

**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

**THIRTY-SIXTH REPORT OF THE MONITOR
ALVAREZ & MARSAL CANADA INC.**

SEPTEMBER 1, 2017

TABLE OF CONTENTS

1.0	INTRODUCTION.....	1
2.0	TERMS OF REFERENCE AND DISCLAIMER	4
3.0	PROCEDURAL BACKGROUND	5
4.0	BELL’S ORIGINAL CLAIMS.....	10
5.0	BELL’S PROPOSED AMENDED CLAIMS.....	12
6.0	CONSIDERATIONS	13
7.0	REQUEST FOR ADVICE AND DIRECTIONS	16

INDEX TO APPENDICES

Appendix A– List of Applicants and Partnerships

Appendix B – Late Claims Order, attaching Late Claims Decision as Schedule A

Appendix C – Law Excerpts from Monitor’s Thirty-Second Report

1.0 INTRODUCTION

- 1.1 On January 15, 2015, Target Canada Co. (“**TCC**”) and those companies listed in **Appendix A** (collectively, the “**Applicants**”), together with the Partnerships also listed in **Appendix A** (the “**Partnerships**”, and collectively with the Applicants, the “**Target Canada Entities**”), applied for and were granted protection by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). Pursuant to an Order of this Court dated January 15, 2015, Alvarez & Marsal Canada Inc. (“**A&M**”) was appointed Monitor of the Target Canada Entities in the CCAA proceedings (the “**Monitor**”). The proceedings commenced by the Applicants under the CCAA are referred to herein as the “**CCAA Proceedings**”.
- 1.2 On February 11, 2015, this Court issued the “**Amended and Restated Initial Order**” (hereinafter, unless the context otherwise requires, the “**Initial Order**”), which incorporates certain changes to the Initial Order granted January 15, 2015 that were described in the Second Report of the Monitor dated February 9, 2015.
- 1.3 In connection with the CCAA Proceedings, the Monitor has provided to this Court thirty-five reports and three supplementary reports (collectively, the “**Monitor’s Reports**”). A&M has also provided to this Court the Pre-Filing Report of the Proposed Monitor (the “**Pre-Filing Report**”) dated January 14, 2015 (together with the Monitor’s Reports, the “**Prior Reports**”). The Prior Reports, the Initial Order and other Court-filed documents and notices in these CCAA Proceedings are available on the Monitor’s website at www.alvarezandmarsal.com/targetcanada.

- 1.4 This Thirty-Sixth Report of the Monitor (the “**Thirty-Sixth Report**”) is filed in connection with the Monitor’s motion for advice and directions scheduled to be heard September 13, 2017, to provide this Court and Creditors with information regarding a request by Bell Canada (“**Bell Canada**”) and Bell Nexxia Corporation (“**Nexxia**”) (together, “**Bell**”) to amend certain claims that they had filed and fully and finally resolved during the Claims Process in these CCAA proceedings (the “**Original Claims**”).
- 1.5 In 2015, Bell Canada and Nexxia filed the Original Claims against TCC asserting amounts owing for the pre-filing and post-filing periods. In December 2015, the Monitor, in consultation with the Target Canada Entities, allowed the Original Claims in the amount Bell filed as pre-filing claims only pursuant to Notices of Revision or Disallowance dated December 15, 2015. Bell disputed the Original Claims as pre-filing Claims. The dispute was resolved through Bell’s execution of Notices of Withdrawal of Dispute of Claim dated June 23, 2016 in respect of each of the Original Claims (the “**Bell Notices of Withdrawal of Dispute**”) pursuant to which Bell accepted the Original Claims as pre-filing claims and in the amount set out in the Monitor’s Notices of Revision or Disallowance.
- 1.6 In support of its current request to amend its Original Claims, made notwithstanding the Bell Notices of Withdrawal of Dispute and the Plan Sanction Order, Bell has provided the Monitor with the affidavit of Patricia Greene, the Director of Finance - Bell Business Markets (the “**Greene Affidavit**”), a copy of which is attached at Tab 3 of the Monitor’s Motion Record. As described in that affidavit, Bell states that it only discovered errors in the method in which it quantified its Original Claims in April 2017, and seeks to file amended claims (“**Bell’s Proposed Amended Claims**”) to address the alleged error. By

Bell's Proposed Amended Claims, Bell claims an additional amount of approximately \$4,100,000, almost double the Original Claims.

