

**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

**RESPONDING BRIEF OF AUTHORITIES OF
TARGET CORPORATION**

(Re: Motion of the Monitor returnable November 29, 2016)

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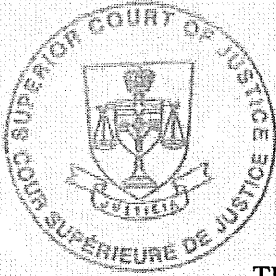
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Lawyers for Target Corporation

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TAB 1



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

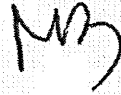
to the Monitor in any foreign proceeding, or to assist the Target Canada Entities and the Monitor and their respective agents in carrying out the terms of this Order.



6461737

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.

| | |
|--|--|
| <p>5. Certification</p> <p>I hereby certify that:</p> <ol style="list-style-type: none">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 "T"

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

6. Filing of Claim

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

**Alvarez & Marsal Canada Inc., Target Canada Monitor
Royal Bank Plaza, South Tower
200 Bay Street, Suite 2900, P.O. Box 22**

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

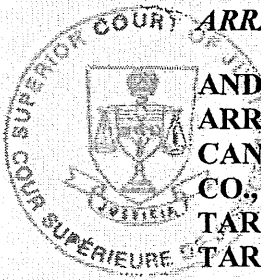
Jesse Mighton LSUC#: 62291J
jmighton@goodmans.ca

Tel: 416.979.2211
Fax: 416.979.1234

Lawyers for the Monitor

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) **MONDAY, THE 21ST**
)
REGIONAL SENIOR JUSTICE) **DAY OF SEPTEMBER, 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")**

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.~~ *MS?*

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

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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

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Tel: 416.979.2211
Fax: 416.979.1234

Lawyers for the Monitor

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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LE / DANS LE REGISTRE NO.:

 OCT 30 2015

TAB 2

Most Negative Treatment: Distinguished

Most Recent Distinguished: Pine Valley Mining Corp., Re | 2008 BCSC 356, 2008 CarswellBC 579, [2008] B.C.W.L.D. 2893, 41 C.B.R. (5th) 43, 165 A.C.W.S. (3d) 842 | (B.C. S.C., Mar 14, 2008)

2006 CarswellOnt 6230
Ontario Superior Court of Justice

Muscletech Research & Development Inc., Re

2006 CarswellOnt 6230, [2006] O.J. No. 4087, 152 A.C.W.S. (3d) 16, 25 C.B.R. (5th) 231

Muscletech Research and Development Inc. et al

Ground J.

Heard: September 29, 2006

Judgment: October 13, 2006

Docket: 06-CL-6241

Counsel: Fred Myers, David Bish for Applicants, Muscletech Research and Development Inc. et al
Natasha MacParland, Jay Swartz for Monitor, RSM Richter Inc.

Justin Fogarty, Fraser Hughes, Chris Robertson for Ishman, McLaughlin, Jaramillo Claimants

Jeff Carhart for Ad Hoc Tort Claimants Committee

Sara J. Erskine for Ward et al

Alan Mark, Suzanne Wood for Iovate Companies, Paul Gardiner

A. Kauffman for GNC Oldco Inc.

Tony Kurian for HVL Incorporated

Steven Golick for Zurich Insurance Company

Subject: Insolvency; Corporate and Commercial

Related Abridgment Classifications

For all relevant Canadian Abridgment Classifications refer to highest level of case via History.

Bankruptcy and insolvency

XIX Companies' Creditors Arrangement Act

XIX.5 Miscellaneous

Headnote

Bankruptcy and insolvency — Proposal — Companies' Creditors Arrangement Act — Miscellaneous issues

Applicant companies sought relief under Act as means of achieving global resolution of numerous actions brought against them and third parties in United States — Liability of third parties was linked to that of applicants — Certain of third parties agreed to provide funding of settlement of actions — Most of plaintiffs settled claims but claimants in three actions did not — Claimants brought motions for various interim orders — Motions dismissed — Claimants were not entitled to make collateral attack on claims resolution order — Court had jurisdiction to make order affecting claims against third parties — Practicality of plan of compromise depended on resolution of all claims — Claimants filed proof of claims including their claims against third parties — Claims were not deemed to be accepted pursuant to claims resolution order — Request for better notices of objection could be dealt with by

claims officer — There was no reason to appoint investigator given thorough and impartial report already prepared by monitor.

Table of Authorities

Cases considered by *Ground J.*:

Canadian Airlines Corp., Re (2000), [2000] 10 W.W.R. 269, 20 C.B.R. (4th) 1, 84 Alta. L.R. (3d) 9, 9 B.L.R. (3d) 41, 2000 CarswellAlta 662, 2000 ABQB 442, 265 A.R. 201 (Alta. Q.B.) — considered

Statutes considered:

Bankruptcy Code, 11 U.S.C. 1982
Chapter 15 — referred to

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36
Generally — referred to

MOTIONS by objecting claimants in proceedings under Companies' Creditors Arrangement Act for various interim orders.

Ground J.:

1 This is a somewhat unique proceeding under the *Companies' Creditors Arrangement Act*, R.S.C. (1985) Ch. c.36 as amended ("CCAA"). The Applicants have also commenced ancillary proceedings under Chapter 15 of the U.S. Bankruptcy Code and are now before the United States District Court for the Southern District of New York ("U.S. Court"). All of the assets of the Applicants have been disposed of and no proceeds of such disposition remain in the estate. The Applicants no longer carry on business and have no employees. The Applicants sought relief under the CCAA principally as a means of achieving a global resolution of the large number of product liability and other lawsuits commenced by numerous claimants against the Applicants and others (the "Third Parties") in the United States. In addition to the Applicants, the Third Parties, which include affiliated and non-affiliated parties, were named as defendants or otherwise involved in some 33 Product Liability Actions. The liability of the Third Parties in the Product Liability Actions is linked to the liability of the Applicants, as the Product Liability Actions relate to products formerly sold by the Applicants.

2 Certain of the Third Parties have agreed to provide funding for settlement of the Product Liability Actions and an ad hoc committee of tort claimants (the "Committee") has been formed to represent the Plaintiffs in such Products Liability Actions (the "Claimants"). Through its participation in a court-ordered mediation (the "Mediation Process") that included the Applicants and the Third Parties, the Committee played a fundamental role in the settlement of 30 of the 33 Product Liability Actions being the Product Liability Claims of all of those Product Liability Claimants represented in the Mediation Process by the Committee.

3 The Moving Parties in the motions now before this court, being the Claimants in the three Product Liability Actions which have not been settled (the "Objecting Claimants"), elected not to be represented by the Committee in the Mediation Process and mediated their cases individually. Such mediations were not successful and the Product Liability Actions of the Moving Parties remain unresolved.

4 Pursuant to a Call for a Claims Order issued by this court on March 3, 2006, and approved by the U.S. court on March 22, 2006, each of the Objecting Claimants filed Proofs of Claim providing details of their claims against the Applicants and Third Parties. The Call for Claims Order did not contain a process to resolve the Claims and Product

Liability Claims. Accordingly, the Applicants engaged in a process of extensive discussions and negotiations. With the input of various key players, including the Committee, the Applicants established a claims resolution process (the "Claims Resolution Process"). The Committee negotiated numerous protections in the Claims Resolution Process for the benefit of its members and consented to the Claims Resolution Order issued by this court on August 1, 2006, and approved by the U.S. court on August 11, 2006.

