amounts claimed in Assessments issued after the Filing Date shall be subject to this Order and there shall be no presumption of validity or deeming of the amount due in respect of the Claim set out in any Assessment where such Assessment was issued after the Filing Date.

MONITOR'S ROLE

10. THIS COURT ORDERS that, in addition to its prescribed rights, duties, responsibilities and obligations under the CCAA, the Initial Order and any other orders of the Court in the CCAA Proceedings, the Monitor is hereby directed and empowered to implement the Claims Process set out herein and to take such other actions and fulfill such other roles as are authorized by this Order or incidental thereto.

11. THIS COURT ORDERS that the Monitor (i) shall have all of the protections given to it by the CCAA, the Initial Order, any other orders of the Court in the CCAA Proceedings, and this Order, or as an officer of the Court, including the stay of proceedings in its favour; (ii) shall incur no liability or obligation as a result of the carrying out of the provisions of this Order, other than in respect of its gross negligence or wilful misconduct; (iii) shall be entitled to rely on the books and records of the Target Canada Entities and any information provided by the Target Canada Entities, all without independent investigation, provided that Intercompany Claims are subject to independent investigation by the Monitor as provided in paragraph 35 herein; (iv) shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information; and (v) may seek such assistance as may be reasonably required to carry out its duties and obligations pursuant to this Order from Target Corporation or any of its subsidiary or affiliated companies, partnerships, or other corporate

entities, including, without limitation, making such inquiries and obtaining such records and information as it deems appropriate in connection with the Claims Process but for greater certainty shall not take direction from Target Corporation or any of its subsidiary or affiliated companies, partnerships, or other corporate entities.

12. THIS COURT ORDERS that the Target Canada Entities and their current and former shareholders, Officers, Directors, employees, agents and representatives shall fully cooperate with the Monitor in the exercise of its powers and discharge of its duties and obligations under this Order.

NOTICE TO CLAIMANTS

13. THIS COURT ORDERS that as soon as practicable, but no later than 5:00 p.m. on June 30, 2015, the Monitor shall cause a Claims Package to be sent to:

(a) Each party that appears on the Service List or has requested a Claims Package;
and

(b) All known Claimants, other than Employees, as evidenced by the books and records of the Target Canada Entities at their respective last known addressees as recorded in the Target Canada Entities' books and records.

14. THIS COURT ORDERS that the Monitor shall cause the Notice to Claimants to be published, for at least two (2) Business Days, in The Globe and Mail (National Edition), La Presse and The Wall Street Journal by no later than 5:00 p.m. on June 18, 2015.

15. THIS COURT ORDERS that the Monitor shall cause the Notice to Claimants and the Claims Package to be posted to the Monitor's Website by no later than 5:00 p.m. on June 18, 2015.

16. THIS COURT ORDERS that, the Monitor shall cause the Employee Letter to be sent to all Employees as soon as practicable but no later than 5:00 p.m. on June 30, 2015.

17. THIS COURT ORDERS that to the extent any Claimant requests documents or information relating to the Claims Process prior to the Claims Bar Date or if the Target Canada Entities or the Monitor become aware of any further Claims, the Monitor shall forthwith send such Claimant a Claims Package, direct such Claimant to the documents posted on the Monitor's Website or otherwise respond to the request for documents or information as the Monitor may consider appropriate in the circumstances.

18. THIS COURT ORDERS that the Claims Process and the forms of Notice to Claimants, Proof of Claim Instruction Letter, D&O Claim Instruction Letter, Employee Letter, Proof of Claim, D&O Proof of Claim, Notice of Revision or Disallowance and Notice of Dispute of Revision or Disallowance are hereby approved. Notwithstanding the foregoing, the Monitor may, from time to time, make minor non-substantive changes to the forms as the Monitor, in its sole discretion, may consider necessary or desirable.

19. THIS COURT ORDERS that the sending of the Claims Package to the Claimants and the publication of the Notice to Claimants, in accordance with this Order, and the completion of the other requirements of this Order, shall constitute good and sufficient service and delivery of notice of this Order, the Claims Bar Date and the Restructuring Period Claims Bar Date on all Persons who may be entitled to receive notice and who may wish to assert a Claim, and no other

notice or service need be given or made and no other document or material need be sent to or served upon any Person in respect of this Order.

FILING OF PROOFS OF CLAIM

(A) Intercompany Claims

20. THIS COURT ORDERS that all Intercompany Claims must be filed by submitting a Proof of Claim to the Monitor no later than the Intercompany Claims Bar Date.

21. THIS COURT ORDERS that any Claimant that does not file a Proof of Claim in respect of a Intercompany Claim so that such Proof of Claim is received by the Monitor on or before the Intercompany Claims Bar Date, or such later date as the Court may direct:

- (a) be and is hereby forever barred, estopped and enjoined from asserting or enforcing any such Intercompany Claim(s) against any of the Target Canada Entities and all such Intercompany Claim(s) shall be forever extinguished;
- (b) will not be permitted to vote at any Meeting on account of such Intercompany Claim(s); and
- (c) will not be permitted to participate in any distribution under any Plan, if applicable, on account of such Intercompany Claim(s).

(B) Prefiling Claims

22. THIS COURT ORDERS that any Claimant that intends to assert a Prefiling Claim or D&O Claim shall file a Proof of Claim or D&O Proof of Claim, as applicable, with the Monitor on or before the Claims Bar Date. For the avoidance of doubt, a Proof of Claim or D&O

Proof of Claim, as applicable, must be filed by every Claimant in respect of every Prefiling Claim or D&O Claim, regardless of whether or not a legal proceeding in respect of such Prefiling Claim or D&O Claim has been previously commenced.

23. THIS COURT ORDERS that any Claimant that does not file a Proof of Claim or D&O Proof of Claim, as applicable, so that such Proof of Claim or D&O Proof of Claim, is received by the Monitor on or before the Claims Bar Date, or such later date as the Monitor may agree in writing or the Court may otherwise direct:

- (a) be and is hereby forever barred, estopped and enjoined from asserting or enforcing any such Prefiling Claim against any of the Target Canada Entities or any D&O Claim relating to such Prefiling Claim and all such Prefiling Claims or D&O Claims shall be forever extinguished;
- (b) will not be permitted to vote at any Meeting on account of such Prefiling Claim(s) or D&O Claim(s) relating to the Prefiling Claim(s);
- (c) will not be entitled to receive further notice with respect to the Claims Process or these proceedings unless the Monitor and/or the Target Canada Entities become aware that such Claimant has a Restructuring Period Claim or D&O Claim relating to the Restructuring Period Claim; and
- (d) will not be permitted to participate in any distribution under any Plan, if applicable, on account of such Pre-filing Claim(s) or D&O Claim(s).

24. THIS COURT ORDERS that the provisions of paragraphs 22 and 23 herein shall not apply to Intercompany Claims.

(C) Restructuring Period Claims

25. THIS COURT ORDERS that upon becoming aware of a circumstance giving rise to a Restructuring Period Claim, the Monitor shall send a Claims Package to the Claimant in respect of such Restructuring Period Claim in the manner provided for herein.

26. THIS COURT ORDERS that any Claimant that intends to assert a Restructuring Period Claim or D&O Claim relating to a Restructuring Period Claim shall file a Proof of Claim or D&O Proof of Claim, as applicable, with the Monitor on or before the Restructuring Period Claims Bar Date. For the avoidance of doubt, a Proof of Claim or D&O Proof of Claim must be filed by every Claimant in respect of every Restructuring Period Claim or D&O Claim relating to a Restructuring Period Claim, regardless of whether or not a legal proceeding in respect of such Restructuring Period Claim or D&O Claim has been previously commenced.

27. THIS COURT ORDERS that any Claimant that does not file a Proof of Claim or D&O Proof of Claim, as applicable, so that such Proof of Claim or D&O Proof of Claim is received by the Monitor on or before the Restructuring Period Claims Bar Date, or such later date as the Monitor may agree in writing or the Court may otherwise direct:

- (a) be and is hereby forever barred, estopped and enjoined from asserting or enforcing any such Restructuring Period Claim against any of the Target Canada Entities or any D&O Claim relating to such Restructuring Period Claim and all such Restructuring Period Claim or D&O Claims shall be forever extinguished;
- (b) will not be permitted to vote at any Meeting on account of such Restructuring Period Claim(s) or D&O Claim(s);

- (c) will not be entitled to receive further notice with respect to the Claims Process or these proceedings unless the Monitor and/or the Target Canada Entities become aware that such Claimant has a Restructuring Period Claim or D&O Claim relating to the Restructuring Period Claim; and
- (d) will not be permitted to participate in any distribution under any Plan, if applicable, on account of such Restructuring Period Claim(s) or D&O Claim(s).

ADJUDICATION OF CLAIMS OTHER THAN INTERCOMPANY CLAIMS

28. THIS COURT ORDERS that, for greater certainty, the procedures outlined in paragraphs 29 to 34 herein shall not apply to the adjudication of Intercompany Claims.

29. THIS COURT ORDERS that the Monitor shall review all Proofs of Claim received on or before the Claims Bar Date or the Restructuring Period Claims Bar Date, in consultation with the Target Canada Entities, and shall accept, revise or reject each Claim. With respect to a D&O Claim set out in a D&O Proof of Claim, the Monitor shall, in consultation with the Target Canada Entities and the Directors and Officers named in respect of such D&O Claim as to the merits of such Claim(s), as applicable, accept, revise or reject such D&O Claim.