Claim #	Entity Name	Allowed Claim Amount	Proposed Revised Claim Amount	Proposed Increase in Claim Value
1667	Bell Canada	\$ 4,019,455.12	\$ 7,286,040.00	\$ 3,266,584.88
1356	BCE Nexxia Corporation	693,264.82	1,495,985.24	802,720.42
TOTAL	Bell Claims	\$ 4,712,719.94	\$ 8,782,025.24	\$ 4,069,305.30

1.7 On March 1, 2017, the Honourable Regional Senior Justice Morawetz released reasons for decision (the “**Late Claims Decision**”) with respect to the Monitor’s motion for advice and directions regarding whether or not certain claims filed after the granting of the Sanction and Vesting Order (which approved the Applicants’ Second Amended and Restated Joint Plan of Compromise and Arrangement) should be considered by the Monitor. By the Late Claims Decision, Justice Morawetz held, among other things, that the Monitor should not consider any further late filed claims unless a court order directing it to do so is first obtained. Although the Monitor and the Target Canada Entities are of the view that Bell’s Proposed Amended Claims are not late filed claims as contemplated by the Late Claims Decision given the circumstances surrounding the Bell claims (as described in the Greene Affidavit), the Monitor seeks the advice and directions of this Court as to whether it should consider Bell’s Proposed Amended Claims in light of, among other things, the Bell Notices of Withdrawal of Dispute and the Monitor’s and the estate’s reliance on same, the provisions of the Claims Procedure Order, the Plan and the Sanction and Vesting Order, the effect on distributions to stakeholders, the need for certainty and finality and, if applicable, the Late Claims Decision.

1.8 The Monitor has not yet evaluated Bell's Proposed Amended Claims, but will do so if it is directed by the Court to accept Bell's Proposed Amended Claims for consideration. Bell's Proposed Amended Claims, if approved, would affect the estimated range of recoveries for the Affected Creditors. Accordingly, the Monitor requests the Court's advice and direction on the following issue: should the Monitor accept Bell's Proposed Amended Claims for review and consideration?

2.0 TERMS OF REFERENCE AND DISCLAIMER

2.1 In preparing this Thirty-Sixth Report, the Monitor has been provided with, and has relied upon, unaudited financial information, books and records and financial information prepared by the Target Canada Entities and Target Corporation, and discussions with management of the Target Canada Entities and Target Corporation (collectively, the "**Information**").

2.2 The Monitor has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Monitor has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards ("**CASs**") pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Monitor expresses no opinion or other form of assurance contemplated under CASs in respect of the Information.

2.3 Unless otherwise indicated, capitalized terms not otherwise defined in this Thirty-Sixth Report are as defined in the Prior Reports, the Second Amended Plan and Restated Joint

Plan of Compromise and Arrangement dated April 6, 2016 (the “**Plan**”), and the Initial Order.

- 2.4 Unless otherwise stated, all monetary amounts contained in this Thirty-Sixth Report are expressed in Canadian dollars. In accordance with the Claims Procedure Order, claims denominated in United States dollars were converted to Canadian dollars at the Bank of Canada noon exchange rate in effect as of the Filing Date.

3.0 PROCEDURAL BACKGROUND

Claims Process

- 3.1 The Court issued the Claims Procedure Order on June 11, 2015 setting out the Claims Process for the filing, determination and adjudication of claims asserted against the Target Canada Entities. The Claims Procedure Order was subsequently amended by Court orders dated September 21, October 30, and December 8, 2015.
- 3.2 In accordance with the Claims Procedure Order, the Claims Bar Date for pre-filing Claims was 5:00 pm on August 31, 2015, and the Restructuring Period Bar Date was the later of (i) 45 days after the date on which the Monitor sent a Claims Package with respect to a Restructuring Period Claim, and (ii) August 31, 2015.
- 3.3 The Claims Procedure Order, as amended, provided for the following procedures:
- (a) to revise or reject a Claim submitted in the Claims Process, the Monitor must have sent a Notice of Revision or Disallowance to the applicable Claimant by no later than December 15, 2015 unless otherwise ordered by the Court;

