

***Ontario***  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

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

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

APPLICANTS

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**WRITTEN SUBMISSIONS OF THE APPLICANTS**

**(Monitor's Motion for Advice and Directions regarding Late Claims)**

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November 25, 2016

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1. The Monitor, with the assistance of the Target Canada Entities,<sup>1</sup> has run an extensive Court-ordered and Court-supervised process to determine the nature and quantum of creditor claims in these CCAA proceedings. The claims process was launched immediately following the realization of the majority of the assets of the Target Canada Entities and prior to the development of a Plan of Compromise and Arrangement. The claims process was an important building block in the CCAA proceedings and was crucial to the development and eventual implementation of the Amended Plan.

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<sup>1</sup> Target Canada Co., the other applicants listed above, and certain related partnerships (collectively, the "Target Canada Entities").

2. The Monitor has brought a motion seeking the advice and direction of the Court regarding the treatment of claimants who have not filed timely claims in accordance with the Claims Procedure Order. The Target Canada Entities seek – once and for all – to ensure certainty and finality in the claims process and the CCAA proceedings generally. Whatever advice and directions are granted in this motion, there must be an end to the filing and acceptance of claims so that the Target Canada Entities, with the assistance of the Monitor, can make final distributions and complete their orderly wind down.

3. The Target Canada Entities believe that the following information relating to the filing of Proofs of Claim pursuant to the claims process approved by the Court in these CCAA proceedings is relevant to the Court’s consideration of this motion:

<b>Date</b>	<b>Event</b>
January 15, 2015	<u>Initial Order granted</u> : The Target Canada Entities obtained relief under the CCAA. Alvarez & Marsal Canada Inc. was appointed as Monitor.
June 11, 2015	<u>Claims Procedure Order granted</u> : The Order set out the process to file and determine Proofs of Claim and set the claims bar dates, including the August 31, 2015 Claims Bar Date for all Pre-Filing Claims.
June 2015	<u>Claims Packages / Notice</u> : The Monitor sent a Claims Package to all known Claimants based on the books and records of the Target Canada Entities. The Monitor also published the Notice of the claims process in <i>The Globe and Mail</i> , <i>La Presse</i> , and <i>The Wall Street Journal</i> , and posted the entire Claims Package on its website.
August 31, 2015	<u>Claims Bar Date for Pre-Filing Claims</u> .
Late 2015 / Early 2016	<u>Development of the Plan based on the Filed Claims</u> : The Target Canada Entities, in consultation with the Monitor, negotiated and consulted with their creditors, including the Consultative Committee, to develop a Plan of Compromise and Arrangement. The Initial Plan (served on November 27, 2015) and the Amended Plan (served on April 6, 2016) both provided that on the Plan Implementation Date, the Target Canada Entities and certain plan beneficiaries would be released from “any Claim that has been barred or extinguished by the Claims Procedure Order”.

Date	Event
	<p>The financial reasoning underlying the design of both the Initial Plan and the Amended Plan was based on the claims (contingent or otherwise) that had been filed in accordance with the Claims Procedure Order. The Target Canada Entities and other stakeholders negotiated aspects of the Amended Plan in part based on the expected recoveries that were developed from the Monitor's analysis of the filed claims.</p>
April 13, 2016	<p><u>Meeting Order granted.</u></p>
April 2016	<p><u>Meeting Materials / Notice:</u> The Monitor:</p> <ul style="list-style-type: none"> <li>published the Meeting Materials on the Monitor's website, including a copy of the Amended Plan;</li> <li>sent the Meeting Materials to Affected Creditors by first class mail; and</li> <li>published notice of the Creditors' Meeting in <i>The Globe and Mail</i> (National Edition), <i>La Presse</i> and <i>The Wall Street Journal</i>.</li> </ul> <p>The Meeting Materials included Target Canada's letter to creditors, which gave an overview of the terms of the Amended Plan, including the expected recoveries that the Monitor had estimated based on its analysis of the filed claims and a description of the releases contemplated in the Plan.</p>
May 11, 2016	<p><u>Monitor Announces No Further Claims and Updates Recovery Estimate:</u> In its Twenty-Seventh Report – which provided information regarding the Amended Plan in advance of the Creditors' Meeting – the Monitor stated: "In accordance with the discretion provided to the Monitor in the Claims Procedure Order, the Monitor will no longer be accepting late-filed claims after the date of the Creditors' Meeting."<sup>2</sup></p> <p>In the same report, the Monitor provided an illustrated range of recoveries based on its analysis of the filed claims. The Monitor informed all stakeholders of the Target Canada Entities that, subject to the qualifications and restrictions in that report, the Amended Plan was projected to result in recoveries for Affected Creditors<sup>3</sup> in the range of 71% to 80% of their Proven Claims.</p> <p>The Monitor's Twenty-Seventh Report was sent to the Service List and posted on the Monitor's website. The Meeting Materials had also advised creditors that this report would be published on or before May 11, 2016, and that it would be available thereafter on the Monitor's website.</p>

<sup>2</sup> Twenty-Seventh Report of the Monitor, para. 5.16.