30. THIS COURT ORDERS that the Monitor shall consult with the Consultative Committee in connection with any Claim the Monitor proposes to allow (including by Notice of Revision or Disallowance) in excess of \$5 million and if the Consultative Committee objects to the allowance of such Claim, the Monitor shall seek the Court's approval of the Claim.

31. THIS COURT ORDERS that if the Monitor intends to revise or reject a Claim, the Monitor shall notify the Claimant who has delivered such Proof of Claim or D&O Proof of

Claim, as applicable, that such Claim has been revised or rejected and the reasons therefor, by sending a Notice of Revision or Disallowance by no later than November 15, 2015, unless otherwise ordered by this Court on application by the Monitor.

32. THIS COURT ORDERS that any Claimant who intends to dispute a Notice of Revision or Disallowance hereof shall:

- (a) deliver a completed Notice of Dispute of Revision or Disallowance, along with the reasons for the dispute, to the Monitor by no later than twenty-eight (28) days after the date on which the Claimant is deemed to receive the Notice of Revision or Disallowance, or such other date as may be agreed to by the Monitor in writing; and
- (b) in the event that a dispute raised in a Notice of Dispute of Revision or Disallowance is not settled within a time period or in a manner satisfactory to the Monitor, in consultation with the Target Canada Entities, the Monitor shall refer the dispute raised in the Notice of Dispute of Revision or Disallowance to a Claims Officer or the Court for adjudication at its election.

33. THIS COURT ORDERS that where a Claimant that receives a Notice of Revision or Disallowance does not file a completed Notice of Dispute of Revision or Disallowance by the time set out in paragraph 32(a), such Claimant's Claim or D&O Claim relating to such Claim shall be deemed to be as set out in the Notice of Revision or Disallowance and such Claimant shall have no further right to dispute same.

34. THIS COURT ORDERS that the Monitor may refer any Claim to a Claims Officer or the Court for adjudication at its election by sending written notice to the Claimant at any time.

ADJUDICATION OF INTERCOMPANY CLAIMS AND INTERCREDITOR DISPUTES

35. THIS COURT ORDERS that, notwithstanding anything to the contrary in this Order with respect to Intercompany Claims, the Monitor shall prepare a report to be served on the Service List and filed with the Court for the Court to consider, detailing its review of all Intercompany Claims and assessing in detail with reasonably sufficient particulars and analysis the validity and quantum of such Claims as filed (the “**Monitor’s Intercompany Claims Report**”), subject to further review and adjustments in respect of claims that may be pursued by the Monitor in accordance with section 36.1 of the CCAA. The Monitor’s Intercompany Claims Report shall include, among other things, full particulars of the debt comprising the Intercompany Claims, including without limitation: (i) the source of the funds comprising the debt; (ii) whether such funds were advanced from another Target Canada Entity, or any of their affiliated companies, partnerships, or other corporate entities, including Target Corporation or any of its subsidiary or affiliated companies, partnerships, or other corporate entities; (iii) the portion of the debt arising as a result of penalties or early termination of agreements; and (iv) which portion (if any) of the amount of the debt was (x) advanced on or after the Filing Date; (y) originally advanced as equity by a related entity; and/or (z) originally advanced on an unsecured basis. The Monitor’s Intercompany Claims Report shall be served on August 31, 2015, unless otherwise ordered by this Court on application by the Monitor. For greater certainty, nothing in the Monitor’s Intercompany Claims Report shall bind the Court with respect to its determination

of the Intercompany Claims as the Court sees fit, including without limitation, the validity, priority or quantum of such Intercompany Claims.


36. THIS COURT ORDERS that on or before October 31, 2015, the Monitor shall serve on the Service List and file with the Court a list of all Claims other than Intercompany Claims filed by any of the Target Canada Entities, or any of their affiliated companies, partnerships, or other corporate entities, including Target Corporation or any of its subsidiary or affiliated companies, partnerships, or other corporate entities arising through subrogation or assignment.

37. THIS COURT ORDERS that, after the service of the Monitor's Intercompany Claims Report, any Claimant may file objections, which may include, but are not limited to, any argument asserted for the subordination of outstanding intercompany debts of any of the Target Canada Entities, any relief in connection with claims to priority, any claim asserted for substantive consolidation, and the validity and quantum of Intercompany Claims and any claim relating to debt recharacterization, by filing a Notice of Objection with the Monitor, no later than the Notice of Objection Bar Date. Any Notice of Objection filed after the Notice of Objection Bar Date shall be disregarded and of no effect.

38. THIS COURT ORDERS that, promptly following the Notice of Objection Bar Date, the Monitor shall schedule a motion with the Court to seek approval of a process for the resolution of any objections filed in connection with the Intercompany Claims and any other intercreditor disputes or motions, including a process regarding requests for the production of documents or any oral examinations.

39. THIS COURT ORDERS that, at the motion described in paragraph 38 above, the Monitor shall schedule with the Court any motions a Claimant has advised the Monitor it still wishes to be heard regarding requests for the production of documents and/or any oral examinations.

~~SET-OFF~~ 

~~40. THIS COURT ORDERS that nothing in this Order affects the rights of any Person pursuant to section 21 of the CCAA.~~ 

CLAIMS OFFICERS

41. THIS COURT ORDERS that Hon. Dennis O'Connor, and such other Persons as may be appointed by the Court from time to time on application of the Monitor, be and they are hereby appointed as Claims Officers for the claims procedure described herein.

42. THIS COURT ORDERS that the decision as to whether the disputed Claim should be adjudicated by the Court or a Claims Officer shall be in the sole discretion of the Monitor.

43. THIS COURT ORDERS that a Claims Officer shall determine the validity and amount of disputed Claims in accordance with this Order and to the extent necessary may determine whether any Claim or part thereof constitutes an Excluded Claim and shall provide written reasons. A Claims Officer shall determine all procedural matters which may arise in respect of his or her determination of these matters, including the manner in which any evidence may be adduced. A Claims Officer shall have the discretion to determine by whom and to what extent the costs of any hearing before a Claims Officer shall be paid.

44. THIS COURT ORDERS that the Monitor, the Claimant or the applicable Target Canada Entity may, within ten (10) days of such party receiving notice of a Claims Officer's determination of the value of a Claimant's Claim, appeal such determination or any other matter determined by the Claims Officer in accordance with paragraph 43 or otherwise to the Court by filing a notice of appeal, and the appeal shall be initially returnable within ten (10) days of filing such notice of appeal.

45. THIS COURT ORDERS that if no party appeals the determination of value of a Claim by a Claims Officer within the time set out in paragraph 44, above, the decision of the Claims Officer in determining the value of the Claimant's Claim shall be final and binding upon the relevant Target Canada Entity, the Monitor, and the Claimant, and there shall be no further right of appeal, review or recourse to the Court from the Claims Officer's final determination of a Claim.

46. THIS COURT ORDERS that the provisions of paragraphs 41 to 45 herein shall not apply to Intercompany Claims and inter-creditor disputes.

NOTICE OF TRANSFEREES

47. THIS COURT ORDERS that from the date of this Order until seven (7) days prior to the date fixed by the Court for any distribution in the CCAA Proceedings or any other proceeding, including a bankruptcy, to the extent required, leave is hereby granted to permit a Claimant to provide notice of assignment or transfer of a Claim to any third party to the Monitor.

48. THIS COURT ORDERS that subject to the terms of any subsequent Order of this Court, if, after the Filing Date, the holder of a Claim transfers or assigns the whole of such Claim

to another Person, neither the Monitor nor the Target Canada Entities shall be obligated to give notice to or otherwise deal with the transferee or assignee of such Claim in respect thereof unless and until actual notice of transfer or assignment, together with satisfactory evidence of such transfer or assignment, shall have been received and acknowledged by the Monitor in writing and thereafter such transferee or assignee shall, for the purposes hereof, constitute the "Claimant" in respect of such Claim or D&O Claim. Any such transferee or assignee of a Claim shall be bound by any notices given or steps taken in respect of such Claim in accordance with this Order prior to receipt and acknowledgement by the Monitor of satisfactory evidence of such transfer or assignment. A transferee or assignee of a Claim or takes the Claim subject to any rights of set-off to which the Target Canada Entities may be entitled with respect to such Claim. For greater certainty, a transferee or assignee of a Claim is not entitled to set-off, apply, merge, consolidate or combine any Claims assigned or transferred to it against or on account or in reduction of any amounts owing by such Person to the Target Canada Entities.

49. THIS COURT ORDERS that no transfer or assignment shall be effective for voting purposes at any Meeting unless sufficient notice and evidence of such transfer or assignment has been received by the Monitor no later than 5:00 p.m. on the date that is seven (7) days prior to the date fixed by the Court for any Meeting, failing which the original Claimant shall have all applicable rights as the "Claimant" with respect to such Claim as if no transfer or assignment of the Claim had occurred.

SERVICE AND NOTICE

50. THIS COURT ORDERS that the Monitor may, unless otherwise specified by this Order, serve and deliver or cause to be served and delivered the Claims Package, and any letters,

notices or other documents, to the Claimants or any other interested Person by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile transmission or email to such Persons at the physical or electronic address, as applicable, last shown on the books and records of the Target Canada Entities or set out in such Claimant's Proof of Claim. Any such service and delivery shall be deemed to have been received: (i) if sent by ordinary mail, on the third Business Day after mailing within Ontario, the fifth Business Day after mailing within Canada (other than within Ontario), and the tenth Business Day after mailing internationally; (ii) if sent by courier or personal delivery, on the next Business Day following dispatch; and (iii) if delivered by facsimile transmission or email by 5:00 p.m. on a Business Day, on such Business Day and if delivered after 5:00 p.m. or other than on a Business Day, on the following Business Day.