- (b) to dispute a Notice of Revision or Disallowance, a Claimant must have delivered 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 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, with some accommodation if a Notice of Dispute would have otherwise been due in the holiday period; and
- (c) if a Claimant that received a Notice of Revision or Disallowance did not file a completed Notice of Dispute of Revision or Disallowance by the prescribed time, such Claimant's Claim was deemed to be as set out in the Notice of Revision or Disallowance and such Claimant had no further right to dispute same.

Plan and Sanction and Vesting Order

- 3.4 As described more fully in the Twenty-Eighth Report of the Monitor dated May 27, 2016, Affected Creditors voting in person or by proxy (or deemed to have voted) unanimously voted in favour of the Plan, thus achieving the requisite double majority contemplated by the CCAA.
- 3.5 Article 7 of the Plan sets out the releases provided for therein, and provides that on the Plan Implementation Date, the Target Canada Entities shall be released from all claims including specifically those "in any way relating to, arising out of or in connection with the Claims...or any Claim that has been barred or extinguished by the Claims Procedure Order".

3.6 On June 2, 2016, the Court issued the Sanction and Vesting Order approving the Plan. Among other things, the Sanction and Vesting Order provides that:

- (a) the releases contemplated in the Plan are approved, shall be deemed to be implemented, and shall be binding and effective as of the Effective Time on the Plan Implementation Date (paragraph 7);
- (b) all Affected Claims shall be fully, finally, irrevocably and forever compromised, discharged and released, with prejudice, in accordance with the terms of the Plan (paragraph 9);
- (c) the determination of Proven Claims in accordance with the Claims Procedure Order and Plan shall be final and binding on the Target Canada Entities and all Affected Creditors (paragraph 10);
- (d) nothing in the Plan extends or shall be interpreted as extending or amending the Claims Bar Date or gives or shall be interpreted as giving any rights to any Person in respect of Claims that have been barred or extinguished pursuant to the Claims Procedure Order (paragraph 12); and
- (e) any claim for which a Proof of Claim has not been filed by the Claims Bar Date in accordance with the Claims Procedure Order, whether or not the holder of such claim has received personal notification of the claims process established by the Claims Procedure Order, shall be forever barred, extinguished and released with prejudice (paragraph 12).

Interim Distributions

3.7 As set out in the Prior Reports, the Plan Implementation Date occurred and the following interim distributions have been made:

- (a) on June 29 and 30, 2016, the Target Canada Entities, in consultation with the Monitor, issued the Initial Distributions totalling approximately \$672.5 million. The Initial Distributions represented approximately 55.34% of then-current Affected Creditors' Proven Claims; and
- (b) on October 19 and 20, 2016, the Target Canada Entities, in consultation with the Monitor, issued a second interim distribution in the amount of approximately \$87 million (the "**Second Distribution**"). The Second Distribution represented approximately 12.65% of then-current Affected Creditors' Proven Claims.

3.8 Accordingly, as of the date of this Report, approximately 68% of Affected Creditors' Proven Claims has been distributed. As described in the Thirty-Fifth Report, the Applicants have advised that, in consultation with the Monitor, they intend to make a third interim distribution in early October totalling approximately \$63.3 million to Affected Creditors' with Proven Claims. This third distribution represents a recovery of approximately 8.95% of such Affected Creditors' Proven Claims, which would bring interim distributions to approximately 76.94% of such Affected Creditors' Proven Claims.

Late Claims Decision

3.9 As described more fully in the Thirty-Second Report of the Monitor, following full publication of the Claims Bar Date and after providing notice that late-filed claims would no longer be considered or accepted, the Monitor had declined to permit the filing of late claims following the Creditors' Meeting. The Monitor had received claims from 12 putative claimants¹ asserting claims against the Target Canada Entities on behalf of individuals and corporations who did not file claims in the Claims Process.