5 The Claims Resolution Order appoints the Honourable Edward Saunders as Claims Officer. The Claims Resolution Order also sets out the Claims Resolution Process including the delivery of a Notice of Objection to Claimants for any claims not accepted by the Monitor, the provision for a Notice of Dispute to be delivered by the Claimants who do not accept the objection of the Monitor, the holding of a hearing by the Claims Officer to resolve Disputed Claims and an appeal therefrom to this court. The definition of "Product Liability Claims" in the Claims Resolution Order provides in part:

"Product Liability Claim" means any right or claim, including any action, proceeding or class action in respect of any such right or claim, other than a Claim, Related Claim or an Excluded Claim, of any Person which alleges, arises out of or is in any way related to wrongful death or personal injury (whether physical, economic, emotional or otherwise), whether or not asserted and however acquired, against any of the Subject Parties arising from, based on or in connection with the development, advertising and marketing, and sale of health supplements, weight-loss and sports nutrition or other products by the Applicants of any of them.

.....

Nature of the Motions

6 The motions now before this court emanate from Notices of Motion originally returnable August 22, 2006 seeking:

1. An Order providing for joint hearings before Canadian and U.S. Courts and the establishment of a cross-border insolvency protocol in this CCAA proceeding, to determine the application or conflict of Canadian and U.S. law in respect of the relief requested herein.

2. An Order amending the June 8, 2006 Claims Resolution Claim to remove any portions that purport to determine the liabilities of third party non-debtors who have not properly applied for CCAA relief.

.....

3. An Order requiring the Monitor and the Applicants herein,

(a) to provide an investigator, funded by the Claimants (the "Investigator"), with access to all books and records relied upon by the Monitor in preparing its Sixth Report, including all documents listed at Appendix "2" to that report;

(b) to provide the Investigator with copies of or access to documents relevant to the investigation of the impugned transactions as the Investigator may request, and

(c) providing that the Investigator shall report back to this Honourable Court as to its findings, and a Notice of Motion returnable September 29, 2006 seeking.

4. An Order finding that the Notices of Objection sent by the Monitor/Applicants do not properly object to the Claimants' claims against non-debtor third parties;

5. An Order that the Claimants' Product Liability Claims against non-debtor third parties are deemed to be accepted by the Applicants pursuant to paragraph 14 of the Claims Resolution Order;

6. In the alternative, an Order that the Monitor, on behalf of the Applicants, provide further and better Notices of Objection properly objecting to claims against non-debtor third parties so that the Claimants may know the case they are to meet and may respond appropriately.

Analysis

7 With respect to the relief sought relating to Claims against Third Parties, the position of the Objecting Claimants appears to be that this court lacks jurisdiction to make any order affecting claims against third parties who are not applicants in a CCAA proceeding. I do not agree. In the case at bar, the whole plan of compromise which is being funded by Third Parties will not proceed unless the plan provides for a resolution of all claims against the Applicants and Third Parties arising out of "the development, advertising and marketing, and sale of health supplements, weight loss and sports nutrition or other products by the Applicants or any of them" as part of a global resolution of the litigation commenced in the United States. In his Endorsement of January 18, 2006, Farley J. stated:

the Product Liability system vis-à-vis the Non-Applicants appears to be in essence derivative of claims against the Applicants and it would neither be logical nor practical/functional to have that Product Liability litigation not be dealt with on an all encompassing basis.

8 Moreover, it is not uncommon in CCAA proceedings, in the context of a plan of compromise and arrangement, to compromise claims against the Applicants and other parties against whom such claims or related claims are made. In addition, the Claims Resolution Order, which was not appealed, clearly defines Product Liability Claims to include claims against Third Parties and all of the Objecting Claimants did file Proofs Of Claim settling out in detail their claims against numerous Third Parties.

9 It is also, in my view, significant that the claims of certain of the Third Parties who are funding the proposed settlement have against the Applicants under various indemnity provisions will be compromised by the ultimate Plan to be put forward to this court. That alone, in my view, would be a sufficient basis to include in the Plan, the settlement of claims against such Third Parties. The CCAA does not prohibit the inclusion in a Plan of the settlement of claims against Third Parties. In *Canadian Airlines Corp., Re* (2000), 20 C.B.R. (4th) 1 (Alta. Q.B.), Paperney J. stated at p. 92:

While it is true that section 5.2 of the CCAA does not authorize a release of claims against third parties other than directors, it does not prohibit such releases either. The amended terms of the release will not prevent claims from which the CCAA expressly prohibits release.

10 I do not regard the motions before this court with respect to claims against Third Parties as being made pursuant to paragraph 37 of the Claims Resolution Order which provides that a party may move before this court "to seek advice and directions or such other relief in respect of this Order and the Claims Resolution Process." The relief sought by the Objecting Creditors with respect to claims against Third Parties is an attack upon the substance of the Claims Resolution Order and of the whole structure of this CCAA proceeding which is to resolve claims against the Applicants and against Third Parties as part of a global settlement of the litigation in the United States arising out of the distribution and sale of the offending products by the Applicants. What the Objecting Claimants are, in essence, attempting to do is to vary or set aside the Claims Resolution Order. The courts have been loathe to vary or set aside an order unless it is established that there was:

- (a) fraud in obtaining the order in question;
- (b) a fundamental change in circumstances since the granting of the order making the order no longer appropriate;
- (c) an overriding lack of fairness; or

(d) the discovery of additional evidence between the original hearing and the time when a review is sought that was not known at the time of the original hearing and the time when a review is sought that was not known at the time of the original hearing and that could have led to a different result.

None of such circumstances can be established in the case at bar.

11 In any event, it must be remembered that the Claims of the Objecting Claimants are at this stage unliquidated contingent claims which may in the course of the hearings by the Claims Officer, or on appeal to this court, be found to be without merit or of no or nominal value. It also appears to me that, to challenge the inclusion of a settlement of all or some claims against Third Parties as part of a Plan of compromise and arrangement, should be dealt with at the sanction hearing when the Plan is brought forward for court approval and that it is premature to bring a motion before this court at this stage to contest provisions of a Plan not yet fully developed.

12 The Objecting Claimants also seek an order of this court that their claims against Third Parties are deemed to be accepted pursuant to paragraph 14 of the Claims Resolution Order. Section 14 of the Claims Resolution Order provides in part as follows:

This Court Orders that, subject to further order of this Court, in respect of any Claim or Product Liability Claim set out in a Proof of Claim for which a Notice of Objection has not been sent by the Monitor in accordance with paragraph 12(b) above on or before 5:00 p.m. (Eastern Standard Time) on August 11, 2006, such Claim or Product Liability Claim is and shall be deemed to be accepted by the Applicants.

13 The submission of the Objecting Claimants appears to be based on the fact that, at least in one case, the Notice of Objection appears to be an objection solely on behalf of the Applicants in that Exhibit 1 to the Notice states "the Applicants hereby object to each and all of the Ishman Plaintiffs' allegations and claims." The Objecting Claimants also point out that none of the Notices of Objection provide particulars of the objections to the Objecting Claimants' direct claims against third parties. I have some difficulty with this submission. The structure of the Claims Resolution Order is that a claimant files a single Proof of Claim setting out its Claims or Product Liability Claims and that if the Applicants dispute the validity or quantum of any Claim or Product Liability Claim, they shall instruct the Monitor to send a single Notice of Objection to the Claimant. Paragraph 12 of the Claims Resolution Order states that the Applicants, with the assistance of the Monitor, may "dispute the validity and/or quantum or in whole or in part of a Claims or a Product Liability Claim as set out in a Proof of Claim." The Notices of Objection filed with the court do, in my view, make reference to certain Product Liability Claims against Third Parties and, in some cases, in detail. More importantly, the Notices of Objection clearly state that the Applicants, with the assistance of the Monitor, have reviewed the Proof of Claim and have valued the amount claimed at zero dollars for voting purposes and zero dollars for distribution purposes. I fail to understand how anyone could read the Notices of Objection as not applying to Product Liability Claims against Third Parties as set out in the Proof of Claim. The Objecting Claimants must have read the Notices of Objection that way initially as their Dispute Notices all appear to refer to all claims contained in their Proofs of Claim. Accordingly, I find no basis on which to conclude that the Product Liability Claims against the Third Parties are deemed to have been accepted.