51. THIS COURT ORDERS that any notice or communication required to be provided or delivered by a Claimant to the Monitor under this Order shall be in writing in substantially the form, if any, provided for in this Order and will be sufficiently given only if delivered by prepaid ordinary mail, registered mail, courier, personal delivery, facsimile transmission or email addressed to:

Alvarez & Marsal Canada Inc., Target Canada Monitor
200 Bay Street, Suite 2900
P.O. Box 22
Toronto, ON
M5J 2J1

Attention: Greg Karpel
Email: targetcanadaclaims@alvarezandmarsal.com
Fax: 416-847-5201

52. THIS COURT ORDERS that if, during any period during which notices or other communications are being given pursuant to this Order, a postal strike or postal work stoppage of general application should occur, such notices or other communications sent by ordinary or registered mail and then not received shall not, absent further Order of this Court, be effective and notices and other communications given hereunder during the course of any such postal strike or work stoppage of general application shall only be effective if given by courier, personal delivery, facsimile transmission or email in accordance with this Order.

MISCELLANEOUS

53. THIS COURT ORDERS that the Monitor may from time to time apply to this Court to extend the time for any action which the Monitor is required to take if reasonably required to carry out its duties and obligations pursuant to this Order and for advice and directions concerning the discharge of its powers and duties under this Order or the interpretation or application of this Order.

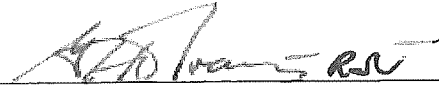
54. THIS COURT ORDERS that nothing in this Order shall prejudice the rights and remedies of any Directors or Officers or other Persons under the Directors' Charge or any applicable insurance policy or prevent or bar any Person from seeking recourse against or payment from the Target Canada Entities' insurance and any Director's or Officer's liability insurance policy or policies that exist to protect or indemnify the Directors or Officers or other Persons, whether such recourse or payment is sought directly by the Person asserting a Claim from the insurer or derivatively through the Director or Officer or any Target Canada Entity; provided, however, that nothing in this Order shall create any rights in favour of such Person under any policies of insurance nor shall anything in this Order limit, remove, modify or alter

any defence to such Claim available to the insurer pursuant to the provisions of any insurance policy or at law; and further provided that any Claim or portion thereof for which the Person receives payment directly from, or confirmation that she is covered by, the Target Canada Entities' insurance or any Director's or Officer's liability insurance or other liability insurance policy or policies that exist to protect or indemnify the Directors or Officers or other Persons shall not be recoverable as against a Target Canada Entity or Director or Officer as applicable.

55. THIS COURT ORDERS that nothing in this Order shall prejudice, limit, bar, extinguish or otherwise affect (i) any right or claim of any Person, including under any guarantee, indemnity or otherwise, against Target Corporation, any predecessor tenant, or any other Person other than the Target Canada Entities and the Directors and Officers; and (ii) any right or claim of Target Corporation, any predecessor tenant, or any other Person in response to such right or claim. For greater certainty, this Order is subject to and shall not derogate from paragraph 19A of the Initial Order.

56. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Target Canada Entities, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Target Canada Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status

to the Monitor in any foreign proceeding, or to assist the Target Canada Entities and the Monitor and their respective agents in carrying out the terms of this Order.



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

JUN 11 2015



SCHEDULE "A"

List of the Applicants and Partnerships

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 (SK) Corp.

Target Canada Pharmacy Corp.

Target Canada Property LLC

Partnerships

Target Canada Pharmacy Franchising LP

Target Canada Mobile LP

Target Canada Property LP

SCHEDULE "B"

CLAIMANT'S GUIDE TO COMPLETING THE D&O PROOF OF CLAIM FORM FOR CLAIMS AGAINST DIRECTORS AND/OR OFFICERS OF THE TARGET CANADA ENTITIES¹

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

The D&O Proof of Claim form is for Claimants asserting a claim against any Directors and/or Officers of the Target Canada Entities, and NOT for claims against the Target Canada Entities themselves. For claims against the Target Canada Entities, please use the form titled "Proof Of Claim Form For Claims Against the Target Canada Entities", which is available on the Monitor's website at www.alvarezandmarsal.com/targetcanada.

Additional copies of the D&O Proof of Claim form 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 all the Target Canada Entities' Directors or Officers against whom the Claim is asserted must be listed.

SECTION 2(a) – ORIGINAL CLAIMANT

2. A separate D&O Proof of Claim must be filed by each legal entity or person asserting a claim against the Target Canada Entities' Directors or Officers.
3. The Claimant shall include any and all D&O Claims it asserts against the Target Canada Entities' Directors or Officers in a single D&O 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.

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 Pharmacy (Ontario) Corp., Target Canada Property LLC, Target Canada Pharmacy Franchising LP, Target Canada Mobile LP, and Target Canada Property LP (collectively, the "Target Canada Entities").

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.

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 Director(s) and/or Officer(s) was/were and still is/are indebted to the Claimant in the Amount of Claim column, including interest up to and including January 14, 2015.²

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.

SECTION 4 - DOCUMENTATION

17. Attach to the D&O 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.

² Pursuant to paragraph 9 of the Claims Procedure Order, interest accruing from the Filing Date (January 15, 2015) shall not be included in any Claim.

SECTION 5 - CERTIFICATION

18. The person signing the D&O 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(s) as set out in the D&O Proof of Claim and certify all supporting documentation is attached.
 - (d) have a witness to its certification.
19. By signing and submitting the D&O Proof of Claim, the Claimant is asserting the claim against the Debtor(s).

SECTION 6 - FILING OF CLAIM

20. The D&O 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 D&O 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 Directors and Officers of 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.

SCHEDULE "C"

**PROOF OF CLAIM FORM FOR CLAIMS AGAINST
DIRECTORS OR OFFICERS OF THE TARGET CANADA ENTITIES¹
(the "D&O Proof of Claim")**

This form is to be used only by Claimants asserting a claim against any Directors and/or, Officers of the Target Canada Entities and NOT for claims against the Target Canada Entities themselves. For claims against the Target Canada Entities, please use the form titled "Proof Of Claim Form For Claims Against the Target Canada Entities", which is available on the Monitor's website at www.alvarezandmarsal.com/targetcanada.

1. Name of Target Canada Officer(s) and/or Director(s) (the "Debtor(s))":

Debtor(s): _____

(A) Original Claimant (the "Claimant")

Legal Name of Claimant	_____	Name of Contact	_____
Address	_____	Title	_____
_____		Phone #	_____
_____		Fax #	_____
City _____	Prov /State _____	email	_____
Postal/Zip Code	_____		

2b. Assignee, if claim has been assigned

Legal Name of Assignee	_____	Name of Contact	_____
Address	_____	Phone #	_____
_____		Fax #	_____
City _____	Prov /State _____	email:	_____
Postal/Zip Code	_____		

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(s) was/were and still is/are indebted to the Claimant as follows:

Name(s) of Director(s), and/or Officers	Currency	Amount of Claim (including interest up to and including January 14, 2015)	
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

4. Documentation

Provide all particulars of the Claim and supporting documentation, including any claim assignment/transfer agreement or similar document, if applicable, and including amount and description of transaction(s) or agreement(s) or legal breach(es) giving rise to the Claim.

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(s) as set out above.
- 4. Complete documentation in support of this Claim is attached.

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

6. Filing of Claim

This D&O 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)

SCHEDULE "D"

(Letterhead of the Monitor)

●, 2015

●

Dear :

Re: ●

As you know, Target Canada Co. (the "Company") and certain of its subsidiaries and affiliates (collectively "Target Canada") filed for and were granted creditor protection under the *Companies' Creditors Arrangement Act* ("CCAA"), pursuant to an order (the "Initial Order") of the Ontario Superior Court (the "Court") (the "CCAA Proceedings"). In connection with the CCAA filing, the Court appointed Alvarez & Marsal Canada Inc. (the "Monitor") to oversee the CCAA Proceedings. A copy of the Court's Orders and other information relating to the CCAA Proceedings has been posted to www.alvarezandmarsal.com/targetcanada, the Monitor's website.

The Court also appointed Koskie Minsky LLP as Representative Counsel in order to assist eligible employees through the CCAA Proceedings. Information about the proceedings and matters of specific interest to employees may be found at www.kmlaw.ca/targetemployees.

The purpose of this letter is to inform you about the claims process which was approved by the Court on June 11, 2015 (the "Estate Claims Process"). The Estate Claims Process is for claims **not** covered by the Employee Trust. Claims under the Employee Trust are subject to a different process, described below.

Employee Trust Dispute Process

1. A trust for eligible employees was established by Target Corporation and approved by the Court (the "Employee Trust"). Eligible employees have received payments from the Employee Trust to top up amounts earned working for the Company since January 24, 2015 (to equal regular wages), and to provide regular wages for the period after release until the termination date (May 16, 2015 or May 30, 2015 for employees in Manitoba).
2. The process for challenging whether an employee has been paid the amount to which he or she is entitled from the Employee Trust is to file a Trust Dispute.
 - The Trust Dispute must be filed no later than **July 31, 2015**.
 - The Trust Dispute form was sent to you by Representative Counsel and is also available on both the Monitor's website www.alvarezandmarsal.com/targetcanada and on the website of Representative Counsel www.kmlaw.ca/targetemployees.
 - If you do not file a trust dispute by July 31, 2015, you will have no further right to challenge the amount you received from the Employee Trust.