3.10 On March 1, 2017, the Court released the Late Claims Decision, a copy of which is attached as Schedule A to Appendix B hereto. The Court also granted an Order dated the same date incorporating the provisions of the Late Claims Decision, a copy of which is attached as Appendix B (the "**Late Claims Order**"). As set out in paragraph 52 of the Late Claims Decision and paragraph 7 of the Late Claims Order, the Monitor was directed not to accept any further late filed claims without a further order of the Court.

3.11 The Late Claims Decision also addressed distributions to any late-filed claimants whose claims have been accepted and reviewed in accordance with the decision. Justice Morawetz held that the Late Claims then under consideration would only be able to participate in distributions from amounts held in the TCC Disputed Claims Reserve Account and without disturbing prior distributions made to the unsecured creditors. Paragraphs 49 and 53 of the decision read:

[49] Accordingly, I direct, to the extent that the claims of the late claimants are proven, that the Monitor effect distributions from this

¹ Representatives of the Monitor also received inquiries from several additional putative claimants who did not provide details of the nature of their claims, and who are not reflected in this section.

reserve. The distributions to these late claimants should be made in amounts sufficient to provide them with the equivalent of the First and Second Interim Distributions. These distributions should be made prior to any further distribution being made to all unsecured creditors.

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

Current Reserves

3.12 TCC is currently holding approximately \$36.8 million in the TCC Disputed Claims Reserve Account pending the resolution of currently disputed claims. These claims include one unresolved Pharmacist Franchisee claim and the outstanding resolution of the CRA Claims. The TCC Disputed Claims Reserve also includes an amount related to Bell's Proposed Amended Claims pending the outcome of this motion for advice and directions.

4.0 BELL'S ORIGINAL CLAIMS

4.1 Prior to the Claims Bar Date, Bell Canada and Nexxia each filed their Original Claims under the Claims Process. Copies of their claims are attached as Exhibits A to C and Exhibits G and H, respectively, to the Greene Affidavit.

4.2 Following receipt of the Original Claims, the Monitor, with the assistance of finance employees of Target Corporation who provided assistance to the Target Canada Entities during the course of the CCAA Proceedings through a shared services arrangement, vetted and carried out due diligence on the Original Claims over the course of several days. In carrying out that due diligence, the Monitor reviewed and relied upon the materials and contracts provided by Bell, supplemented with additional materials from

the Applicants as the Monitor thought advisable. As a result of that work, the Monitor was satisfied with the quantum of the Original Claims advanced by Bell.

- 4.3 At the time the Original Claims were first filed, Bell alleged that the claims were post-filing claims (which ought to be treated as Unaffected Claims and paid in full) as opposed to pre-filing claims (which would have been treated as Affected Claims and only receive a *pro rata* distribution from the Applicants' assets). The Monitor did not agree that the claims were post-filing claims, and accordingly delivered Notices of Revision or Disallowance accepting the amount of the Original Claims but as pre-filing claims. In response, Bell filed Notices of Dispute of Revision or Disallowance contesting the Monitor's characterization of the claims as pre-filing claims. Copies of the Notices of Revision or Disallowance and the Notices of Dispute are attached as Exhibits D and I and Exhibits E and J, respectively, to the Greene Affidavit.
- 4.4 Following the delivery of the Notices of Dispute, the Monitor and Bell engaged in discussions in an attempt to resolve the dispute as required by the Claims Procedure Order. In June, 2016, both Bell Canada and Nexxia executed and filed the Bell Notices of Withdrawal of Dispute, which state that:

1. The Claimant hereby withdraws the Notice of Dispute filed in respect of the Claim.

2. This notice confirms that the Notice of Dispute is and shall be deemed to be withdrawn and of no effect for all purposes with respect to the CCAA Proceedings, effective as of the date hereof, and the Notice of Revision or Disallowance (and the amount of the Claim set out therein as a Pre-filing Claim) is hereby deemed accepted for all purposes with respect to the CCAA Proceedings.

Copies of the Bell Notices of Withdrawal of Dispute are attached as Exhibits F and K to the Greene Affidavit.

