

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

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

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

Applicants

NOTICE OF MOTION

(Motion for Advice and Directions)

The Monitor will make a motion before a judge of the Ontario Superior Court of Justice (Commercial List) on May 11, 2015 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR:

1. Advice and directions in accordance with paragraph 73 of the Initial Order (defined below), and in particular the Monitor is seeking directions that:
 - (a) the Court hear the Monitor's motion (the "**Claims Process Motion**") for approval of a comprehensive claims process with respect to the Target Canada Entities (the "**Claims Process**") on June 10, 2015, subject to the Court's availability (the "**Claims Process Hearing Date**");

- (b) the Monitor serve its motion materials in respect of the Claims Process Motion at least 7 days prior to the Claims Process Hearing Date;
- (c) the Claims Process include, among other things:
 - (i) procedures regarding the calling of all claims as against the Target Canada Entities, including intercompany claims, and as against the Target Canada Entities' current and former directors and officers; and
 - (ii) procedures regarding the determination and resolution of all claims as against the Target Canada Entities and their directors and officers, other than intercompany claims or any intercreditor disputes, including the appointment of claims officers; and
 - (iii) preparation and service by the Monitor of a report on all intercompany claims submitted in accordance with the claims procedures (the “**Monitor Intercompany Claims Report**”) following the claims bar date established in the Claims Process;
- (d) the Monitor Intercompany Claims Report shall identify and quantify the intercompany claims to be allowed subject to the determination of objections filed pursuant to (e), below;
- (e) following the filing of the Monitor Intercompany Claims Report, all creditors of the Target Canada Entities shall have the opportunity to file objections, which may include, but are not limited to, any claim asserted for the subordination of outstanding intercompany debts of any of the Target Canada Entities, any relief regarding claimed priority rights, and the validity or quantum of intercompany claims (the “**Intercompany Claims Objections Bar Date**”);
- (f) following the Intercompany Claims Objections Bar Date, the Monitor shall schedule a motion with this Court to seek approval of a process for the resolution of any objections filed in connection with the validity or quantum of intercompany claims and any other intercreditor disputes, including a process

regarding requests for the production of documents or any oral examinations (the “**Intercompany Claims and Intercreditor Dispute Process Motion**”);

- (g) at the hearing of the Intercompany Claims and Intercreditor Dispute Process Motion, the Monitor shall schedule with this Court motions that creditors have advised the Monitor they still wish to be heard regarding any one or more of the following matters:
 - (i) the scheduling of the cross-examination of Mark Wong and any related document production requests;
 - (ii) any requests for the production of documents and/or any oral examinations; and
 - (iii) any motion, if brought, for the appointment of an *ad hoc* committee of suppliers or other unsecured creditors of TCC and of representative counsel to any such *ad hoc* committee; and

2. Such further and other relief as this Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

- (a) The Applicants were granted protection in the form of a stay of proceedings and other relief under the CCAA pursuant to the Initial Order dated January 15, 2015, as amended and restated as of February 11, 2015 (the “**Initial Order**”)¹;
- (b) Alvarez & Marsal Canada Inc. was appointed in the Initial Order to act as the Monitor in these CCAA proceedings (the “**Monitor**”), including to assist with the Orderly Wind-down of the Target Canada Entities’ business and operations;

¹ Capitalized terms used but not defined herein have the meaning given to them in the Initial Order or in prior reports of the Monitor, as applicable.

- (c) The primary focus of the Orderly Wind-down is and has been on the completion of the Inventory Liquidation Process and the Real Property Portfolio Sales Process in an effort to maximize realizations for the benefit of the Target Canada Entities' stakeholders;
- (d) In the course of these CCAA proceedings, the Court has requested that all motion scheduling requests run through the Monitor, as its Court-appointed officer, to assist in an orderly administration of the CCAA proceedings, and has also instructed that the Monitor, as its Court-appointed officer, structure and administer a claims process in respect of the Target Canada Entities;
- (e) As instructed by this Court, the Monitor is developing and will administer a comprehensive claims process, which claims process will be commenced immediately following completion or substantial completion of the Inventory Liquidation Process and the Real Property Portfolio Sales Process;
- (f) As set out in an endorsement of R.S.J. Morawetz dated March 5, 2015: (i) when any intercompany claims are submitted in the Claims Process to be approved by the Court, the Monitor will prepare a report on any intercompany claims submitted and make it available to the Court and all creditors; and (ii) creditors will then have an opportunity to seek any remedy or relief with respect to any intercompany claims in the Claims Process;
- (g) The Monitor, as Court-appointed officer, is charged with the responsibility for managing the Claims Process and reviewing and bringing to the attention of the Court claims matters as and when appropriate in an orderly and efficient manner;