Estate Claims Process

The Estate Claims Process deals with claims against the Company not covered by the Employee Trust.

- Claims against the Company must be described on the “Proof of Claim” form, and must be filed with the Monitor by **August 31, 2015**. For claims against directors and officers of the Company, use the “D&O Proof of Claim” form, which must also be filed with the Monitor by August 31, 2015.
- The Proof of Claim, D&O Proof of Claim and instructions for each are available on both the Monitor’s website www.alvarezandmarsal.com/targetcanada and on the website of Representative Counsel www.kmlaw.ca/targetemployees.
- If you have questions, you may contact:
 - The Monitor at targetcanada.monitor@alvarezandmarsal.com or 1.844.864.9548;
 - Representative Counsel at targetemployees@kmlaw.ca or 1.866.860.9364.
- If you do not file a Proof of Claim or a D&O Proof of Claim by August 31, 2015, you will have no further right to file a claim against the Company, you will be barred from filing any such claim and the claim will be considered to be extinguished:

Important Deadlines:

1. Trust Disputes must be filed by **July 31, 2015**.
2. Claims in the Estate Claims Process must be filed by **August 31, 2015**.

Yours truly,

SCHEDULE "E"

NOTICE TO CLAIMANTS
AGAINST THE TARGET CANADA ENTITIES

RE: NOTICE OF CLAIMS PROCESS FOR TARGET CANADA CO., TARGET CANADA HEALTH CO., TARGET CANADA MOBILE GP CO., TARGET CANADA PHARMACY (BC) CORP., TARGET PHARMACY (ONTARIO) 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") PURSUANT TO THE *COMPANIES' CREDITORS ARRANGEMENT ACT* (the "CCAA")

PLEASE TAKE NOTICE that on [June 11], 2015, the Ontario Superior Court of Justice (Commercial List) issued an order (the "Claims Procedure Order") in the CCAA proceedings of the Target Canada Entities, requiring that all Persons who assert a Claim (capitalized terms used in this notice and not otherwise defined have the meaning given to them in the Claims Procedure Order) against the Target Canada Entities, whether unliquidated, contingent or otherwise, and all Persons who assert a claim against Directors, Officers of the Target Canada Entities (as defined in the Claims Procedure Order, a "D&O Claim"), **must file a Proof of Claim (with respect to Claims against the Target Canada Entities) or D&O Proof of Claim (with respect to D&O Claims) with Alvarez and Marsal Canada Inc. (the "Monitor") on or before 5:00 p.m. (Toronto time) on August 31, 2015 (the "Claims Bar Date"), by sending the Proof of Claim or D&O Proof of Claim to the Monitor by prepaid ordinary mail, registered mail, courier, personal delivery or electronic transmission at the following address:**

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

Pursuant to the Claims Procedure Order, Claims Packages, including the form of Proof of Claim and D&O Proof of Claim, will be sent to all known Claimants by mail, on or before June 30, 2015. Claimants may also obtain the Claims Procedure Order and a Claims Package from the Monitor's website at www.alvarezandmarsal.com/targetcanada, or by contacting the Monitor by telephone (1-844-864-9548).

Only Proofs of Claim and D&O Proofs of Claim actually received by the Monitor on or before 5:00 p.m. (Toronto time) on August 31, 2015 will be considered filed by the Claims Bar Date. **It**

is your responsibility to ensure that the Monitor receives your Proof of Claim or D&O Proof of Claim by the Claims Bar Date.

CLAIMS AND D&O CLAIMS WHICH ARE NOT RECEIVED BY THE APPLICABLE CLAIMS BAR DATE WILL BE BARRED AND EXTINGUISHED FOREVER.

DATED this ● day of ●, 2015.

SCHEDULE "F"

NOTICE OF DISPUTE OF NOTICE OF REVISION OR DISALLOWANCE

With respect to the Target Canada Entities¹

Claims Reference Number: _____

1. Particulars of Claimant:

Full Legal Name of Claimant (include trade name, if different)

(the "Claimant")

Full Mailing Address of the Claimant:

Other Contact Information of the Claimant:

Telephone Number:

Email Address: _____

Facsimile Number: _____

Attention (Contact Person): _____

2. Particulars of original Claimant from whom you acquired the Claim or D&O

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").

Claim, if applicable

Have you acquired this purported Claim by assignment?

Yes:

No:

If yes and if not already provided, attach documents evidencing assignment.

Full Legal Name of original Claimant(s): _____

3. Dispute of Revision or Disallowance of Claim:

The Claimant hereby disagrees with the value of its Claim, as set out in the Notice of Revision or Disallowance and asserts a Claim as follows:

	Currency	Amount allowed by Monitor: (Notice of Revision or Disallowance)	Amount claimed by Claimant: ²
A. Unsecured		\$	\$
B. Secured		\$	\$
C. D&O Claim		\$	\$
E. Total Claim		\$	\$

² If necessary, currency will be converted in accordance with the Claims Procedure Order.

SCHEDULE "G"

NOTICE OF REVISION OR DISALLOWANCE

**For Persons that have asserted Claims against the Target Canada Entities¹,
D&O Claims against the Directors and/or Officers of the Target Canada Entities**

Claims Reference Number: _____ ● _____

TO: ● _____
(the "Claimant")

Defined terms not defined in this Notice of Revision or Disallowance have the meaning ascribed in the Order of the Ontario Superior Court of Justice (Commercial List) in the CCAA proceedings of the Target Canada Entities dated [June 11], 2015 (the "Claims Procedure Order").

Pursuant to the Claims Procedure Order, the Monitor hereby gives you notice that it has reviewed your Proof of Claim or D&O Proof of Claim and has revised or disallowed all or part of your purported Claim. Subject to further dispute by you in accordance with the Claims Procedure Order, your Claim will be as follows:

	Amount as submitted		Amount allowed by Monitor
	Currency		
A. Unsecured Claim		\$	\$
B. Secured Claim		\$	\$
C. D&O Claim		\$	\$
E. Total Claim		\$	\$

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").

Reasons for Revision or Disallowance:

●

SERVICE OF DISPUTE NOTICES

If you intend to dispute this Notice of Revision or Disallowance, you must, no later than 5:00 p.m. (prevailing time in Toronto) on the day that is twenty-eight (28) Calendar Days after this Notice of Revision or Disallowance is deemed to have been received by you (in accordance with paragraph 32(a) of the Claims Procedure Order), deliver a Notice of Dispute of Revision or Disallowance to the Monitor by ordinary prepaid mail, registered mail, courier, personal delivery or electronic transmission to the address below.

Alvarez & Marsal Canada Inc., Target Canada Monitor

Address: Royal Bank Plaza, South Tower
200 Bay Street
Suite 2900
P.O. Box 22
Toronto, Ontario Canada
M5J 2J1

Fax No.: 416-847-5201

Email: targetcanadaclaims@alvarezandmarsal.com

Attention: Greg Karpel

In accordance with the Claims Procedure Order, notices shall be deemed to be received by the Monitor upon actual receipt thereof by the Monitor during normal business hours on a Business Day, or if delivered outside of normal business hours, on the next Business Day.

The form of Notice of Dispute of Revision or Disallowance is enclosed and can also be accessed on the Monitor's website at www.alvarezandmarsal.com/targetcanada.

IF YOU FAIL TO FILE A NOTICE OF DISPUTE WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF REVISION OR DISALLOWANCE WILL BE BINDING UPON YOU.

DATED this _____ day of _____, 2015.

Alvarez & Marsal Canada Inc., solely in its capacity as Court-appointed Monitor of the Target Canada Entities, and not in its personal or corporate capacity

Per: _____

For more information see www.alvarezandmarsal.com/targetcanada, or contact the Monitor by telephone (1-844-846-9548)

SCHEDULE “H”

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

21. 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

22. 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.
23. 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.
24. The full legal name of the Claimant must be provided.
25. If the Claimant operates under a different name or names, please indicate this in a separate schedule in the supporting documentation.
26. If the Claim has been assigned or transferred to another party, Section 2(b) must also be completed.
27. 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

28. If the Claimant has assigned or otherwise transferred its Claim, then Section 2(b) must be completed.
29. The full legal name of the Assignee must be provided.
30. If the Assignee operates under a different name or names, please indicate this in a separate schedule in the supporting documentation.
31. 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

32. 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

33. The amount of the Claim must be provided in the currency in which it arose.
34. Indicate the appropriate currency in the Currency column.
35. 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.
36. If necessary, currency will be converted in accordance with the Claims Procedure Order.

Unsecured Claim

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

Secured Claim

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

SECTION 4 - DOCUMENTATION

39. 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

40. 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.
41. 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

42. **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.

