

January 6, 2016

Our File No.: 143291

Via E-mail

Lax O'Sullivan Lissus Gottlieb LLP
Barristers & Solicitors
Suite 2750, 145 King Street W
Toronto, ON M5H 1J8

Attention: Matthew P. Gottlieb and Andrew Winton

Dear Sirs:

**Re: Target Canada Co. CCAA Proceedings
Court File No. CV-15-10832-00CL**

We are in receipt of your letter dated January 2, 2016 in which you requested the Monitor's response to certain questions. Please find below your questions repeated and the Monitor's response.

1. *Regarding the RioCan claims and settlement:*

- a. *Please provide particulars of when/what requests were made for a copy of the settlement, from which parties the requests were made (i.e., Target Corp. and/or RioCan), and what the Monitor was told?*

Immediately following RioCan's issuance of the press release on November 23, 2015 regarding the settlement with Target Corporation, the Monitor (through counsel) requested from Target Corporation a copy of the settlement agreement. Counsel for Target Corporation advised the Monitor that the settlement agreement is confidential and could not be provided.

Following certain landlord requests for a copy of the settlement agreement, the Monitor again (through counsel) requested a copy of the agreement from Target Corporation. Target Corporation's counsel advised the Monitor on December 1, 2015 that the settlement agreement provided that any disclosure would require the consent of both RioCan and Target Corporation and Target Corporation was not prepared to consent to disclosure of the settlement agreement.

On January 4, 2016, the Monitor (through counsel) repeated its request for a copy of the settlement agreement from Target Corporation. Counsel advised that Target Corporation's position has not changed.

Counsel to Target Corporation can confirm the above requests were made. Further, Mr. Swartz has confirmed in his email correspondence on December 2, 2015 to various landlord counsel, and Mr. Schwill made it clear in his submissions to the Court on December 21, 2015, that Target Corporation is not prepared to provide parties with a copy of the settlement agreement or make any disclosure of the terms other than as provided in the November 23, 2015 press release issued by RioCan.

As described in the Outline of Submissions of RioCan and Kingsett returnable February 4, 2015, Kingsett was the landlord for five of Target's leased premises, one of which was a joint venture with RioCan. The Monitor understands that the joint venture property was included in the RioCan settlement. The Monitor also understands that Bennett Jones LLP may have been acting under a joint retainer in relation to this property. If so, your client may be privy to some or all of the terms of the settlement that the Monitor and other parties are not privy to.

- b. *Please produce a copy of any written correspondence relating to those requests.*

The Monitor has responded to your information request as set out above. Copies of any written correspondence are not relevant and production thereof is neither necessary nor appropriate.

- c. *Please confirm that the sum of \$77,039,051.79 for the allowed RioCan claims includes HST.*

Yes, the allowed RioCan claim amount of \$77,039,051.79 includes GST/HST.

- d. *The supplemental report notes that the RioCan settlement amount of \$132 million is net of HST. Please advise if the Monitor is able to confirm whether the settlement amount is only net of HST, and not any other amounts.*

The Monitor has been advised by Target Corporation's counsel that the \$132 million is net of HST only.

- e. *Please provide the aggregate allowed claim amount for allowed RioCan claims net of HST for comparison purposes.*

The allowed amount net of GST/HST is \$68,297,577.25 comprised of \$2,830,364.57 in respect of pre-filing amounts and \$65,467,212.68 in respect of Landlord Restructuring Period Claims calculated by applying the Landlord Formula Amount.

- f. *What was the value of the Stockyards claim for rent to term: (i) as claimed by RioCan, and (ii) as allowed by the Monitor under the formula?*

For the reasons set out in the response to questions 2a and 2b, below, and as set out in the response to question 2c, below, the Monitor is of the view that it has an obligation of confidentiality with respect to the RioCan claims. The Monitor sought permission from RioCan's counsel to disclose this information relating to Stockyards in its Supplemental Report and provided a draft of the proposed disclosure regarding the RioCan claims to Bennett Jones. RioCan did not provide its consent to disclosure of this information relating to an individual property (as opposed to aggregate information). Following receipt of your letter dated January 2, 2016, the Monitor repeated its request to RioCan's counsel regarding disclosure of this information and RioCan advised that its position has not changed and that property specific information should not be released.

- g. *With regard to the Stockyards lease, was the Monitor aware prior to delivering its supplemental report that RioCan reported in its November 23 press release that the entire Stockyards space has been fully leased to Nations Fresh Foods for roughly the same base rental revenue that was generated by Target Canada?*

Yes, the Monitor is familiar with and has read the press release with respect to the RioCan settlement.

As you are aware, the landlord formula under the plan filed by TCC does not purport to assess mitigation on a property-by-property basis. As set out in the Monitor's Twenty-Third Report dated November 27, 2015, the application of the Landlord Formula Amount to Landlord Restructuring Period Claims avoids the complexity and uncertainty of calculating and resolving disputes over common law damage claims on a lease-by-lease basis across 95 disclaimed leases, which would include assessing obligations on the part of the Landlord to mitigate damages in each instance.

Information with respect to allocation of the RioCan settlement amount among the various RioCan properties has not been disclosed in the RioCan press release and we understand remains subject to the confidentiality provisions of the RioCan settlement.