14 The Objecting Claimants seek, in the alternative, an order that the Monitor provide further and better Notices of Objection with respect to the claims against the Third Parties so that the Objecting Claimants may know the case they have to meet and may respond appropriately. I have some difficulty with this position. In the context of the Claims Resolution Process, I view the Objecting Claimants as analogous to plaintiffs and it is the Applicants who need to know the case they have to meet. The Proofs of Claim set out in detail the nature of the claims of the Objecting Claimants against the Applicants and Third Parties and, to the extent that the Notices of Objection do not fully set out in detail the basis of the objection with respect to each particular claim, it appears to me that this is a procedural matter, which should be dealt with by the Claims Officer and then, if the Objecting Claimants remain dissatisfied, be appealed to this court. Section 25 of the Claims Resolution Order provides:

This Court Orders that, subject to paragraph 29 hereof, the Claims Officer shall determine the manner, if any, in which evidence may be brought before him by the parties, as well as any other procedural or evidentiary matters that may arise in respect of the hearing of a Disputed Claim, including, without limitation, the production of documentation by any of the parties involved in the hearing of a Disputed Claim.

15 In fact, with respect to the medical causation issue which is the first issue to be determined by the Claims Officer, the Claims Officer has already held a scheduling hearing and has directed that by no later than August 16, 2006, all parties will file and serve all experts reports and will-say statements for all non-expert witnesses as well as comprehensive memoranda of fact of law in respect of the medical causation issues. To the extent that the Objecting Claimants appear to have some concerns as to natural justice, due process and fairness, in spite of the earlier decision of Judge Rakoff with respect to the Claims Resolution Order and the consequent amendments made to such Order, in my view, any such concerns are adequately addressed by the rulings made by the Claims Officer with respect to the hearing of the medical causation issue. I would expect that the Claims Officer would make similar rulings with respect to the other issues to be determined by him.

16 In addition, as I understand it, all three actions commenced by the Objecting Claimants in the United States were ready for trial at the time that the CCAA proceedings commenced and I would have thought, as a result, that the Objecting Claimants are well aware of the defences being raised by the Applicants and the Third Parties to their claims and as to the positions they are taking with respect to all of the claims.

17 Accordingly, it appears to me to be premature and unproductive to order further and better Notices of Objection at this time.

18 The motion seeking an order requiring the Monitor and the Applicants to provide an Investigator selected by the Objecting Claimants relates to transactions referred to by the Monitor in preparing its Sixth Report which dealt with certain transactions entered into by the Applicants with related parties prior to the institution of these CCAA proceedings. The Objecting Creditors also seek to have the Investigator provided with copies of, or access to, all documents relevant to an investigation of the impugned transactions as the Investigator may request. It appears from the evidence before this court that the Applicants prepared for the Monitor a two-volume report (the "Corporate Transactions Report") setting out in extensive detail the negotiation, documentation and implementation of the impugned transactions. Subsequently by order of this court dated February 6, 2006, the Monitor was directed to review the Corporate Transactions Report and prepare its own report to provide sufficient information to allow creditors to make an informed decision on any plan advanced by the Applicants. This review was incorporated in the Monitor's Sixth Report filed with this court and the U.S. court on March 31, 2006. In preparing its Sixth Report, the Monitor had the full cooperation of, and full access to the documents of, the Iovate Companies and Mr. Gardiner, the principal of the Iovate Companies. No stakeholder has made any formal allegation that the review conducted by the Monitor was flawed or incomplete in any way. The Monitor has also, pursuant to further requests, provided documentation and additional information to stakeholders on several occasions, subject in certain instances to the execution of confidentiality agreements particularly with respect to commercially sensitive information of the Applicants and the Iovate Companies which are Third Parties in this proceeding. There is no evidence before this court that the Monitor has, at any time, refused to provide information or to provide access to documents other than in response to a further request from the Objecting Claimants made shortly before the return date of these motions, which request is still under consideration by the Monitor. The Sixth Report is, in the opinion of the Respondents, including the Committee, a comprehensive, thorough, detailed and impartial report on the impugned transactions and I fail to see any utility in appointing another person to duplicate the work of the Monitor in reviewing the impugned transactions where there has been no allegation of any deficiency, incompleteness or error in the Sixth Report of the Monitor.

19 I also fail to see how a further report of an Investigator duplicating the Monitor's work would be of any assistance to the Objecting Claimants in making a decision as to whether to support any Plan that may be presented to this court. The alternative to acceptance of a Plan is, of course, the bankruptcy of the Applicants and I would have thought that,

equipped with the Corporate Transactions Report and the Sixth Report of the Monitor, the Objecting Claimants would have more than enough information to consider whether they wish to attempt to defeat any Plan and take their chances on the availability of relief in bankruptcy.

20 In any event, it is my understanding that, at the request of the Committee, any oppression claims or claims as to reviewable transactions have been excluded from the Claims Resolution Process.

21 The final relief sought in the motions before this court is for an Order providing for joint hearings before this court and the U.S. court and the establishment of a cross-border protocol in this proceeding to determine the application of Canadian and U.S. law or evidentiary rulings in respect of the determination of the liability of Third Parties. During the currency of the hearing of these motions, I believe it was conceded by the Objecting Claimants that the question of the applicability of U.S. law or evidentiary rulings would be addressed by the Claims Officer. The Objecting Claimants did not, on the hearing of these motions, press the need for the establishment of a protocol at this time. An informal protocol has been established with the consent of all parties whereby Justice Farley and Judge Rakoff have communicated with each other with respect to all aspects of this proceeding and I intend to follow the same practice. Any party may, of course, at any time bring a motion before this court and the U.S. court for an order for a joint hearing on any matter to be considered by both courts.

22 The motions are dismissed. Any party wishing to make submissions as to the costs of this proceeding may do so by brief written submissions to me prior to October 31, 2006.

Motions dismissed.

TAB 3

2015 ONSC 4044
Ontario Superior Court of Justice

Verge Insurance Brokers Ltd. v. Sherk

2015 CarswellOnt 9757, 2015 ONSC 4044, [2015] O.J. No. 3413, 255 A.C.W.S. (3d) 976

Verge Insurance Brokers Limited, 1729628 Ontario Inc., Marick Bros. Investments Inc. and Mark Sherk, (plaintiffs) v. Richard Sherk, Daniel Sherk, Martin, Merry & Reid Limited, Cal Schultz Insurance Brokers Ltd., Andree Senn, Brenda French and Ruth Pluska, (defendants)

J.W. Quinn J.

Heard: December 16, 2014; May 4, 2015

Judgment: June 29, 2015

Docket: St. Catharines 53982/12

Proceedings: leave to appeal refused *Verge Insurance Brokers Ltd. v. Sherk* (2015), 2015 ONSC 5614, 2015 CarswellOnt 13667, R.A. Lococo J. (Ont. S.C.J.)