SCHEDULE "I"

**PROOF OF CLAIM FORM FOR CLAIMS AGAINST
THE TARGET CANADA ENTITIES¹**

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

Debtor: _____

2(A) Original Claimant (the "Claimant")

Legal Name of Claimant	_____	Name of Contact	_____
Address	_____	Title	_____
_____		Phone #	_____
_____		Fax #	_____
City _____	Prov /State _____	email	_____
Postal/Zip Code	_____		

2b. Assignee, if claim has been assigned

Legal Name of Assignee	_____	Name of Contact	_____
Address	_____	Phone #	_____
_____		Fax #	_____
City _____	Prov /State _____	email:	_____
Postal/Zip Code	_____		

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) ²	Unsecured Claim	Secured Claim
_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	<input 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: _____ Name: _____ Title: _____	Witness: _____ (signature) _____ (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**

² Pursuant to paragraph 9 of the Claims Procedure Order, interest accruing from the Filing Date (January 15, 2015) shall not be included in any Claim.

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)

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.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

CLAIMS PROCEDURE ORDER

GOODMANS LLP
Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, Canada M5H 2S7

Alan Mark LSUC#: 21772U
amark@goodmans.ca

Jay Carfagnini LSUC#: 22293T
jcarfagnini@goodmans.ca

Melaney Wagner LSUC#: 44063B
mwagner@goodmans.ca

Jesse Mighton LSUC#: 62291J
jmighton@goodmans.ca

Tel: 416.979.2211
Fax: 416.979.1234

Lawyers for the Monitor

TAB 7

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)
)
REGIONAL SENIOR JUSTICE)
)
MORAWETZ)
)

MONDAY, THE 21ST
DAY OF SEPTEMBER, 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 (collectively the "Applicants")

ORDER

(Amending the Claims Procedure Order)

THIS MOTION, made by Alvarez & Marsal Canada Inc. in its capacity as Monitor ("Monitor") in the within proceedings, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36 , as amended, for an order amending the Notice of Objections Bar Date as defined in the Claims Procedure Order issued by Regional Senior Justice Morawetz on June 11, 2015 (the "**Claims Procedure Order**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON HEARING the submissions of counsel for Alvarez & Marsal Canada Inc., in its capacity as Monitor, and counsel for the Applicants, and on being advised that the Monitor has consulted with the Consultative Committee regarding the relief requested herein, no one else appearing although duly served as appears from the Affidavit of Service of Jesse Mighton sworn September 15, 2015.

1. THIS COURT ORDERS that capitalized terms used but not defined herein have the meaning given to them in the Claims Procedure Order.

2. THIS COURT ORDERS that the definition of "Notice of Objection Bar Date" set out at paragraph 3(aa) of the Claims Procedure Order is hereby amended to extend such date to October 30, 2015, or such later date as may be agreed to by the Monitor and the Consultative Committee.

- ~~3. THIS COURT ORDERS that this extension in no way prejudices or affects any rights or remedies that any party otherwise has.~~

MB

JB

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

SEP 21 2015

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.

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

ONTARIO

**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER

(Amending the Claims Procedure Order)

GOODMANS LLP

Barristers & Solicitors

Bay Adelaide Centre

333 Bay Street, Suite 3400

Toronto, Canada M5H 2S7

Alan Mark LSUC#: 21772U

amark@goodmans.ca

Jay Carfagnini LSUC#: 22293T

jcarfagnini@goodmans.ca

Melaney Wagner LSUC#: 44063B

mwagner@goodmans.ca

Jesse Mighton LSUC#: 62291J

jmighton@goodmans.ca

Tel: 416.979.2211

Fax: 416.979.1234

Lawyers for the Monitor

TAB 8

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE)
REGIONAL SENIOR JUSTICE)
MORAWETZ)
FRIDAY, THE 30th
DAY OF OCTOBER, 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 (collectively the "Applicants")



ORDER

(Amending the Claims Procedure Order and Certain Related Relief)

THIS MOTION, made by Alvarez & Marsal Canada Inc. in its capacity as Monitor ("Monitor") in the within proceedings, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36 , as amended, for an order amending the Notice of Objections Bar Date as defined in the Claims Procedure Order issued by Regional Senior Justice Morawetz on June 11, 2015 (the "**Claims Procedure Order**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON HEARING the submissions of counsel for Alvarez & Marsal Canada Inc., in its capacity as Monitor, counsel for the Applicants, and counsel for Royal Bank of Canada, no one else appearing although duly served as appears from the Affidavit of Service of Jesse Mighton sworn October 27, 2015.

1. THIS COURT ORDERS that the time for service of the Monitor's Motion Record and the Notice of Motion therein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that capitalized terms used but not defined herein have the meaning given to them in the Claims Procedure Order.
3. THIS COURT ORDERS that paragraph 31 of the Claims Procedure Order be and is hereby deleted in its entirety and replaced with the following:

31. If the Monitor intends to revise or reject a Claim, the Monitor shall notify the Claimant who has delivered such proof of Claim or D&O Proof of Claim, as applicable, that such Claim has been revised or rejected and the reasons therefor, by sending a Notice of Revision or Disallowance by no later than December 15, 2015, unless otherwise ordered by this Court on application by the Monitor.

4. THIS COURT ORDERS that subparagraph 32(a) of the Claims Procedure Order be and is hereby deleted in its entirety and replaced with the following:

32(a) deliver a completed Notice of Dispute of Revision or Disallowance, along with the reasons for the dispute, to the Monitor by no later than twenty-eight (28) days after the date on which the Claimant is deemed to receive the Notice of Revision or Disallowance, or such other date as may be agreed to by the Monitor in writing; provided that, notwithstanding any other provision of this Order, solely for any Notice of Revision or Disallowance deemed to be received by a Claimant in accordance with this Order between November 25, 2015 and December 15, 2015, a Claimant who intends to dispute such Notice of Revision or Disallowance shall have no later than 38 days after the date on which the Claimant is deemed to receive the Notice of Revision or Disallowance to

deliver to the Monitor a completed Notice of Dispute of Revision or Disallowance, along with the reasons for the dispute; and

5. THIS COURT ORDERS that the posting of this Order on the Monitor's Website shall constitute good and sufficient delivery of notice of the amendment to the Claims Procedure Order on all Persons who may be entitled to receive notice and no other service need be given or made in respect of the Claims Procedure Order or this Order.

6. THIS COURT ORDERS the following with respect to the Consultative Committee:
 - (a) the Applicants are hereby authorized and directed to pay members of the Consultative Committee \$5,000 plus HST per month for each of October and November, 2015, subject to further arrangements on further order of the Court;

 - (b) no member of the Consultative Committee, as a result of his or her participation in the Consultative Committee, shall owe a duty to any party other than such member's existing clients and participation as a member of the Consultative Committee shall not:
 - (i) give rise to any duty or solicitor and client or fiduciary relationship between any member and any party other than such member's existing clients;

 - (ii) in any way prevent or limit a member or the client of any member from pursuing any rights or remedies of such client, including, without limitation, exercising (or omitting to exercise) or seeking (or omitting to seek) to enforce or protect any of its rights as a stakeholder in the CCAA Proceedings as such stakeholders may deem appropriate;

 - (iii) limit or interfere with the member's representation of his or her clients in any way; or

- (iv) provide any authority for any member to bind any party without such party's consent;
- (c) no member of the Consultative Committee shall incur any liability to any party arising solely from such member's participation on the Consultative Committee or as a result of any suggestion or feedback such member may provide to the Monitor, the Target Canada Entities or Target Corporation;
- (d) without the consent of each member of the Consultative Committee and the Monitor:
 - (i) the Monitor and the Consultative Committee members will not discuss with or disclose the content of their discussions in Consultative Committee meetings with any party including the media, the Target Canada Entities or Target Corporation; and
 - (ii) and without the consent of the Target Canada Entities or Target Corporation, as applicable, a Consultative Committee member will not provide to any party any documents or other information or data provided to him or her by the Monitor, the Target Canada Entities or Target Corporation that is confidential in nature, at least until such time as such documents or other information or data becomes publicly disclosed by the Monitor, the Target Canada Entities or Target Corporation;(such discussions, documents and other information, collectively, the "**Confidential Information**"); and
- (e) notwithstanding the foregoing:
 - (i) any Consultative Committee member may disclose Confidential Information to his or her respective clients provided that such member advises such clients that the Confidential Information must be kept

confidential by them and such client agrees to keep the Confidential Information confidential;

- (ii) a Consultative Committee member, however, shall not be entitled to disclose Confidential Information to any party, including any client of the member or the member's firm, that is in the business of acquiring claims in insolvency proceedings or other distressed situations or any other party the member is aware may seek to acquire claims of creditors in the CCAA Proceedings; and
- (iii) a Consultative Committee member shall continue to be bound by these obligations of confidentiality, notwithstanding the resignation of such member from the Consultative Committee.



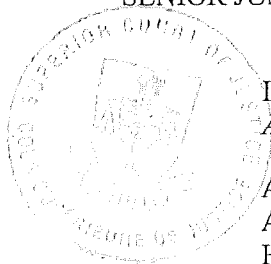
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TAB 9

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE REGIONAL)
)
SENIOR JUSTICE MORA WETZ) WEDNESDAY, THE 1ST
) DAY OF MARCH, 2017



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 (the "**Applicants**")

ORDER

(Late Claims)

THIS MOTION, made by Alvarez & Marsal Canada Inc. ("**A&M**") in its capacity as monitor of the Applicants (in such capacity, the "**Monitor**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 was heard on November 29, 2016 at 330 University Avenue, Toronto, Ontario, with reasons for decision reserved until the date hereof.

