2024 **Hfx No. 538745**

SUPREME COURT OF NOVA SCOTIA

IN THE MATTER OF the *Companies Creditors Arrangement Act,* R.S.C., 1985, c. C- 36, as amended (the "**CCAA**")

AND IN THE MATTER OF an application by Blue Lobster Capital Limited, 3284906 Nova Scotia Limited, 3343533 Nova Scotia Limited and 4318682 Nova Scotia Limited (collectively, the "**Applicants**")

BRIEF OF LAW OF THE MONITOR

January 22, 2026

RECONSTRUCT LLP
80 Richmond Street West
Suite 1700
Toronto, ON M5H 2A4

Sharon Kour
skour@reconllp.com
Tel: 416.613.8283

Natasha Rambaran
nrambaran@reconllp.com
Tel: 416.587.1439

Counsel for KSV Restructuring Inc. in its capacity as Court-appointed Monitor of the Applicants

TO: **THE SERVICE LIST**

To the Honourable Associate Chief Justice Jamieson, KSV Restructuring Inc. ("**KSV**"), in its capacity as Court-appointed monitor (the "**Monitor**") of Blue Lobster Capital Limited ("**BLCL**"), 3284906 Nova Scotia Limited, 3343533 Nova Scotia Limited and 4318682 Nova Scotia Limited (the "**Applicants**"), submits:

PART I – OVERVIEW

1. This brief is filed by the Monitor in support of its motion seeking an Order to, among other things:

   (a) extend the stay period until and including April 30, 2026; and

   (b) approve the Seventh Report of the Monitor dated January 22, 2026 (the "**Seventh Report**") and the Monitor's activities described therein.

PART II – FACTS

2. The facts relevant to this motion are more fully set out in the Seventh Report. Capitalized terms used herein and not otherwise defined have the meanings given to them in the Seventh Report.

Overview

3. The Applicants are private companies incorporated under the laws of Nova Scotia.[1]

[1] Seventh Report of the Monitor dated January 22, 2026 ["**Seventh Report**"] at 2.1.

4. Prior to completing the Transactions, the primary business of the Applicants was the manufacturing and sale of alcoholic beverages, which were sold to liquor boards in Ontario, Nova Scotia and Prince Edward Island, as well as to restaurants and directly to consumers.[2]

5. Pursuant to the Initial Order granted by the Supreme Court of Nova Scotia (the "**Court**") on December 13, 2024, the Applicants were granted protection under the CCAA and KSV was appointed as Monitor of the Applicants.

6. The Initial Order was amended by the Amended and Restated Initial Order granted by the Court on December 20, 2024, which, among other things, extended the stay of proceedings.[3]

7. The stay of proceedings was subsequently extended by Orders of this Court, including by the Ancillary Order granted October 22, 2025, which extended the stay period until and including January 31, 2026.[4]

Claims Process

8. The Monitor has continued to conduct the Claims Procedure in accordance with the Claims Procedure Order, including by taking the steps described in the Seventh Report.[5]

9. As set out in the Seventh Report, the Filed Claims represent approximately 44% of the total number of claims and approximately 79% of the total book value of claims, each based on the Applicants' books and records.[6]

---

[2] Seventh Report at 2.2.
[3] Seventh Report at 1.2.
[4] Seventh Report at 1.5.
[5] Seventh Report at 3.2.
[6] Seventh Report at 3.4.

10. The Monitor has scheduled a motion to be heard on February 24, 2026, at which time it expects to be able to make recommendations as to the distribution to creditors of the net recoveries in these proceedings, the basis for the recommended distribution methodology, as well as other matters that effect those distributions, including an allocation of professional fees and costs of realization since the commencement of these proceedings.

11. The Monitor, in consultation with its legal counsel, is considering a claim by Beck Flavors Inc. (the "**Beck Claim**") with a view to seeing if it can be resolved. If the claim cannot be resolved consensually, the Monitor intends to refer it to the Claims Officer appointed pursuant to the Claims Procedure Order to be determined.