Counsel: Stephen F. Gleave, Richelle M. Pollard, for Plaintiffs / Responding Parties
George Limberis, for Defendant / Moving Party, Daniel Sherk

Subject: Civil Practice and Procedure; Public; Employment

Related Abridgment Classifications

For all relevant Canadian Abridgment Classifications refer to highest level of case via History.
Civil practice and procedure

XXII Judgments and orders

XXII.13 Consent judgments or orders

XXII.13.e Miscellaneous

Headnote

Civil practice and procedure — Judgments and orders — Consent judgments or orders — Miscellaneous

Variation — Plaintiff employer V Ltd. terminated defendant employee DS's employment — V Ltd. later learned that DS was allegedly soliciting its clients through defendant C Ltd. — Plaintiffs brought action against DS and other defendants for breaches of contract, confidentiality, and fiduciary duties — DS counterclaimed for damages for wrongful dismissal — V Ltd. obtained interlocutory injunction on consent prohibiting DS and other defendants from soliciting or servicing clients of V Ltd., and gave undertaking as to damages — DS brought motion for variation of consent interlocutory injunction so that he could solicit and serve V Ltd.'s clients as long as he did not use V Ltd.'s confidential information — Motion dismissed — Parties intended that interlocutory injunction would remain in place until trial — Consent judgment could only be rectified on same grounds on which contract could be rectified, and there was no basis for doing so — There was no inherent jurisdiction to vary consent order — Jurisdiction to vary consent order by means of motion brought pursuant to R. 59.06(2)(b) and (d) of Rules of Civil Procedure was confined to express language of those Rules — Court should not upset bargain struck by parties, as evidenced by their consent, freely and voluntarily given — Plaintiffs were not required to defend or justify substantive merits of consent interlocutory injunction.

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Ciba-Geigy Ltd. v. Novopharm Ltd. (1997), 77 C.P.R. (3d) 428, 1997 CarswellNat 2400, (sub nom. *CIBA-Geigy Canada Ltd. v. Novopharm Ltd.*) 141 F.T.R. 95, 16 C.P.C. (4th) 298, [1998] 2 F.C. 527, 1997 CarswellNat 2822 (Fed. T.D.) — distinguished

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McCowan v. McCowan (1995), 14 R.F.L. (4th) 325, 24 O.R. (3d) 707, 84 O.A.C. 125, 1995 CarswellOnt 435 (Ont. C.A.) — considered

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s. 146 — considered

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R. 37.14(1) — considered

R. 37.14(1)(c) — considered

R. 37.14(2) — considered

R. 40.03 — considered

R. 59.06 — considered

R. 59.06(1) — considered

R. 59.06(2) — considered

R. 59.06(2)(a) — considered

R. 59.06(2)(b) — considered

R. 59.06(2)(c) — considered

R. 59.06(2)(d) — considered

Words and phrases considered:

interlocutory injunction

I have always regarded an interlocutory injunction as one lasting until trial, when the rights of the parties are finally determined, whereas an interim injunction is for a defined period of time irrespective of the trial date.

MOTION by defendant to vary consent judgment providing for interlocutory injunction.

J.W. Quinn J.:

I. Introduction

1 This motion highlights the relative sanctity of a consent order.

2 The parties are involved in a hornets' nest of litigation, fueled by a soap opera display of ill will and family betrayal. Motions abound. The one currently before the court seeks a variation of an interlocutory injunction granted on consent.

3 Pursuant to that injunction, one of the defendants, Daniel Sherk, was prohibited from engaging in certain activities connected with his employment as an insurance salesman. His notice of motion, dated July 4, 2014, asks for an order "varying" the consent interlocutory injunction "by substituting" other provisions. Rules 37.14 and 59.06 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 are cited.

4 The motion evolved to the point where, in his factum of May 19, 2015, the moving party sought to "suspend and amend" the injunction, using, in his words, Rules 59.06(2)(b) and (d) "in tandem."

5 Also in that factum, the matter was phrased in the form of this question:

Should the present injunction be suspended and amended pursuant to Rules 59.06(2)(b) or (d)?

6 Another description of what the moving party is asking for is seen in a letter from his counsel on May 25, 2015: [Underlining added]

We are looking to suspend the parts of the interlocutory injunction order that restrict [the moving party] from soliciting or servicing clients of Verge [Insurance] and are asking the provisions to be substituted that allow the same to occur ... so as to allow [the moving party] to resume his business and his livelihood ...

7 Thus, we went from: "varying... by substituting"; to, "suspend and amend" pursuant to Rules 59.06(2)(b) and (d) "in tandem"; to, suspend and amend pursuant to Rules 59.06(2)(b) or (d); to, "suspend the parts... [with] provisions to be substituted."

8 Whatever language the moving party wishes to use, he argues that:

- "the fiduciary duty he allegedly owed has arguably expired, as have the restrictive covenants in his employment agreement";
- "if the injunction ever had a legal justification, that justification has evaporated";
- despite the fact that the order here was made on consent, a distinction should be made between an order disposing of substantive rights on a final basis and one that deals with procedural rights and obligations;
- the passage of time since the order was made, the delay by the plaintiffs in bringing this matter to trial and the change in circumstances warrant a variation;
- the court has a general or inherent jurisdiction to vary a consent order and should do so where the circumstances surrounding the original order have so changed that it would be unjust to continue to enforce the order in its present form;
- the injunction should be suspended and amended pursuant to a combination of Rules 59.06(2)(b) and (d).

9 The plaintiffs oppose the motion, contending that:

- Rules 59.06(2)(b) and (d) cannot be used as proposed by the moving party;
- the court lacks inherent jurisdiction under Rule 59.06(2)(b) and (d) to consider the interests of justice;
- the power to vary a consent order is restricted to the express provisions of Rule 59.06(2);
- a consent order may only be varied where, if it were a contract, it could be rectified.

II. Background

1. The plaintiffs

10 The plaintiff, Verge Insurance Brokers Limited ("Verge"), is a company that carries on business as an insurance broker. The head office of Verge is located in the City of St. Catharines. Verge and its related and subsidiary companies constitute the largest general insurance brokerage in the Niagara Peninsula. Verge is successful. Very successful. I have seen the valuations.

11 The plaintiff, Mark Sherk ("Mark"), is the president and managing director of Verge. He owns 50% of its shares.

12 The role of the other two corporate plaintiffs is such that I need not mention them further for the purposes of this decision.

2. The defendants

13 The defendant, Richard Sherk ("Richard"), is the brother of Mark. He is an officer and director of Verge and he owns the other 50% of the shares.

14 The defendant, Daniel Sherk ("Daniel"), is a former salesman at Verge and the son of Richard. Daniel has brought the variation motion now before the court.

15 The defendant, Cal Schultz Insurance Brokers Ltd. ("CSI"), is a company that carries on business as an insurance broker in the City of Burlington. It is said that CSI is the competitor who knowingly benefited from the alleged wrongdoing of Richard and Daniel.

16 The remaining defendants need not be described for an understanding of the motion.

3. The nature of the action and allegations

17 On April 3, 2012, Richard, having reached the age of 65 years, retired from Verge. On May 3, 2012, Daniel, a 13-year employee of Verge, was fired on the grounds of "inappropriate conduct toward a co-worker as well as insubordination." I am not aware that the retirement of Richard was controversial (it being age-related), however, Daniel disputes the grounds for his firing.

18 Verge continued to pay Daniel's salary until late in August of 2012, at which time it was discontinued upon learning that Daniel allegedly was soliciting clients from Verge.

19 In October of 2012, a statement of claim was issued and subsequently amended.

20 According to the amended statement of claim, it is said that Verge earns revenues by commissions on the sale of insurance products to clients, with the commissions being based upon a percentage of the premiums paid by the clients to insurance companies. Verge also is paid monies by insurance companies in accordance with the level of sales by Verge of the products of those companies. Consequently, a loss of clients produces, at least, a double-barreled direct financial loss to Verge.