ON READING the Thirty-Second Report of the Monitor dated October 31, 2016, the written submissions of the Applicants, the affidavit of Corey Haaland sworn November 22, 2016 on behalf of Target Corporation and Target Brands, Inc., the affidavit of Jeff Klausner sworn September 23, 2016 on behalf of Capital Brands, LLC, the affidavit of Aftab Alam sworn November 26, 2016 on behalf of the claimant Shahida Abid Sindhu, the affidavit of Naser

Ghasemlou sworn November 14, 2016 on behalf of Lou Pharma Corp., the affidavit of Phil Choi sworn November 15, 2016 on behalf of Fruits & Passion Boutiques Inc., and the affidavit Beverly Sagert sworn November 17, 2016 on behalf of the claimant Kulwinder Kaur Rai, and on hearing the submissions of counsel for the Monitor, the Applicants, Target Corporation, Target Brands, Inc., Capital Brands, LLC, Shahida Abid Sindhu, Lou Pharma Corp., Fruits & Passion Boutiques Inc., and Kulwinder Kaur Rai and those other parties present, no one else appearing for any other person on the service list, although properly served as appears from the affidavit of Jesse Mighton sworn October 31, 2016, and in respect of the Endorsement of this Court dated March 1, 2017 attached hereto as Schedule "A" (the "**Late Claims Endorsement**"):

1. **THIS COURT ORDERS** that capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Late Claims Endorsement.
2. **THIS COURT ORDERS** that Capital Brands, LLC, Lou Pharma Corp., Fruits & Passion Boutiques Inc., Shahida Abid Sindhu, and Kulwinder Kaur Rai (collectively the "**Identified Claimants**") are permitted to submit proofs of claim solely against the Applicants (or any of them) in the form prescribed in the Claims Procedure Order issued by this Court on June 11, 2015 in the within proceedings (the "**Claims Procedure Order**") to the Monitor by no later than April 10, 2017 for determination in the Claims Process (as such term is defined in the Claims Procedure Order).
3. **THIS COURT ORDERS** that the Claims Process set out in the Claims Procedure Order shall apply to the determination of the claims of the Identified Claimants, except that the Monitor shall not be required to comply with the timeline set out at paragraph 31 thereof.

4. **THIS COURT ORDERS** that the Monitor is directed to: (a) contact Erin Wolf-Bloom (“**Wolf-Bloom**”) and Wazir Chand & Co. PVT. Ltd. (“**Wazir Chand**”) to request evidence as to why their claims as against the Applicants were not timely filed, and (b) present any information obtained in response to such request to this Court for a determination as to whether such claims will be permitted to be filed in the Claims Process. Such determination shall take into account, among other things, all notices sent to creditors respecting distributions, notice of the Monitor’s November 29, 2016 motion, and the *Blue Range* principles as set out in the Late Claims Endorsement (collectively, “**Factors for Consideration**”).

5. **THIS COURT ORDERS** that to the extent that the claims of the Identified Claimants are proven, and to the extent that the Claims of Wolf-Bloom and Wazir Chand are permitted to be filed in accordance with paragraph 4 hereof and are proven, distributions shall be made in respect of any such proven claims in amounts sufficient to provide to the claimants the equivalent of the First and Second Interim Distributions. To the extent such claims have been proven, such distributions will be made prior to any further distribution being made to all affected creditors with proven claims.

6. **THIS COURT ORDERS** and confirms that the claims of the Identified Claimants, any claims that may be filed in accordance with this Order, and all claims filed within these CCAA proceedings, are subject to the terms of the Plan and the Sanction and Vesting Order issued by this Court on June 2, 2016, and have already been fully and finally released, barred and forever extinguished as against Target Corporation and Target Brands, Inc.

7. **THIS COURT ORDERS** that, without limiting paragraphs 4 and 5 hereof, any claimant other than an Identified Claimant, Wolf-Bloom and Wazir Chand, seeking to file a late-filed proof of claim against an Applicant is required to provide evidence attesting to the reason for the

lateness of the filing of such claim, and the Monitor is directed to not accept any claim as against Target Corporation or Target Brands, Inc. The Monitor shall present such evidence to this Court for a determination as to: (a) whether such claim will be permitted to be filed for assessment in the Claims Process, which determination will take into account, among other things, the Factors for Consideration, and (b) if permitted to be filed and proven, the distributions to which such claimants are entitled to participate.



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SCHEDULE "A"

(see next page)

CITATION: Target Canada Co. (Re), 2017 ONSC 327
COURT FILE NO.: CV-15-10832-00CL
DATE: 2017-03-01

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 G.B. Morawetz

COUNSEL: *Marco Cedrone* and *Alex Ilchenko*, for Kulwinder Rai,

Robin B. Schwill and *Dina Milivojevic*, for Target Corporation

Lisa S. Corne, for Lou Pharma Corp. and Naser Ghasemlou and Fruits & Passion
Boutiques Inc.

Jay Carfagnini and *Jesse Mighton* for Alvarez & Marsal Canada Inc., Monitor

David Ullman and *Alexandra Teotorescu*, for Capital Brands LLC

Jeremy Dacks, for the Target Canada Entities

ENDORSEMENT

[1] Alvarez & Marsal Canada Inc., in its capacity as Court appointed Monitor (the "Monitor") of the Applicant, brought this motion for advice and directions regarding the treatment of a number of claimants who have not filed timely claims in accordance with the claims procedure order issued in these proceedings, but who now seek to have their claims admitted for determination in the claims process.

[2] The Monitor specifically requests guidance on the following issues:

- (a) Should any of the known late claimants be permitted to file proof of claims in the claims process?
- (b) If so, and if such claims are determined to be allowed (in whole or in part), which distributions are such claimants entitled to participate in?

- (c) How is the Monitor to address any as-of-yet unknown late claims that may come forward in the future, bearing in mind the need for certainty and finality for the Estate and for all Stakeholders?

Background

[3] The Target Canada Entities (the "TCE") were granted protection under the *Companies' Creditors Arrangement Act* ("CCAA") pursuant to the initial order dated January 15, 2015 (the "Initial Order"). The Initial Order appointed the Monitor.

[4] On June 11, 2015, the court issued the claims procedure order setting out the procedures to be followed for the filing and determination of claims against the TCE and their former directors and officers (the "Claims Procedure Order"), and the procedures set out therein, (the "Claims Process").

[5] Pursuant to the Claims Procedure Order, the claims bar date for creditors asserting pre-filing claims was August 31, 2015, and for claimants with restructuring period claims, the bar date was the later of:

- (i) 45 days after the date on which the Monitor sent a claims package with respect to a restructuring period claim, and
- (ii) August 31, 2015.

[6] More than 1700 proofs of claim were filed with the Monitor in accordance with the Claims Procedure Order.

[7] On May 25, 2016, a creditors' meeting was held (the "Creditors' Meeting") where Affected Creditors voting pursuant to the meeting order issued April 13, 2016 (the "Meeting Order") unanimously voted to approve Applicant's Joint Amended and Restated Plan of Compromise and Arrangement dated April 13, 2016 (the "Plan").

[8] Among other things, the Plan includes broad releases in favour of Target Corporation and Target Brands in respect of claims not filed in the Claims Process.

[9] The Sanction and Vesting Order issued June 2, 2016 provides that the Plan, including the releases provided therein, shall become effective on the Plan Implementation Date.

[10] Plan implementation occurred on June 28, 2016.

[11] The Sanction and Vesting Order specifically provides:

"Any Affected Claim (...) for which a Proof of Claim has not been filed at the Claims Bar Date in accordance with the Claims Procedure Order, whether or not the holder of such Affected Claim (...) has received personal notification of the claims process established by the Claims Procedure Order, shall be and are hereby forever barred, extinguished and released with prejudice".

[12] In the Twenty-Seventh Report of the Monitor dated May 11, 2016, the Monitor indicated that it would no longer accept Proof of Claim filed following the Creditors' Meeting.

[13] Since the Creditors' Meeting, the Monitor has been contacted by a number of putative claimants seeking to file Proofs of Claim for adjudication under the Claims Process. In each case, the Monitor declined to permit the filing of such late claims.

[14] In September 2016, the Monitor was contacted by counsel on behalf of Capital Brands Inc., ("CBI") a former supplier of the TCE, who indicated that a motion would be brought seeking to have the court approve the late filing of a Proof of Claim.

[15] Out of fairness to other late claimants who contacted the Monitor, but whose request to file late claims was declined, the Monitor indicated that the relief sought by CBI should be addressed through a motion for advice and direction where other claimants seeking to file late claims could have an opportunity to make submissions in an orderly process.

[16] In an Endorsement dated October 18, 2016 (the "October 18 Endorsement"), I directed that the Monitor's motion for advice and directions be heard on November 29, 2016 (the "November 29 Motion").

[17] The October 18 Endorsement set out the following processes pertaining to the November 29 Motion:

- (i) The Monitor is to serve a report regarding late claims by October 31, 2016;
- (ii) CBI is to file its responding materials by November 4, 2016; and
- (iii) Any other claimant seeking to late-file a claim is to serve and file responding materials, including an evidentiary record sufficient for the CCAA court to make a determination that the allowance of such claim at this late stage is appropriate in the circumstances, prior to the November 29 Motion, in accordance with the *Rules of Civil Procedure*.

First and Second Interim Distribution

[18] On June 29 and 30, 2016, the TCE, in consultation with the Monitor, issued the initial distribution totalling approximately \$672.5 million (the "Initial Distribution"). The Initial Distribution represented approximately 55.34% of affected creditors' proven claims.