5.0 BELL'S PROPOSED AMENDED CLAIMS

- 5.1 In April 2017, almost a year after the Bell Notices of Withdrawal of Dispute, resolution of the Original Claims and granting of the Sanction and Vesting Order, Bell contacted the Monitor and advised that it wished to file Bell's Proposed Amended Claims as it believed that it had uncovered various errors in the manner in which it had previously calculated the quantum of its claims. Bell claims that these errors increase its claims by almost \$4,200,000, in effect doubling its claims.
- 5.2 In support of its position, Bell has provided the Monitor with the Greene Affidavit, which sets out how the alleged error was discovered, and the nature of the error.
- 5.3 The Greene Affidavit also indicates that following Bell's discovery and review of credit balances in the TCC accounts, it ascertained that TCC overpaid Bell certain post-filing amounts and reimbursements were owing to TCC. Accordingly, at the same time Bell filed Bell's Proposed Amended Claims, Bell Canada sent a cheque to the Monitor in the amount of \$49,846.90 representing an overpayment of post-filing obligations of TCC towards Bell, and Nexxia sent a cheque to the Monitor in the amount of US\$285,426.11 representing an overpayment of post-filing obligations of TCC towards Nexxia. The Monitor, after consultation with the Target Canada Entities, has not cashed these cheques pending resolution of this motion.

5.4 The Monitor notes that significant time and estate resources were expended by the Monitor, with the assistance of the Target Canada Entities, to evaluate the Original Claims and validate their quantum and they became Proven Claims in accordance with the Claims Procedure Order. The Monitor has not investigated or considered in detail the accuracy of Bell's position regarding the interpretation of the various contracts as described in the Greene Affidavit, and will do so only if directed by the Court.

6.0 CONSIDERATIONS

6.1 The Monitor notes the following key considerations with respect to Bell's Proposed Amended Claims for the benefit of the Court and interested parties. In addition to the considerations set out in this section, the Monitor reserves its right to file responding materials after reviewing Bell's factum in support of Bell's Proposed Amended Claims.

6.2 The Monitor had previously set out what it believed to be the applicable law related to late-filed claims in Section 5.0 of the Thirty-Second Report, which excerpts are attached hereto as **Appendix C**. For reasons set out in this Report, the Monitor and the Target Canada Entities are of the view that Bell's Proposed Amended Claims are not late claims, but rather requested amendments to claims that had become Proven Claims in accordance with the Plan and the Claims Procedure Order following the Bell Notices of Withdrawal of Dispute, and therefore the applicability of such cases to Bell's Proposed Amended Claims is unclear.

6.3 Bell requested amendments to the Original Claims in April 2017 when it discovered errors in the calculation of the amount of the Original Claims. This is approximately seventeen months after the Original Claims were first submitted to the Monitor and

almost one year after final resolution of the Original Claims and the granting of the Sanction and Vesting Order.

6.4 The Original Claims were determined to be Proven Claims under the Plan for the amounts set out in the Notices of Revision and Disallowance pursuant to and in accordance with the Bell Notices of Withdrawal of Dispute, in which Bell agreed that the Notices of Revision and Disallowance and the amount of the Claims set out therein were deemed accepted for all purposes in the CCAA proceedings.

6.5 In addition to the broad releases in Article 7 of the Plan as confirmed by the Court, the Sanction and Vesting Order provides that the determination of Proven Claims in accordance with the Claims Procedure Order and the Plan shall be final and binding on the Target Canada Entities and all Affected Creditors.

6.6 Based on the Bell Notices of Withdrawal of Dispute and Bell's acceptance of the Original Claims as pre-filing claims in the amount set out in the Notices of Revision or Disallowance, as well as the provisions of the Claims Procedure Order, the Plan and the Sanction and Vesting Order, the Original Claims have been treated as pre-filing Proven Claims that are final and binding on the Target Canada Entities, Bell and all other Affected Creditors for all purposes in the CCAA proceedings, including distributions.

6.7 Bell has been on the Service List throughout these proceedings and remained on the Service List after the final resolution of the Original Claims. Following that resolution, the Monitor served and filed a number of reports providing updates to stakeholders and Affected Creditors on the Claims Process and estimated recovery ranges, which reports used the amount of the Bell claims as Bell agreed to and accepted. In Bell's Proposed

Amended Claims, they have claimed almost double the amount of the Original Claims, which would affect distributions to other Affected Creditors.