- h. *With respect to the 19th disclaimed RioCan lease:*

- i. *Please confirm that this relates to RioCan Niagara Falls?*

Yes, it does. This can be derived from a review of public information, including the RioCan press releases and the Monitor's Fourteenth Report dated June 3, 2015.

- ii. *What is the allowed amount for this claim under the landlord formula?*

As the Monitor has consistently advised, and as set out below: (A) the Monitor is not able to disclose information relating to individual properties without the consent of the claimant or Order of the Court; and (B) counsel to RioCan (and, until late November 2015, to Kingsett) has reiterated to the Monitor that claims filed by its landlord clients are to be held confidential.

Following receipt of your letter dated January 2, 2016, the Monitor sought consent from counsel to RioCan to disclose the information requested on RioCan's Niagara Falls property. RioCan's counsel advised that its position on confidentiality and disclosure has not changed and it did not provide consent.

iii. Has this claim been settled or assigned by RioCan?

The Monitor is not aware of any settlement with respect to this claim and has not received any notice of assignment of this claim.

2. Paragraphs 3.1 and 3.2 of the Monitor's report refer to confidentiality of claims. In this regard:

a. Is there anything in the Claims Procedure Order or other court orders stating that proofs of claim filed in the CCAA proceeding are to be kept confidential by Target and the Monitor? If so, please provide particulars, i.e. which orders and which paragraphs.

In contrast to section 126(1) of the BIA, the CCAA does not provide for any creditor access to or examination of the claims of others. Absent an Order to the contrary, claims in CCAA proceedings are typically considered to be filed on the basis that they will be kept confidential by the debtor company and the Monitor. This issue was discussed by the Monitor with the Consultative Committee.

There was a limited exception to such confidentiality of claims encapsulated in paragraph 30 of the Claims Procedure Order dated June 11, 2015, which provides that the Monitor must consult with the Consultative Committee on any claims it proposes to allow in excess of \$5 million. This provision was included to provide a limited exception at the request of certain Consultative Committee members for the very reason that the CCAA does not provide for creditor access to claims. In this regard, we note: (i) some creditors filed claims expressly reflect this expectation by specifically indicating that they were filed on a confidential basis and (ii) one creditor appeared before the Court on October 30, 2015 and sought an undertaking of the Monitor that the Monitor would not disclose any information to the Consultative Committee pursuant to the paragraph 30 exception pending a

further Court Order addressing confidentiality. The Monitor worked with the Consultative Committee and the creditor on confidentiality provisions that would continue to apply even in the context of the limited exception. It was expressly provided in the Consultative Committee Protocol approved by the Court on November 18, 2015 that each Member of the Consultative Committee was under an obligation to keep any information or data provided to it in connection with paragraph 30 of the Claims Procedure Order strictly confidential and not reveal or disclose such information to any party, including the Member's clients, without further order of the Court or consent of the applicable claimant and the Monitor.

The Monitor is of course prepared to disclose information on individual claims upon the consent of the claimant or Order of the Court.

- b. Which landlords advised that they were particularly sensitive to the confidentiality of their claims and how and when did they request that their claims be maintained as confidential? Please produce any written correspondence concerning confidentiality requests from landlords.*

Bennett Jones, as counsel to RioCan and Kingsett (the latter until late November 2015), consistently reiterated in discussions with the Monitor the importance of maintaining confidentiality with respect to the claims filed by its landlord clients, including in an email to the Monitor on October 6, 2015 in the context of Consultative Committee meetings. Counsel to RioCan and Kingsett emphasized the sensitivity to rent rates, CAM and other information that could be gleaned from any disclosure of claims on an individual property basis. Bennett Jones also contacted the Monitor and reiterated its concerns on confidentiality and disclosure following the December 21 and 22 Court hearing and the Court's direction regarding the Monitor's Supplemental Report.

As indicated above, the Monitor is prepared to disclose information on an individual property basis upon the consent of the claimant or Order of the Court.

The Monitor has responded to your information request as set out above. Copies of any written correspondence are not relevant and production thereof is neither necessary nor appropriate.

- c. Did the Monitor seek permission from RioCan prior to disclosing its summary of the terms of the Stockyards lease in its supplemental report? If so, please produce that correspondence.*

Yes. As set out above, Bennett Jones, as counsel to RioCan (and, until late November 2015, to Kingsett), emphasized to the Monitor the confidentiality of the claims filed by its landlord clients, including with regard to the Supplemental

Report. Accordingly, the Monitor provided the portion of its draft Supplemental Report regarding RioCan claims (which included references to the Stockyards lease terms) to Bennett Jones in draft and requested their consent to the disclosure of that information prior to issuing such report. As set out above, Bennett Jones did not provide their consent to disclosure of individual claim information relating to Stockyards and that information was accordingly deleted from the final version of the Supplemental Report.

The Monitor has responded to your information request as set out above. Copies of any written correspondence are not relevant and production thereof is neither necessary nor appropriate.

Yours truly,

Goodmans LLP



J. A. Carfagnini

JAC/

cc. Regional Senior Justice Geoffrey Morawetz
Service List

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