[19] On October 19 and 20, 2016, the TCE, in consultation with the Monitor, issued a Second Interim Distribution in the amount of approximately \$87 million (the "Second Distribution"). The Second Distribution represented approximately 12.65% of affected creditors' proven claims. The Second Distribution was, subject to further order of the court, without prejudice to the rights of the putative late claimants in respect of this motion.

[20] As of October 31, 2016, the date of the Thirty-Second Report of the Monitor, approximately 68% of affected creditors' proven claims had been distributed.

[21] Following the Second Distribution, approximately \$3.5 million is being held in the TCE cash pool for scheduled vendor payments. An additional amount of approximately \$97.4 million is being held in reserve in the TCE disputed claims reserve account pending the resolution of disputed claims, including, in particular, the claims of the 27 remaining unresolved pharmacist franchisees and CRA.

[22] The Monitor has reported that current reserves are sufficient to satisfy distributions to the known late claimants, should they be permitted to file their claims, and such claims are ultimately accepted as proven by the Monitor (or the Claims Officer) in the amounts known to the Monitor at this time, without materially disturbing the estimated range of the coverage to affected creditors (being approximately 78% to 82%).

[23] In determining the motion, one must also take into account the terms of the October 18 Endorsement which are set out at [17] above. Specifically, (iii) sets out the process to be followed by any claimant seeking to file a late claim. The October 18 Endorsement specifically provides that any other claimant seeking to late file a claim is to serve and file responding materials, including an evidentiary record sufficient for the CCAA court to make a determination that the allowance of such claim at this late stage is appropriate in the circumstances (emphasis added).

[24] The test to evaluate whether a court will accept creditor claims after the passing of the claims bar date is articulated in *Blue Range Resource Corp. Re*, 2000 ABCA 285 (“Blue Range”).

[25] The question put before the court in *Blue Range* (para. 5) was as follows:

“What criteria in the circumstances of these cases should the court use to exercise its discretion in deciding whether to allow late claimants to file claims which, if proven, may be recognized, notwithstanding a previous claims bar order containing a claims bar date which would otherwise bar the claim of the late claimants, and applying the criteria to each case, what is the result?”

[26] The judgment of the court in *Blue Ridge* was delivered by Wittmann J.A. (as he then was). The relevant portions read as follows:

[14] I accept that some guidance can be gained from the *BIA* approach to these types of cases but I find that some concerns remain. An inadvertence standard by itself might imply that there need be almost no explanation whatever for the failure to file a claim in time. In my view, inadvertence could be an appropriate element of the standard if parties are able to show, in addition, that they acted in good faith and were not simply trying to delay or avoid participation in CCAA proceedings. But I also take some guidance from the *US Bankruptcy Rules* Standard because I agree that the length of delay and the potential prejudice to other parties must be considered. To this extent, I accept a blended approach, taking into consideration both the *BIA* and the *US Bankruptcy Rules* approaches, bolstered by the application of some of the concepts included into other areas,

such as late reporting in insurance claims, and delay in the prosecution of a civil action.

...

[26] Therefore, the appropriate criteria to apply to the late claimants is as follows:

1. Was the delay caused by inadvertence and if so, did the claimant act in good faith?
2. What is the effect of permitting the claim in terms of the existence and impact of any relevant prejudice caused by the delay?
3. If relevant prejudice is found, can it be alleviated by attaching appropriate conditions to an order permitting late filing?
4. If relevant prejudice is found which cannot be alleviated, are there any other considerations which may nonetheless warrant an order permitting late filing?

[27] In the context of the criteria, "inadvertent" includes carelessness, negligence, accident, and is unintentional. ..."

[27] On the subject of prejudice, the Blue Range decision is also instructive. At [40] the court stated:

"In a *CCAA* context, as in a *BIA* context, the fact that Enron and the other Creditors will receive less money if late and late amended claims are allowed is not prejudice relevant to this criterion. Re-organization under the *CCAA* involves compromise. Allowing all legitimate creditors to share in the available process is an integral part of the process. A reduction in that share cannot be characterized as prejudice: *Cohen, Re* (1956), 36 C.B.R. 21 (Alta. C.A.) at 30-31. Further, I am in agreement with the test for prejudice used by the British Columbia Court of Appeal in *312630 British Columbia Ltd*. It is: did the creditor(s) by reason of the late filings lose a realistic opportunity to do anything that they otherwise might have done? Enron and the other creditors were fully informed about the potential for late claims being permitted, and were specifically aware of the existence of the late claimants as creditors. I find, therefore, that Enron and the Creditors will not suffer any relevant prejudice should the late claims be permitted.

[28] There are certain similarities between Blue Range and Target Canada. Both entities filed under the *CCAA*, and both Blue Range and Target Canada were essentially liquidations. In addition, in both cases, the plans of arrangement had already been voted upon by the creditors and sanctioned by the court.

[29] In accordance with the terms of the October 18 Endorsement, certain claimants have filed materials in connection with the motions. Their reasons for not having filed timely claims are summarized as follows:

- (a) Fruits & Passion Boutiques Inc. ("Fruits & Passion"): Fruits & Passions claim that it did not file a timely claim because it did not receive the Claims Package that was mailed to it in late June 2015, perhaps because Fruits & Passion moved its head office in the summer of 2015. Fruits & Passion asserted its claim within a reasonable time after receiving notice of its claim bar date.
- (b) Lou Pharma Corp. ("Lou Pharma"): Lou Pharma claims that it did not file a timely claim because Mr. Ghasemlou (Lou Pharma's sole shareholder, officer and director) was in Iran for all of June and July 2015 and most of August 2015 and consequently was not aware of the Claims Procedure Order or Claims Bar date, did not receive the Claims Package, was not familiar with legal processes in Canada generally and has not previously had exposure to a claims process in any insolvency or restructuring proceeding.
- (c) Kulwinder Kaur Rai: Ms. Rai's claim is for damages arising from a slip and fall at a Target Shopping Centre in Surrey, B.C. A paralegal at the law firm representing Ms. Rai claims that a timely claim was not filed because of Mr. Rai's counsel's view that the CCAA proceeding did not apply to Mr. Rai's claims "because an insurer has already responded to the claim in British Columbia".
- (d) CBI: CBI claims that it assumed it had filed a timely claim because:
 - i. It received regular offers from claims traders to purchase CBI claim against Target Canada;
 - ii. It was listed on the list of creditors posted on the Monitor's website and it assumed, based on its understanding of U.S. bankruptcy procedure, that being listed on the list of creditors meant that its claim was deemed to be filed; and
 - iii. It was not aware of the disclaimer on the Monitor's website about the nature of the list of creditors.

CBI also states that it is "still unsure" that the proof of claim was not filed and relies on the turnover in its accounting department to justify its ignorance with respect to the status of the proof of claim.

- (e) Mohammad Alam: Mr. Alam commenced an action for damages as a result of injuries allegedly sustained by him on August 16, 2014 while a patron/invitee at a Target Shopping Centre located in Ajax, Ontario.

Mr. Alam retained counsel on August 21, 2014. Counsel to Mr. Alam sent a notice of claim to the defendant, Target, on August 27, 2014. The following day, August 28, 2014, Mr. Alam received a letter from Sedgwick Claims Management Services Canada Inc. advising that they had been assigned to handle the incident on behalf of Target Corporation and its insurer, ACE American Insurance Company.

On August 2, 2016, Counsel to Mr. Alam contacted the adjuster for the defendant Target Canada to inquire about the status of Target Canada.

Since the loss occurred on August 16, 2014, counsel to Mr. Alam maintains the limitation date for maintaining the claim is August 16, 2016.

On August 12, 2016, the Statement of Claim was issued against the defendants, Target Corporation, Target Canada Co. o/a Target Canada and 151516 Ontario Inc.

Mr. Alam takes the position that he relied on the wording of paragraph 54 of the Claims Procedure Order which reads as follows:

“THIS COURT ORDERS that nothing in this Order shall prejudice the rights ... or prevent or bar any person from seeking recourse against or payment from the Target Canada Entities insurance that exists to protect or indemnify ... or other Persons, whether such recourse or payment is sought directly by the Person asserting a Claim from the insurer or any Target Canada Entity; provided, however, that nothing in this Order shall create any rights in favour of such Person under any policies of insurance nor shall anything in this Order limit, remove, modify or alter a defence to such Claim available to the insurer pursuant to the provisions of any insurance policy or at law; and further provided that any Claim or portion thereof for which the Person receives a payment directly from, or confirmation that she is covered by, the Target Canada Entities insurance ... or other liability insurance policy or policies that exist to protect or indemnify the Directors or Officers or other persons shall not be recoverable as against a Target Canada Entity or Director or Officer as applicable.

[30] The claims of Fruits & Passion, Lou Pharma, Kulwinder Kai Rai, CBI and Mohammed Alam were supported by uncontroverted evidence that establishes, in my view, that their failure to file timely claims was caused by inadvertence and there was no suggestion that these claimants were not acting in good faith. Further, there is no evidence to suggest that these claimants were seeking to delay or otherwise avoid participating in the CCAA process. Indeed, it would have been contrary to their interest not to participate in the CCAA process.