21 In their amended statement of claim, the plaintiffs allege, in part, that Richard:

- breached his employment contract with Verge;
- "breached the non-competition covenant in the Shareholders' Agreement by entering into competitive activities against Verge and directing and encouraging clients to take their business to another brokerage";
- "breached his duty of confidence at common law and under his employment contract to keep all confidential information belonging to Verge in strict confidence";
- "breached his fiduciary duties owed to Mark and Verge by using confidential information and encouraging and assisting clients to cease doing business with Verge";
- "knowingly and intentionally used unlawful means and interfered in Verge's contractual relations by using confidential information relating to clients to encourage and assist the clients and insurance companies to take their business to a competitor [CSI]"; and
- "conspired with Daniel, CSI, French [a co-owner of CSI], Pluska [the other co-owner of CSI] [and] Senn [a former senior executive of Verge] ... to misappropriate the clients and confidential information of Verge for the purpose to injure Verge's business."

22 Similar allegations are made in the amended statement of claim against Daniel, with the principal ones being:

- that he wrongfully solicited the clients of Verge by using confidential information (including a client list he is said to have stolen from Verge when his employment was terminated) for the purpose of transferring business to CSI;
- that, by doing so, he breached restrictive covenants in his contract of employment; and
- that he breached fiduciary duties allegedly owing to Verge.

23 As for CSI, the amended statement of claim contends that it:

- "intentionally and knowingly encouraged and assisted" Daniel and Richard to breach their duties to Verge;
- "has an ongoing plan to work with Daniel and Richard to use Verge's confidential information to solicit clients and take their business from Verge and assign the business to CSI";
- "misappropriated and misused Verge's confidential information relating to its clients";
- "knowingly and intentionally [together with Richard and Daniel] interfered with Verge's contracts and induced breach of contract"; and
- "conspired with Daniel and Richard to wrongfully terminate the contracts and relationships between Verge and its clients."

4. Counterclaim

24 Daniel has counterclaimed, alleging wrongful dismissal.

25 He also seeks a declaration that the restrictive covenant, in section 7 of his employment agreement with Verge, is void. The statement of claim does not plead section 7. Indeed, the reply and defence to counterclaim delivered by the plaintiffs (following the consent interlocutory injunction that is the subject-matter of this motion) states that they are relying upon neither the non-solicitation clause in section 7.01(b) nor the term "know-how" in section 7.01(d).

26 Section 7 reads, in part:

NON-COMPETITION AND CONFIDENTIALITY

7.01 [Daniel] warrants, covenants and agrees that:

(a) N/A

(b) during the term of this Agreement and for the period(s) of:

(i) six (6) months;

(ii) twelve (12) months;

(iii) eighteen (18) months;

(iv) twenty-four (24) months;

after the termination of the Agreement for any reason ... [Daniel] shall not ... contact, solicit, or otherwise attempt to contact for purposes of selling insurance any of the clients, customers or accounts of ... [Verge] ... whether or not such clients, customers or accounts... were originally solicited by [Daniel] during the term of this Agreement...

(c) N/A

(d) [Daniel] recognizes and acknowledges that all information relating to [Verge]'s business ..., its know-how, trade secrets and the particular way in which [Verge] generally conducts its business is a valuable, special and unique asset of [Verge]. [Daniel] covenants and agrees that all information obtained during the term of this Agreement shall be held by [Daniel] as a trustee for [Verge] ... [Daniel] covenants and agrees that he ... will not, during or after the term of this Agreement, disclose any secret or confidential information ...

(e) N/A

(f) N/A

27 Section 7.01(b) is ambiguously worded such that one is unable to determine the applicable timeframe. Nevertheless, even if the longest period is selected (24 months), it has now expired (Daniel was terminated on May 3, 2012).

5. Interim injunction (January 22, 2013)

28 Verge brought a motion against Daniel, Richard and CSI for an interlocutory injunction. Pending the date when the motion was to be argued, Ramsay J. considered contested terms for an uncontested adjournment, and made an interim injunction in favour of Verge which prohibited Daniel, Richard and CSI from soliciting or servicing the clients of Verge. The interim injunction, dated January 22, 2013, provides: [Underlining and footnote added]

(1) THIS COURT ORDERS that the defendants, Richard Sherk, Daniel Sherk and CSI Insurance Brokers Ltd. ('CSI'), deliver up any of Verge's confidential documents and information in the defendants' possession, power or control, including, but not limited to all confidential information.

(2) THIS COURT FURTHER ORDERS that the defendants, Richard Sherk, Daniel Sherk and CSI are prohibited from using, reproducing, selling, disseminating or otherwise disclosing documents and confidential information belonging to Verge.

(3) THIS COURT FURTHER ORDERS the defendants, Richard Sherk, Daniel Sherk and CSI and their officers, directors, employees and agents to preserve all written communications between themselves, each other and clients regarding the use of Verge's confidential information including e-mails and other electronic communications.

(4) THIS COURT FURTHER ORDERS the defendants, Richard Sherk, Daniel Sherk and CSI and their officers, directors, employees and agents requiring the defendants and their officers, directors, employees and agents to diarize all verbal communications they have had or may have in the future relating to the confidential information of Verge and dealings with Verge's clients.

(5) THIS COURT FURTHER ORDERS that defendants, Richard Sherk, Daniel Sherk and CSI, are prohibited from soliciting or servicing Verge's present or former clients and from interfering with Verge's contractual relations and economic interests. CSI is not prohibited from servicing Verge's former clients who have decided to go to CSI without having been solicited by the defendants, Richard Sherk, Daniel Sherk and CSI.

(6) THIS COURT FURTHER ORDERS that Richard Sherk is prohibited from working for, financially supporting and advising CSI or its officers, directors, shareholders and employees. *Richard Sherk is allowed to support his son Daniel in the context of a father-son relationship.*¹

(7) THIS COURT FURTHER ORDERS that for the purposes of this order, the plaintiff, Verge, includes the following companies: Stewart McGuiness Insurance Brokers Ltd.; 1254224 Ontario Inc. (Reimer-Verge); Kannegieter-Zimmerman Ins. Brokers Ltd.; A.B. & J.L White Insurance Brokers Ltd.; 1255653 Ontario Inc. (Milmine Insurance); 1729628 Ontario Inc.; Niagara Insurance Managers Ltd.; Marick Bros. Investments Ltd.; 1760107 Ontario Inc.

6. Minutes of settlement and interlocutory injunction (May 6, 2013)

29 On April 22, 23, 25, May 1 and 6, 2013, I partially heard several motions brought by the parties.

30 On May 6, 2013, I granted an interlocutory injunction pursuant to minutes of settlement. The relevant portions of the injunction state:

1. THIS COURT ORDERS that Mr. Justice Ramsay's interim order dated January 22, 2013 ('the January 22nd interim order') shall continue as against Richard and Daniel until the trial of this action, except that the following language shall be substituted for paragraph 5 of the January 22nd interim order:

5. THIS COURT ORDERS that Richard and Daniel are prohibited from soliciting or servicing the present customers of the plaintiff Verge Insurance Brokers Limited ('Verge') and from interfering with Verge's contractual relations and economic interests and that Richard and Daniel are prohibited from soliciting or inducing producers presently employed by Verge to leave Verge and to seek employment elsewhere in the insurance brokerage in Ontario.