- (h) The Monitor is seeking advice and directions regarding what it views as an appropriate and reasonable timetable for the hearing of its motion for approval of the Claims Process, namely, June 10, 2015, with at least 7 days' notice to be provided to the Service List, which Claims Process will also include the preparation of the Monitor Intercompany Claims Report and a process for the resolution of disputes related to intercompany claims and other intercreditor issues, including production and discovery matters relating thereto;

- (i) Blaney McMurtry LLP and Solmon Rothbart Goodman LLP have, by way of motions and letter correspondence, requested extensive information and documentary production from the Applicants and the Monitor throughout these CCAA proceedings on matters primarily relating to possible intercreditor disputes involving 30-day goods, and have received extensive responses to their inquiries in each instance (subject to issues of relevance and privilege) from the Applicants or the Monitor, as applicable;

- (j) Blaney McMurtry LLP and Solmon Rothbart Goodman LLP, by letter dated March 31, 2015 and by oral submissions at an 8:30 am scheduling hearing before R.S.J. Morawetz held April 1, 2015, indicated their intention to bring several motions, which primarily relate to, as the case may be:
 - (i) intercreditor disputes in the nature of relief for subordination of intercompany claims and priority rights for certain supplier creditors;
 - (ii) document production and cross-examinations for information relating to the above; and

- (iii) the appointment of an *ad hoc* committee of creditors and of Mr. Brzezinski (of Blaney McMurtry LLP) and Mr. Solmon (of Solmon Rothbart Goodman LLP) as representative counsel for carriage of intercreditor disputes;
- (k) Mr. Brzezinski has subsequently advised that the motions referred to in subparagraphs 2(j)(i) and 2(j)(ii) above will be deferred until after the claims bar date to be established in the Claims Process has passed and the only motion he will be bringing at this time is for the appointment of an *ad hoc* committee of suppliers together with his appointment and that of Mr. Solmon as representative counsel;
- (l) The Monitor is of the view that:
 - (i) the motions referred to in subparagraphs 2(j)(i) and 2(j)(ii) above need not and should not be heard at this time as they are only properly considered after claims have been filed, the Monitor Intercompany Claims Report has been filed, and the Intercompany Claims and Intercreditor Dispute Process Motion is brought forward by the Monitor and therefore agrees with their deferral until such time;
 - (ii) the motion referred to in subparagraph 2(j)(iii) above is also only properly dealt with after the Monitor Intercompany Claims Report has been filed and intercreditor disputes, if any, and the parties interested therein, have been identified through the Claims Process and only properly heard, if it is brought, concurrently with the Intercompany Claims and Intercreditor Dispute Process Motion; and
 - (iii) the above referenced motions need not be determined in order for creditors to be able to file their proofs of claim in the Claims Process;
- (m) Paragraph 73 of the Initial Order;

- (n) The provisions of the CCAA and the inherent and equitable jurisdiction of this Court;
- (o) Rules 1.04, 1.05, 2.03, 3.02, 16 and 37 of the Ontario *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended and section 106 of the Ontario *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended; and
- (p) Such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of this motion:

1. The Eighth Report of the Monitor, to be filed; and
2. Such further and other evidence as counsel may advise and this Court may permit.

April 17, 2015

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

TO: SERVICE LIST

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AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TARGET
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Court File No. CV-15-10832-00CL

Applicants

**ONTARIO
SUPERIOR COURT OF JUSTICE
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PROCEEDING COMMENCED AT
TORONTO

**NOTICE OF MOTION
(Returnable May 11, 2015)**

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

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Lawyers for the Monitor