6.8 Based on the Late Claims Decision, the Monitor would only consider late claims in connection with future distributions taking into account the amount of the TCC Disputed Claim Reserve Amount and without adjustment for payments already made to other creditors, unless directed to do otherwise by the Court. As indicated above, the Monitor is currently holding approximately \$36.8 million in the TCC Disputed Claims Reserve and certain claims remain disputed and unresolved.

6.9 The Monitor has estimated the effect that allowance of Bell's Proposed Amended Claims would have on the future distributions and ultimate overall creditor recoveries in the event the same approach is taken:

(a) The Monitor provided an updated report on the estimated distributions to creditors in its Thirty-Fifth Report. In that Report, the Monitor estimated² that Affected Creditors with Proven Claims would ultimately receive aggregate distributions under the Plan in the range of approximately 82.7% to 84.3% of such Affected Creditors' Proven Claims, with the low range calculated for illustrative purposes using the full amount of Bell's Proposed Amended Claims;

(b) If Bell's Proposed Amended Claims are not accepted for consideration, the Monitor estimates³ that Affected Creditors with Proven Claims would ultimately

² Subject to the important qualifications noted therein.

³ Subject to the important qualifications noted in the Thirty-Fifth Report.

receive aggregate distributions under the Plan in the range of approximately 83.2% to 84.3%; and

- (c) Bell's Proposed Amended Claims, if accepted, would affect the estimated range of recovery for the Affected Creditors. The Monitor estimates that if Bell's Proposed Amended Claims were accepted in full, they would reduce the estimated recovery range by approximately 0.45% to between 82.7% and 83.9%.

6.10 The Target Canada Entities and Target Corporation, as plan sponsor, continue to express to the Monitor the need for the estate and its stakeholders to have finality and certainty. The Monitor is also cognizant of not opening the door to further amended claims when Claims have become Proven Claims in accordance with the Plan and the Claims Procedure Order, which could reduce the recoveries of other Affected Creditors, as exemplified by the impact Bell's Proposed Amended Claims would have if they were accepted in full, and increase the costs to the estate by having to re-evaluate such claims.

7.0 REQUEST FOR ADVICE AND DIRECTIONS

7.1 As set out above, the Monitor is applying to the Court for advice and directions with respect to whether or not it should accept Bell's Proposed Amended Claims for consideration. If the Monitor is directed to accept Bell's Proposed Amended Claims, it will then undertake a review and analysis to determine whether or not such amended claims should be allowed as proposed.

7.2 Accordingly, the Monitor respectfully requests the advice and direction of the Court regarding the following issue: should the Monitor accept Bell's Proposed Amended Claims for review and consideration?

All of which is respectfully submitted to this Court this 1st day of September, 2017.

**Alvarez & Marsal Canada Inc., in its capacity
as Monitor of Target Canada Co., and
the other Applicants listed on Appendix A**

Per:



Name: Douglas R. McIntosh
Title: President

Per:



Name: Alan J. Hutchens
Title: Senior Vice-President

APPENDIX 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

APPENDIX B

LATE CLAIMS ORDER, ATTACHING LATE CLAIMS DECISION

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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



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

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

ORDER

(Late Claims)

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

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

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

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

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

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

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

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

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



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

MAR 13 2017

PER / PAR: *Ci*

SCHEDULE "A"

(see next page)

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

SUPERIOR COURT OF JUSTICE - ONTARIO

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

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

BEFORE: Regional Senior Justice G.B. Morawetz

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

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

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

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

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

Jeremy Dacks, for the Target Canada Entities

ENDORSEMENT

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

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

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

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

Background

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

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

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

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

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

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

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

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

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

[11] The Sanction and Vesting Order specifically provides:

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

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

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

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

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

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

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

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

First and Second Interim Distribution

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

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

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

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

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

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

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

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

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

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

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

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

...