2. THIS COURT ORDERS that the plaintiffs' ... [production motion] as against Richard and Daniel is stayed.

31 Under this consent interlocutory injunction, Daniel is free to obtain employment, and to engage in his chosen career, anywhere in Ontario.

32 Daniel resigned from his employment with CSI on May 6, 2013. It was a term of the minutes of settlement that he do so. CSI, since then, has settled the action with the plaintiffs.

33 The motion by Daniel, now before the court, seeks to vary paragraph 5 of the May 6th interlocutory injunction to allow him to solicit and service clients of Verge, as long as he does not use Verge's confidential information. Specifically, Daniel wishes to substitute the following for paragraph 5 of the May 6th interlocutory injunction:

5. THIS COURT ORDERS that Richard is prohibited from soliciting or servicing the present customers of the plaintiff Verge Insurance Brokers Limited ('Verge') and from interfering with Verge's contractual relations and economic interests and that Richard is prohibited from soliciting or inducing producers presently employed by Verge to leave Verge and to seek employment elsewhere in the insurance brokerage in Ontario.

5a. THIS COURT ORDERS that Daniel can solicit past and current customers of Verge, but is prohibited from using Verge confidential business information to solicit or service the present customers of Verge.

34 I will set out the three versions of paragraph 5 to permit a side-by-side comparison:

Interim injunction of January 22
5. THIS COURT FURTHER ORDERS that defendants, Richard Sherk, Daniel Sherk and CSI, are prohibited from soliciting or servicing Verge's present or former clients and from interfering with Verge's contractual relations and economic interests. CSI is not prohibited from servicing Verge's former clients who have decided to go to CSI without having been solicited by the defendants, Richard Sherk, Daniel Sherk and CSI.

Interlocutory injunction of May 6
5. THIS COURT ORDERS that Richard and Daniel are prohibited from soliciting or servicing the present customers of the plaintiff Verge Insurance Brokers Limited ('Verge') and from interfering with Verge's contractual relations and economic interests and that Richard and Daniel are prohibited from soliciting or inducing producers presently employed by Verge to leave Verge and to seek employment elsewhere in the insurance brokerage in Ontario.

Variation sought
5. THIS COURT ORDERS that Richard is prohibited from soliciting or servicing the present customers of the plaintiff Verge Insurance Brokers Limited ('Verge') and from interfering with Verge's contractual relations and economic interests and that Richard is prohibited from soliciting or inducing producers presently employed by Verge to leave Verge and to seek employment elsewhere in the insurance brokerage in Ontario.

5a. THIS COURT ORDERS that Daniel can solicit past and current customers of Verge, but is prohibited from using Verge confidential business information to solicit or service the present customers of Verge.

35 On behalf of Verge it is argued that Daniel, by this variation motion, seeks to "recapture the benefit" of section 5 of the May 6th interlocutory injunction that "he gave away to Verge at that time," thereby robbing the consent injunction of any efficacy.

7. Minutes of settlement were very early in the action

36 When the minutes of settlement were signed on May 6, 2013, pleadings had not been completed. There were outstanding motions by the plaintiffs (to strike all or part of Daniel's counterclaim) and by Daniel (pursuant to Rules 20 and 21 of the *Rules of Civil Procedure*).

37 It also must be noted that, when the May 6th minutes of settlement were signed, there was an outstanding production motion by Verge in which e-mails and text messages passing among the defendants (allegedly in furtherance of the conspiracy pleaded in the amended statement of claim) were sought. Paragraph 4 of the minutes of settlement states:

4. If, at a later stage in this action, the plaintiffs allege that Richard and/or Daniel have not complied with their obligations under Rule 29.1 (Discovery Plan) and/or Rule 30 (Discovery of Documents) then the plaintiffs may move for a remedy at that time.

38 Consequently, when the interlocutory injunction of May 6, 2013 was granted, a trial was far, far in the distance. The finish line for the action was not even slightly visible.

39 On May 6, 2013, it would have been obvious that May 3, 2015, the two year anniversary of Daniel's firing, would come and go without a trial having taken place.

40 I harbor not the daintiest doubt that, had Daniel proposed a time limit on the interlocutory injunction, Verge would never have signed the minutes of settlement; and, with a time limit, it would not have been an interlocutory injunction.

41 I have always regarded an interlocutory injunction as one lasting until trial, when the rights of the parties are finally determined, whereas an interim injunction is for a defined period of time irrespective of the trial date. Here, the January 22, 2013 injunction was described as "interim" and the May 6, 2013 injunction was labeled as "interlocutory," which suggests to me that the parties turned their minds to that distinction. In other words, the intention of the parties was that the interlocutory injunction would remain in place until trial.

8. Undertaking as to damages

42 Both paragraph 10 of the minutes of settlement and paragraph 5 of the May 6th interlocutory injunction required the plaintiffs to provide the undertaking as to damages stipulated by Rule 40.03:

40.03 On a motion for an interlocutory injunction ... the moving party shall... undertake to abide by any order concerning damages ... that the granting of the order has caused... to the responding party ...

43 The undertaking was provided by the plaintiffs.

9. Production motion

44 Subsequently, Verge moved for a further and better affidavit of documents from Richard and Daniel and sought a forensic review of their electronic devices for the purposes of identifying and recovering deleted texts and e-mails. Verge alleges that there has been spoliation of evidence. That motion remains outstanding.

III. Discussion

1. Rules relied upon

45 The notice of motion cites Rules 37.14 and 59.06 of the *Rules of Civil Procedure* as the grounds relied upon. Rule 59.06 reads:

AMENDING, SETTING ASIDE OR VARYING ORDER

59.6 (1) Amending - An order that contains an error arising from an accidental slip or omission or requires amendment in any particular on which the court did not adjudicate may be amended on a motion in the proceeding.

(2) Setting aside or varying - A party who seeks to,

- (a) have an order set aside or varied on the ground of fraud or of facts arising or discovered after it was made;
- (b) suspend the operation of an order;

(c) carry an order into operation; or

(d) obtain other relief than that originally awarded,

may make a motion in the proceeding for the relief claimed.

46 Rule 59.06(1) is not applicable and was not mentioned in argument.

47 After much initial confusion, it is now expressly acknowledged that the moving party is not relying upon Rule 59.06(2)(a).

48 Rule 59.06(2)(c) does not apply in this case.

49 What remains are Rules 59.06(2)(b) and (d), and it is under those Rules that the motion has been argued.

2. Rules 37.14(1) and (2)

50 Rules 37.14(1) and (2) state, in part:

37.14 (1) Motion to set aside or vary - A party or other person who,

(a) is affected by an order obtained on motion without notice;

(b) fails to appear on a motion through accident, mistake or insufficient notice; or

(c) is affected by an order of a registrar, may move to set aside or vary the order ...

(2) On a motion under subrule (1), the court may set aside or vary the order on such terms as are just.

51 In reviewing the cases supplied by the parties, particularly the ones upon which the moving party relies, it is important to distinguish those decided under Rule 59.06(2) and those decided under Rule 37.14. The latter are not of assistance, as Rule 37.14(2) allows the court to set aside or vary an order "on such terms as are just" and similar language is missing in Rule 59.06(2).

52 Consequently, the following cases referenced by counsel for the moving party are not helpful in my task:

• *Beetown Honey Products Inc., Re* (2003), 67 O.R. (3d) 511 (Ont. S.C.J.); [2004] O.J. No. 4329 (Ont. C.A.) (Although Rule 37.14 is not mentioned, the order in issue there was made by the registrar and, therefore, falls under Rule 37.14(c));

• *Stoughton Trailers Canada Corp. v. James Expedite Transport Inc.*, 2008 CarswellOnt 7344 (Ont. S.C.J.); [2008] O.J. No. 4864 (Ont. C.A.) (Although the Court of Appeal did not cite a Rule, the Rule relied upon in the lower court was Rule 37.14(1)).