[31] Turning now to the effect of permitting the claims in terms of the existence and the impact of any relevant prejudice caused by the delay. The second, third and fourth factors of the Blue Range test deal with any prejudice to other creditors if late claims are admitted. In this

case, the Monitor reports that even if the late claimants are permitted to file their claims and such claims are ultimately accepted as proven in the amounts known to the Monitor at this time, there will be no change in the estimated range of the distribution to affected creditors (being approximately 78% - 82%).

[32] A relevant question is whether other creditors lost a realistic opportunity to do anything that they otherwise might have done.

[33] From the outset, it was clear that this was a liquidation plan. Target Canada followed a court approved process to liquidate its assets. The proceeds from the liquidation were being made available to creditors in accordance with their legal priorities.

[34] Simply put, unsecured creditors are sharing *pro rata* in any assets of Target Canada available for distribution after satisfying secured creditors, preferred creditors and valid trust claims. There was no other choice available to unsecured creditors.

[35] There is, however, one significant variable that would affect the distribution to unsecured creditors. It concerns the status of the claim of the parent company, Target Corporation.

[36] Target Corporation, as Plan Sponsor (as defined in the Plan), made significant economic contributions to the CCAA proceedings and the Plan. These contributions included the following:

- a. Funding a trust established for the benefit of the employees of Target Canada in the amount of \$95 million;
- b. Making available debtor-in-possession financing to Target Canada to allow Target Canada to meet payroll and other obligations;
- c. Providing ongoing shared services to facilitate the orderly wind-down of the Applicant's operations; and
- d. Subordinating well in excess of \$3.1 billion in inter-company debt against Target Canada.

[37] Target Corporation submits that they made these contributions to the Plan and relied upon obtaining the releases provided for in the Plan. Specifically, pursuant to the Plan, Target Corporation and its subsidiaries (including Target Brands Inc.) ("Target Brands") were released from all claims (subject to certain exceptions which are not relevant for the purpose of this motion) existing or taking place on or prior to the later of the Plan Implementation Date and the date on which actions were taken to implement the Plan, that were arising out of or in connection with the Claims, the Business whether or however conducted, the Plan, the CCAA proceedings, or any Claims that were barred or extinguished by the Claims Procedure Order.

[38] Target Corporation also submits that it relied upon the anticipated recovery on its remaining unsecured claims which it did not subordinate, based on the Monitor's illustrative recovery.

[39] Finally, Target Corporation takes the position that it would not have sponsored the Plan on the terms to which it agreed without being able to rely on the finality and enforceability of the release and discharge of claims provided for in the Sanction Order. This evidence is set out in the affidavit of Cory Haaland, sworn November 22, 2016.

[40] Target Corporation has been named as defendant in three of the late claims and Target Brands has been named as defendant in one of the late claims. Each of these late claims was initiated after the Sanction Order was granted and the Plan implementation occurred. From the standpoint of Target Corporation, each late claim against Target Corporation or Target Brands has already been released pursuant to the terms of the Plan, as approved by the Sanction Order.

[41] Given the evidence of Target Corporation that they would not have sponsored the Plan on terms to which it agreed without being able to rely on the finality and enforceability of the release and discharge of claims provided for in the Plan, as approved by the Sanction Order, I am satisfied that Target Corporation and Target Brands have established that they would be prejudiced if such late claims were permitted to be filed to the extent that such claims are being made as against Target Corporation and Target Brands. Further, I am satisfied that given the contributions of Target Corporation and the fact that the Plan has been sanctioned and distributions have already been made to creditors, the relevant prejudice to Target Corporation and Target Brands cannot be alleviated by attaching any appropriate conditions to an order permitting late filings.

[42] I conclude that Fruits & Passion, Lou Pharma, Kulwinder Kaur Rai, CBI and Mohammed Alam have satisfied the test as set out in *Blue Range*.

[43] Accordingly, an order is granted permitting Fruits & Passion, Lou Pharma, Kulwinder Kaur Rai, CBI and Mohammad Alam, to file their claims. The Monitor is directed to review and value them and, to the extent that the claims are proven, against Target Canada, these claimants are entitled to participate in a distribution.

[44] To the extent that the claims are made against Target Corporation or Target Brands, the Monitor is directed not to accept such claims. The claims as against Target Corporation and Target Brands have been barred and the release is effective.

[45] Two other claimants made submissions at the November 29 Motion, but did not file an evidentiary record.

- (a) Erin Wolf Bloom: Ms. Wolf-Bloom commenced a lawsuit against Target Canada Co. and Target Brands, Inc. as a result of injuries which Ms. Bloom alleges persist following her purchase of a Target brand shampoo known as "Up and Up".

The Statement of Claim has not been served as Ms. Bloom has been advised by the Monitor that no claims are permitted against Target-related companies.

Ms. Bloom's position is that she is not a creditor of the TCE as she has a claim against the insurer and ought to be allowed to effect service of her

Statement of Claim and to prove her claim for payment under the third-party liability insurance in place.

- (b) Wazir Chand & Co. PVT Ltd.: In response to receiving the Motion Record, Wazir Chand sent an email to the Monitor on November 3, 2016 in which they state that they are resubmitting the details of outstanding claims against Target Canada totalling U.S. \$10,747.90.

The email also references attachments of scanned copies of three invoices, respective purchase orders and the relative 3FCRs in support of their claim.

In response, on November 21, 2016 counsel to the Monitor requested further information from Wazir Chand, specifically an explanation as to why Wazir Chand did not file a proof of claim with the Monitor, noting that a claims package was sent to Wazir Chand in June 2015.

In reply, by email dated November 23, 2016, Wazir Chand indicates that they never received any communication whereby a proof of claim was required. This was the reason provided as to why Wazir Chand could not send the proof of claims earlier.

[46] The claims of Ms. Wolf Bloom and Wazir Chand have not been supported by any evidence as required by the November 18 Endorsement. The Monitor is directed to advise Ms. Wolf Bloom and Wazir Chand that if they intend to pursue their claims, they are required to file some evidence as to why they did not file a timely proof of claim with the Monitor. If and when such evidence is filed, the Monitor can request direction from the court, taking into account the reasons set out in this endorsement.

[47] The second issue is to provide the Monitor with directions with respect to distributions in which late claimants are entitled to participate. The Monitor has made two distributions, pursuant to court order. These distributions are not to be disturbed.

[48] The Monitor has approximately \$97.4 million being held in reserve. The Monitor has reported that these reserves are sufficient to satisfy distributions to the known late claimants, if these claims are ultimately accepted as proven by the Monitor.

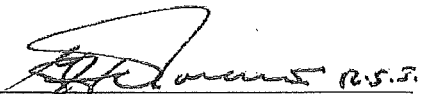
[49] Accordingly, I direct, to the extent that the claims of the late claimants are proven, that the Monitor effect distributions from this reserve. The distributions to these late claimants should be made in amounts sufficient to provide them with the equivalent of the First and Second Interim Distributions. These distributions should be made prior to any further distribution being made to all unsecured creditors.

[50] Finally, the Monitor has asked for direction as to how to address any as of yet unknown claims that may come forward in the future, bearing in mind the need for certainty and finality for the Estate and for all stakeholders.

[51] Consistent with my reasons, the Monitor is directed not to accept any further claims as against Target Corporation or Target Brands.

[52] With respect to claims as against Target Canada, the allowance of any such claims will be determined, taking into account, among other things, all notices sent to creditors respecting distributions, notice of the November 29 Motion and the *Blue Range* principles as set out above.

[53] Further, consistent with these reasons, any distributions already made to unsecured creditors are not to be disturbed.


Regional Senior Justice G.B. Morawetz

Date: March 1, 2017

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
(Late Claims)**

GOODMANS LLP
Barristers and Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
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Lawyers for the Monitor

TAB 10

Court File Number: CV-15-10832-00CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

TARGET CANADA

Plaintiff(s)

AND

Defendant(s)

Case Management Yes No by Judge: _____

Counsel	Telephone No:	Facsimile No:
J. Mighton for Plaintiff K0176		
J. Davis for Target Entite. K. ESAN for TRP.		

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: _____
- Time Table approved (as follows):

Mr. Mighton on behalf of the Plaintiff has requested ^{that} ~~for~~ 3 additional late claims as well as additional evidence has been received. ^{from Wazir Chand.}

The Plaintiff is satisfied that the additional evidence from Wazir Chand establishes that they have a claim and that the failure to file in accordance with the Claim Procedure Order was as a result of inadvertence.

With respect to new claims filed - J. Corp. Inc., TRP Worldwide + Cotton ^{Buds} ~~Products~~, the Plaintiff is satisfied that all 3 claims were not filed

April 12, 2017
Date


Judge's Signature

Additional Pages 102

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

on a timely basis due to inadvertence.

Counsel to Target advises that if these claims are admitted and paid, it will not impact on the distribution to creditors on a material manner.

In my recollection of March 1, 2017 I gave directions with respect to the treatment of ~~Plaintiff~~ ~~with~~ any further late claims. I am satisfied that these elements have established that the claims were not filed on time due to inadvertence and there is no prejudice to other creditors of the claims and processed at this time. This treatment is consistent with the Blue Haze principles. Therefore directed to accept these claims for filing purposes. There to be reviewed and, if appropriate, admit claim for distribution purposes. Any distribution to be paid out of reserve funds. Previous distributions are not to be disturbed.

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

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

PROCEEDINGS COMMENCED AT TORONTO

**BOOK OF AUTHORITIES OF
BELL CANADA
AND BCE NEXXIA CORPORATION**

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