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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


Regional Senior Justice G.B. Morawetz

Date: March 1, 2017

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF TARGET CANADA CO., *et al*

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**ORDER
(Late Claims)**

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APPENDIX C

LAW EXCERPTS FROM THE MONITOR'S THIRTY-SECOND REPORT

to the Claims Process for adjudication are required to file materials providing an evidentiary basis for such request.

5.0 APPLICABLE LAW

5.1 While the Monitor is not taking a position with respect to this motion, the Monitor notes the following for the benefit of the Court and interested parties.

5.2 As set out above, in addition to other relevant provisions in the Sanction and Vesting Order, paragraph 12 thereof specifically provides:

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

5.3 The Sanction and Vesting Order is a valid exercise of the Court's jurisdiction under sections 6, 11, and 19 of the CCAA as well as the Court's inherent jurisdiction thereunder. The Sanction and Vesting Order is a final order of the Court, no appeals having been filed in respect thereof within the applicable timeframes. Accordingly, by operation of the Sanction and Vesting Order and the release provisions set out in Article 7 of the Plan, the Target Canada Entities have been released from any and all liabilities associated with any late claims, and the right to bring forward such claims has been clearly and finally extinguished.

5.4 The provisions of the CCAA do not address how claims brought forward following implementation of a plan of compromise or arrangement (and which includes releases in

favour of the debtor company and others) should be dealt with. Although the Sanction and Vesting Order provides that such late claims are barred and extinguished, and the Target Canada Entities and other Released Parties are released in respect of such late claims with prejudice, there is jurisprudential precedent under the CCAA for the Court to exercise its discretion and admit late claims for adjudication in certain circumstances.

5.5 The prevailing test for the admission of late claims is set out by the Alberta Court of Appeal in *Blue Range*,⁴ which lists four factors a court will consider in determining whether to allow late claims to be filed:

- (a) Was the delay caused by inadvertence and if so, did the claimant act in good faith?
- (b) What is the effect of permitting the claim in terms of the existence and impact of any relevant prejudice caused by the delay?
- (c) If relevant prejudice is found can it be alleviated by attaching appropriate conditions to an order permitting late filing?
- (d) If relevant prejudice is found which cannot be alleviated, are there any other considerations which may nonetheless warrant an order permitting late filing?⁵

5.6 In addition to these factors, the Court in *Blue Range* also indicated that it is relevant to consider the length of the delay and the potential prejudice to other parties.⁶ Subsequent decisions applying *Blue Range* hold that “[*Blue Range*] is clear that the timing of the late

⁴ *Blue Range Resource Corp., Re*, 2000 ABCA 285 at para 25 [*Blue Range*]; Monitor’s Book of Authorities, Tab 1.

⁵ *Blue Range* at para 26; see also *Canadian Red Cross Society, Re*, [2008] OJ No 4114 at para 29 (Sup Ct J); Monitor’s Book of Authorities, Tab 2.

⁶ *Blue Range* at para 14.

claim with respect to the stage of proceedings is a key consideration.”⁷ The Court in *Blue Range* also determined that the fact that other creditors will receive less money if late claims are accepted is not considered prejudice relevant to the above criteria.⁸

5.7 Therefore, it is the Monitor’s respectful submission that if this Court determines that any of the putative late claims are to be admitted to the Claims Process for adjudication, each claimant should be required to provide evidence satisfying the *Blue Range* test in respect of its late claim.

5.8 The Monitor notes that the decision in *Blue Range* was issued subsequent to the creditors’ meeting in that case, but, it appears, prior to plan implementation. Subsequent to *Blue Range*, the Alberta Court of Queen’s Bench in *SemCanada Crude*, applying the earlier decision in *Algoma Steel v. Royal Bank*, held that, while late claims may be admitted to the claims process subsequent to plan implementation, doing so is “tantamount to amending or modifying the plan”, and the court’s discretion to do so should be “exercised sparingly and in exceptional circumstances only.”⁹

Participation in Distributions

5.9 The provisions of the CCAA also do not address the extent to which late claimants admitted and allowed in a claims process are entitled to participate in distributions. As set out above, as of the date of this Report, the Target Canada Entities have made two interim distributions totalling approximately \$759.5 million: the First Distribution of

⁷ *Re SemCanada Crude Co.*, 2012 ABQB 489 at para 66 [*SemCanada Crude*]; Monitor’s Book of Authorities, Tab 3.