<sup>3</sup> Other than Convenience Class Creditors, Landlord Guarantee Creditors and Landlord Non-Guarantee Creditors.

Date	Event
May 25, 2016	<u>Creditors' Meeting</u> : The Affected Creditors present in person or by proxy unanimously voted in favour of the Amended Plan. The Amended Plan provides that on the Plan Implementation Date, the Target Canada Entities and certain other plan beneficiaries shall be released from "any Claim that has been barred or extinguished by the Claims Procedure Order". <sup>4</sup>
June 2, 2016	<u>Sanction Order granted</u> : The Order states:  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 [...]. <sup>5</sup>
June 28, 2016	<u>Plan Implementation Date</u> : The releases under the Amended Plan became effective, forever barring and releasing any claims that had not been filed in accordance with the Claims Procedure Order.
June 29 & 30, 2016	<u>Initial Distribution Date</u> . These interim distributions amounted to approximately 55.3% of Affected Creditors' Proven Claims. The amounts paid were determined based on the Monitor's analysis of the filed claims. <sup>6</sup>
July 7, 2016	<u>Monitor Confirms No Further Claims</u> : The Twenty-Ninth Report of the Monitor confirmed that the Monitor had not accepted any late-filed claims since the Creditors' Meeting on May 25, 2016. <sup>7</sup>
September 20, 2016	<u>Monitor Again Confirms No Further Claims</u> : The Thirty-First Report of the Monitor again confirmed that no late-filed claims had been accepted since the date of the Creditors' Meeting on May 25, 2016. <sup>8</sup>
October 19 & 20, 2016	<u>Second Distribution</u> : The Target Canada Entities, in consultation with the Monitor, issued a second interim distribution in the amount of

<sup>4</sup> Amended Plan, s. 7.1.

<sup>5</sup> Sanction and Vesting Order, para. 12.

<sup>6</sup> Thirty-Second Report of the Monitor, para. 4.14.

<sup>7</sup> Thirty-Second Report of the Monitor, para. 4.8.

<sup>8</sup> Thirty-Second Report of the Monitor, para. 4.8.

Date	Event
	approximately \$87 million. After those distributions, approximately 68% of Affected Creditors' Proven Claims had been distributed. <sup>9</sup>

4. The Target Canada Entities and the Monitor (as applicable) have sought certainty, order and finality at every milestone in the process, including the Claims Procedure Order, the Amended Plan, the Plan Sanction Order, the distributions, and the Monitor's ongoing reporting to the Court and the stakeholders.

5. The Target Canada Entities submit that no further claims should be considered for acceptance after the date of this motion (beyond any that may be filed in respect of this motion in accordance with the direction of this Court). This Court required that all claimants who have been advised that their potential late filed claims had been barred be served with the Monitor's motion, and that any claimant seeking to late file a claim is to file materials with respect to the motion. If such claimants do not file materials and appear at the return of the motion, it is the position of the Target Canada Entities that their claims should not be considered further by the Monitor or the Court at any point in the future in these CCAA proceedings.

6. Approximately 15 months have passed since the Claims Bar Date. Continued acceptance of late claims undermines the integrity of the Court-ordered claims process that the Monitor and the Target Canada Entities have implemented in accordance with its terms. Permitting further late claims would be unfair to creditors who filed timely claims and voted on the Amended Plan based on the established Claims Bar Date, estimated recoveries and the consistent information provided to claimants that no further late claims would be permitted. Permitting further late claims

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<sup>9</sup> Thirty-Second Report of the Monitor, paras. 4.15 to 4.16.

after this motion would create uncertainty as to process, and would be unfair to the Target Canada Entities, who are working diligently to finally resolve the last unresolved filed claims, and complete the remaining distributions to Affected Creditors, the orderly wind down of their businesses and these CCAA proceedings.

7. With respect to the Court's consideration of the claimants who have provided materials in response to the Monitor's motion for advice and directions, the Target Canada Entities submit that each potential claim must be considered on its own merits in accordance with established case law, and that there should not be a blanket reopening of the Claims Bar Date at this late stage of the CCAA proceedings. The Target Canada Entities also submit that the following factors should be considered by the Court when analyzing the potential late claims on a case by case basis:

- (a) It has been over a year since the Claims Bar Date;
- (b) All stakeholders were informed in May 2016 that no further late claims would be accepted;
- (c) The Amended Plan received unanimous approval from the Affected Creditors who were aware of the Claims Bar Date and who benefitted from and relied on the Monitor's analysis of recoveries and claims set out in the Monitor's reports; and
- (d) Acceptance of late filed claims at this stage of the CCAA proceedings would in essence involve a modification to the Amended Plan and necessarily involve an amendment or variation of the Sanction and Vesting Order, which is a final order of this Court.



**NATURE OF THE ORDER SOUGHT**

8. The Target Canada Entities submit that the Court should direct the Monitor not to consider any further potential late claims from any potential claimant that does not file materials and appear on the return of the Monitor's motion for advice and directions.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED:**



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Tracy C. Sandler



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Jeremy Dacks



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Robert Carson

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