3. Varying a consent order is like rectifying a contract

53 The crux of this motion lies in the fact that the May 6, 2013 interlocutory injunction is a consent order.

54 "A consent judgment is final and binding and can only be amended when it does not express the real intention of the parties or where there is fraud. In other words, a consent judgment can only be rectified on the same grounds on which a contract can be rectified": see *Monarch Construction Ltd. v. Buldevco Ltd.* (1988), 26 C.P.C. (2d) 164 (Ont. C.A.) at pp. 165-166.

55 "[A] consent judgment may be set aside on the same grounds as the agreement giving rise to the judgment. These grounds go to the formation of the agreement ...": see *McCowan v. McCowan* (1995), 14 R.F.L. (4th) 325 (Ont. C.A.) at para. 19. This statement was approved by the Supreme Court Canada in *Rick v. Brandsema*, [2009] 1 S.C.R. 295 (S.C.C.) at para. 64. The Supreme Court went on to quote the late James G. McLeod in an annotation (one of countless informative annotations that were the trademark of Professor McLeod in the *Reports of Family Law*) to *Thomsett v. Thomsett*, 2001 BCSC 546, 16 R.F.L. (5th) 427 (B.C. S.C.) at pp. 428-29:

... a consent judgment is not a judicial determination on the merits of a case but only an agreement elevated to an order on consent. The basis for the order is the parties' agreement, not a judge's determination of what is fair and reasonable in the circumstances.

56 A recent reaffirmation of the consent-order-is-a-contract principle is found in *Ruffudeen-Coutts v. Coutts*, [2012] O.J. No. 400 (Ont. C.A.) at para. 63, where the Court says, "... consent orders have their foundation in contract..." and refers to *Rick v. Brandsema*, *supra* and *Monarch Construction Ltd. v. Buildveco Ltd.*, *supra*.

57 In *McCowan v. McCowan*, *supra*, at para. 21, it was expressly recognized that the minutes of settlement in that case were "the underlying agreement" or "the agreement giving rise to the consent judgment."

4. Inherent jurisdiction

58 The moving party submits that, irrespective of the *Rules*, there is an inherent jurisdiction in the court to grant the relief requested. The submission is phrased in these words:

... to deal with this specific issue - the consent form of the order - [the moving party] relies on the concept of inherent jurisdiction ... the consent form of an order does not deprive this court of the jurisdiction it would otherwise enjoy to vary or set aside that order.

(a) inherent jurisdiction defined

59 "Inherent jurisdiction is a power derived from the very nature of the court as a superior court of law, permitting the court to maintain its authority and to prevent its process being obstructed and abused": see *Stelco Inc., Re* [2005 CarswellOnt 1188 (Ont. C.A.)], 2005 CanLII 8671 at para. 34, citing with approval I. H. Jacob, "The Inherent Jurisdiction of the Court" (1970), 23 Current Legal Problems at pp. 27-28.

60 "[T]he inherent jurisdiction of the court is ... a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so": see Halsbury's Laws of England, 4th ed. (London: LexisNexis UK, 1973), vol. 37, at para. 14.

(b) inherent jurisdiction is not to conflict with Rule

61 "[T]he inherent jurisdiction of the Court of Queen's Bench is not such as to empower a judge of that Court to make an order negating the unambiguous expression of the legislative will": see *Baxter Student Housing Ltd. v. College Housing Co-operative Ltd.* (1975), [1976] 2 S.C.R. 475 (S.C.C.) at p. 480.

62 "Inherent jurisdiction cannot, of course, be exercised so as to conflict with a statute or Rule": see *Montreal Trust Co. v. Churchill Forest Industries (Manitoba) Ltd.*, [1971] 4 W.W.R. 542 (Man. C.A.) at p. 547, cited with approval in *Baxter Student Housing Ltd. v. College Housing Co-operative Ltd.*, *ibid.*

(c) inherent jurisdiction limited to filling gaps

63 "In spite of the expansive nature of this power, inherent jurisdiction does not operate where Parliament or the legislature has acted": see *Stelco Inc., Re*, *supra*, at para. 35.

64 Inherent jurisdiction is "not limitless; if the legislative body has not left a functional gap or vacuum, then inherent jurisdiction should not be brought into play": see *Royal Oak Mines Inc., Re*, [1999] O.J. No. 864 (Ont. Gen. Div. [Commercial List]), cited with approval in *Stelco Inc., Re, ibid*.

65 "[W]here the usefulness of the powers under the Rule ends, the usefulness of the powers of inherent jurisdiction begins... they are wider and more extensive powers ... filling any gaps left by the Rules ...": see I. H. Jacob, "The Inherent Jurisdiction of the Court" (1970), 23 *Current Legal Problems* at pp. 50-51.

66 Furthermore, s. 146 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 restricts the scope of inherent jurisdiction to situations where there is an "absence of express provision for procedures ...":

146. Where procedures not provided - Jurisdiction conferred on a court, a judge or a justice of the peace shall, in the absence of express provision for procedures for its exercise in any Act, regulation or rule, be exercised in any manner consistent with the due administration of justice.

(d) *no inherent jurisdiction under Rule 59.06(2)(a)*

67 "The respondent cannot avoid the effect of [Rule 59.06(2)(a)] by invoking the inherent jurisdiction of the court": see *Trainor v. Canada (Customs & Revenue Agency)*, [2012] O.J. No. 2665 (Ont. Div. Ct.) at para. 7; affirmed, 2011 ONCA 794 (Ont. C.A.).

68 In a motion brought pursuant to Rule 59.06(2)(a), it is not open to the court to invoke its inherent jurisdiction. Inherent jurisdiction is limited to cases in which there is "jurisdiction conferred on a court and an absence of express provision for procedure for its exercise in any Act, regulation or rule": see the Divisional Court decision in *Estate of Goldentuler v. Crosbie*, 2014 ONSC 6441 (Ont. S.C.J.) (CanLII) at para. 34, relying upon earlier authorities.

69 If there is no inherent jurisdiction under Rule 59.06(2)(a), why should there be one under Rules 59.06(2)(b) and (d)?

(e) *no inherent jurisdiction to vary a consent order*

70 "Although the limits of a Superior Court's power in the exercise of its inherent jurisdiction are not fully defined, there are nevertheless limits that have been established in certain areas and the power of a Court to vary a consent order is one of them": see *Golden Forest Holdings Ltd. v. Bank of Nova Scotia* [1990 CarswellNS 63 (N.S. C.A.)], 1990 CanLII 2489 at pp. 4-5 after citing, with approval, *Monarch Construction Ltd. v. Buildveco Ltd., ibid*.

5. Consent order "is an integrated whole"

71 "A consent order ... is an integrated whole unless specifically provided otherwise": see *Shackleton v. Shackleton*, 1999 BCCA 704 (B.C. C.A.) (CanLII) at para. 14.

72 A consent order represents an agreement reached by the parties. A court rarely, very rarely, should pick and choose what part or parts of that agreement may be reworded or otherwise excused from enforcement.

6. Rule 59.06(2) - no distinction between final and interlocutory orders

73 Rule 59.06(2) does not distinguish between final and interlocutory orders.

7. Rule 59.06(2)(b)

74 Rule 59.06(2)(b) deals with suspending the operation of an order. This Rule only applies to a total suspension of an order. Motions that seek to suspend a portion or parts of an order are not within the contemplation of Rule 59.06(2)(b): see *L.M. Rosen Realty Ltd. v. D'Amore*, 1988 O.J. No. 1113 (Ont. H.C.) at p. 3 (QL).