⁸ *Blue Range* at para 40.

⁹ *SemCanada Crude* at para 71, citing *Algoma Steel Corp. v Royal Bank*, [1992] OJ No 889 at para 8 (CA); Monitor’s Book of Authorities, Tab 4.

approximately \$672.5 million, representing approximately 55.34% of Creditors' Proven Claims; and the Second Distribution of approximately \$87 million, representing 12.65% of same.

5.10 In contrast to the CCAA, and perhaps of benefit to the Court by analogy, section 150 of the *Bankruptcy and Insolvency Act* (“**BIA**”) contemplates the admission of and procedures related to late-filed claims:

150. A creditor who has not proved his claim before the declaration of any dividend is entitled on proof of his claim to be paid, out of any money for the time being in the hands of the trustee, any dividend or dividends he may have failed to receive before that money is applied to the payment of any future dividend, but he is not entitled to disturb the distribution of any dividend declared before his claim was proved for the reason that he has not participated therein, except on such terms and conditions as may be ordered by the court.¹⁰

5.11 In other words, late claims that are admitted to the claims process and determined to be allowed against the debtor are able to participate in future distributions from the debtor's estate,¹¹ but are not permitted to retroactively participate in any distributions that have occurred prior to the admission of such claim.¹² This concept has been applied consistently in BIA cases since as far back as 1922.

5.12 Though not referenced by name in that decision, the concept embodied in section 150 of the BIA was recognized in *Blue Range*: “A late filing creditor under the BIA may only

¹⁰ *BIA*, s 150.

¹¹ *Pilot Butte Sand & Gravel Co., Re*, [1968] 11 CBR (NS) 254 at para 8 (SKQB); Monitor's Book of Authorities, Tab 5; *Macdonald Homes Inc., Re*, [2003] OJ No 5140 at para 21 (Sup Ct J.); Monitor's Book of Authorities, Tab 6; Lloyd W. Houlden, Geoffrey B. Morawetz & Janis P. Sarra, *The 2016 Annotated Bankruptcy and Insolvency Act*, (Toronto: Thomson Reuters, 2016) at 786.

¹² *In re Baker* (1922), 3 CBR 297 at para 1 (NBSC); Monitor's Book of Authorities, Tab 7; *Bank of Nova Scotia v Janzen (Trustee of)*, [1989] CLD 449 at para 7 and 8 (NSSC); Monitor's Book of Authorities, Tab 8.

share in undistributed assets.”¹³ It is not apparent from *Blue Range* whether the late-filed claims under consideration in that case (all of which were permitted to be filed) were able to participate retroactively in previous distributions, or whether any distributions had been made at the time of the Court’s decision.

6.0 MONITOR’S CONSIDERATIONS REGARDING KNOWN LATE CLAIMS

6.1 This section sets out the Monitor’s preliminary considerations regarding the known late claims, organized into the three categories of known late claims: (i) vendor claims for liquidated amounts; (ii) litigation claims for unliquidated damages; and (iii) a Pharmacist Franchisee claim. In addition to the considerations set out in this section, the Monitor reserves its right to file responding materials in advance of the November 29 Motion after reviewing the submissions of any late-filing claimants.

6.2 The Monitor notes that, because the below described late claimants have not been permitted to file Proofs of Claim, the Monitor’s preliminary considerations are based on information provided to the Monitor to date, and the Monitor’s assessment of such claims may change materially depending on the nature of the claims, should they be permitted to be filed.

Current Reserves

6.3 Following the Second Distribution, approximately \$3.5 million is being held in the TCC Cash Pool for scheduled vendor payments.¹⁴ An additional amount of approximately

¹³ *Blue Range* at para 7.

¹⁴ These amounts are paid in the normal course to ongoing suppliers (for example, Bank of America, who continues to facilitate the Target Canada Entities’ banking requirements including with respect to the payment of distributions to creditors).

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

**THIRTY-SIXTH REPORT OF THE
MONITOR**

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