75 The moving party at bar is asking for parts of the consent injunction to be suspended. This is apparent in the earlier quote from the letter of May 25, 2015, which I will repeat: [Underlining added]

We are looking to suspend the parts of the interlocutory injunction order that restrict [the moving party] from soliciting or servicing clients of Verge [Insurance] and are asking the provisions to be substituted that allow the same to occur ... so as to allow [the moving party] to resume his business and his livelihood ...

76 Suspending only part of an order is the equivalent of a variation.

8. Rule 59.06(2)(d)

77 Rule 59.06(2)(d) allows a party to move to "obtain other relief than that originally awarded" and is available only to a party who was granted relief on the original motion: see *Eastwalsh Homes Ltd. v. Anatal Development Corp.*, [1990] O.J. No. 2207 (Ont. Gen. Div.) at p. 4 (QL).

78 That is not what happened here. Relief was not granted to the moving party; and, the consent nature of the order does not negate the fact that relief was granted to the plaintiffs on the original motion.

9. May Rules 59.06(2)(b) and (d) be used in tandem to amend an order?

79 The moving party cites *Wason v. Farmers' Mutual Fire Insurance Co. (Lindsay)*, [1996] O.J. No. 3848 (Ont. Gen. Div.) as authority for the proposition that Rule 59.06(2)(b) may be used to suspend an order and Rule 59.06(2)(d) may be used to substitute a new order and that "the two provisions may be used, in tandem, to amend an existing order."

80 If that is the *ratio decidendi* in *Wason v. Farmers' Mutual Fire Insurance Co. (Lindsay)*, I think that it is bad law. Orders are amended under Rule 59.06(1) which stipulates certain precise criteria. One should not be able to skirt Rule 59.06(1) by resorting to a brew of Rules 59.06(2)(b) and (d).

81 As well, it does not make sense that a litigant may avoid the onerous requirements of Rule 59.06(2)(a) by concocting a two-step fiction involving Rule 59.06(2)(b) and (d).

10. Passage of time and delay

82 As I indicated at the outset, the moving party argues that "the fiduciary duty he allegedly owed has arguably expired, as have the restrictive covenants in his employment agreement ... [and], if the injunction ever had a legal justification, that justification has evaporated." This is a matter for trial. Credibility is a cancerous issue for every party in the various ongoing pieces of the Verge Insurance litigation.

83 Although the moving party submits that "the plaintiffs have utterly failed in their obligation to bring the present matter to trial," I am not satisfied that this submission is factually sound.

11. Change of circumstances

84 The moving party further argues that the court has an inherent jurisdiction to vary a consent order and should do so where the circumstances surrounding the original order have so changed that it would be unjust to continue to enforce the order in its present form.

85 "... Rule 59.06(2)... does not come into play where ... the plaintiff has a change in position or change in circumstances": see *Hall v. Powers* (2005), 80 O.R. (3d) 462 (Ont. S.C.J.) at para. 13.

86 Even if an inherent jurisdiction exists, it should not be used here to upset the fairly-negotiated bargain of the parties.

11. Some cases upon which moving party relies

87 The moving party relies upon certain cases that I think are distinguishable from the matter before me and, therefore, are unhelpful for the reasons parenthetically indicated:

- *Bourganis v. Glarentzos*, [1978] O.J. No. 3311 (Ont. H.C.) (This case did not involve a consent order or Rule 59.06(2).)
- *Chitel v. Rothbart* (1984), 42 C.P.C. 217 (Ont. Master); affirmed (1985), 2 C.P.C. (2d) xlix (Ont. Div. Ct.) (No Rule was cited in this case.)
- *Ciba-Geigy Ltd. v. Novopharm Ltd.*, 1997 CarswellNat 2400 (Fed. T.D.) (This case did not involve a consent order or Rule 59.06(2).)
- *Wilkinson v. Yat Ming Industrial Factory Ltd.*, [2003] O.J. No. 1385 (Ont. S.C.J.) (The consent order was set aside in circumstances where it was found that, in agreeing to the order, counsel for one of the parties was not acting on the instructions of his client. Therefore, that decision is merely consistent with the principle that a court can vary or set aside an order where the order does not express the real intention of the parties.)
- *Lever Personnel Resources Inc. v. LeClair*, [2007] O.J. No. 5013 (Ont. S.C.J.) (The order being considered there was not a consent order.)
- *Malata Group (HK) Ltd. v. Jung*, [2009] O.J. No. 3620 (Ont. S.C.J. [Commercial List]) (Although this was a motion to vary a consent order, it was decided with neither the moving party nor the court mentioning any rule under the *Rules of Civil Procedure*.)
- *1516089 Ontario Inc. v. Jacobs*, 2011 CarswellOnt 2212 (Ont. S.C.J.) (This case did not involve a consent order or Rule 59.06(2).)
- *Mould Clean Laboratories Ltd. v. Fort Albany First Nation*, 2013 ONSC 66 (Ont. S.C.J.) (While the motion was brought pursuant to Rule 59.06(2), the court relied upon *Beetown Honey Products Inc., Re, supra*, and *Stoughton Trailers Canada Corp. v. James Expedite Transport Inc., supra*, which were decided under Rule 37.14.)
- *Cookish v. Paul Lee Associates Professional Corp.*, 2013 CarswellOnt 5070 (Ont. C.A.) (This decision centres around an interpretation of the *Solicitors Act*. Rule 59.06 is not mentioned. The Court references *Beetown Honey Products Inc., Re, supra*, and *Stoughton Trailers Canada Corp. v. James Expedite Transport Inc., supra*, which, as I have said, arose under Rule 37.14. And the Court does not mention *Monarch Construction Ltd. v. Buildveco Ltd., supra*, *Rick v. Brandsema, supra*, and *McCowan v. McCowan, supra*.)
- *Nicholas C. Tibollo Professional Corp. v. Wasserman Associates Inc.*, 2013 ONSC 2685 (Ont. Div. Ct.) (This case does not involve a true consent order. Also, the initial order was that of the local registrar and, therefore, comes under Rule 37.14(2). Finally, this case relied upon *Cookish v. Paul Lee Associates Professional Corp., supra*, which I already have addressed.)

12. Conclusion

88 The jurisdiction to vary a consent order by means of a motion brought pursuant to Rules 59.06(2)(b) and (d) of the *Rules of Civil Procedure* is confined to the express language of those Rules. This is particularly fair and sensible in the case of a consent interlocutory injunction wherein the enjoined party has the benefit of the damages undertaking in Rule 40.03:

40.03 On a motion for an interlocutory injunction or mandatory order, the moving party shall, unless the court orders otherwise, undertake to abide by any order concerning damages that the court may make if it ultimately

appears that the granting of the order has caused damage to the responding party for which the moving party ought to compensate the responding party.

89 In my opinion, this court should not upset the bargain struck by the parties, as evidenced by their consent (freely and voluntarily given).

90 In response to this variation motion the plaintiffs are not required to defend or to justify the substantive merits of the consent interlocutory injunction.

91 If there is an injustice to the moving party by means of a continuation of the interlocutory injunction (and it is too early to conclude one way or another), his remedy is the damages undertaking.

IV. Result

92 The motion is dismissed. Counsel should await further instructions as to costs submissions.

Motion dismissed.

Footnotes

1 On February 4, 2013, Ramsay J. added the underlined sentence to paragraph 6.

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)**

Proceeding commenced at Toronto

**RESPONDING BRIEF OF
AUTHORITIES OF
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