Real Properties

12. In accordance with the September 16th Order, the Monitor is conducting the sale process for the BLCL Real Properties.[7]

13. Five BLCL Real Properties and the Lost Bell Property continue to be listed for sale.[8]

14. The Monitor is engaged in ongoing discussions with each of the realtors and is considering how best to sell the properties, including whether price reductions are appropriate in certain instances, as has been recommended by certain of the realtors.[9]

PART III – ISSUES

15. The issues to be determined are whether this Court should:

---

[7] Seventh Report at 4.1.
[8] Seventh Report at 4.2.
[9] Seventh Report at 4.3.

(a) extend the stay of proceedings until and including April 30, 2026; and

(b) approve the Seventh Report and the Monitor's activities described therein.

PART IV – SUBMISSIONS

A. Stay Extension Should be Granted

16. Pursuant to section 11.02(2) of the CCAA, the Court has the jurisdiction to extend the stay of proceedings following the issuance of an initial order.[10] An extension may only be granted where the Court is satisfied that: (a) circumstances exist that make the order appropriate; and (b) the debtor has acted, and continues to act, in good faith and with due diligence.[11]

17. The stay of proceedings currently expires on January 31, 2026.

18. The Monitor recommends that the stay be extended to and including April 30, 2026 for the following reasons:

(a) the Monitor, which has been granted enhanced powers in these proceedings, has acted in good faith and with due diligence in these proceedings;

(b) the proposed stay extension will provide the Monitor the opportunity to advance the Claims Procedure, including resolving the Beck Claim and making distributions to creditors;

(c) the proposed stay extension will provide the Monitor with additional time to sell the BLCL Real Properties and the Lost Bell Property;

---

[10] CCAA, s 11.02(2).
[11] CCAA, s 11.02(3).

(d) no stakeholder is prejudiced by the proposed extension of the stay period and there are sufficient funds on hand to fund these proceedings; and

(e) neither the Applicants nor the Monitor are aware of any party opposed to an extension of the stay of proceedings.[12]

19. Accordingly, the Monitor believes the requested extension of the stay period to and including April 30, 2026 is necessary and appropriate in the circumstances.

C. Approval of the Seventh Report and Monitor's Activities

20. The Monitor seeks approval of the Seventh Report and the activities of the Monitor referred to therein. As stated by Chief Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) in *Laurentian*, there are good policy and practical reasons for court approval of a Monitor's report and activities, including that court approval:

(a) allows the Monitor to move forward with next steps in the CCAA proceedings;

(b) brings the Monitor's activities before the Court;

(c) allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified;

(d) enables the Court to satisfy itself that the Monitor's activities have been conducted in prudent and diligent manners;

(e) provides protection for the Monitor not otherwise provided by the CCAA; and

---

[12] Seventh Report at 6.1.

(f) protects the creditors from the delay and distribution that would be caused by (i) re-litigation of steps taken to date, and (ii) potential indemnity claims by the Monitor.[13]

21. Since the filing of the Sixth Report dated November 3, 2025, the Monitor has taken the following steps, among others, to advance these proceedings:

(a) dealt with post-closing matters relating to the Transactions;

(b) carried out the Claims Procedure in accordance with the Claims Procedure Order;

(c) negotiated the Brunswick Property Transaction and corresponded with Bryant Realty regarding same;

(d) closed the Brunswick Property Transaction;

(e) advanced the sale process for the BLCL Real Properties and the Lost Bell Property, and corresponded with the Realtors regarding same;

(f) considered the allocation of fees and costs between the Operating Companies and BLCL and dealt with its counsel in this regard; and

(g) prepared the Seventh Report and reviewed all motion material filed in connection with this motion.[14]

22. The Monitor has acted in good faith pursuant to the Monitor's duties and powers set out in the CCAA and the Orders made in this CCAA proceeding.

---

[13] *Re Target Canada Co*, 2015 ONSC 7574 at para 22.
[14] Seventh Report at 1.1.1.

PART IV – RELIEF REQUESTED

23. For the reasons set out above, the Monitor requests the Court grant the Stay Extension Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of January, 2026.

RECONSTRUCT LLP
80 Richmond Street West
Suite 1700
Toronto, ON M5H 2A4

Sharon Kour
skour@reconllp.com

Natasha Rambaran
nrambaran@reconllp.com

Counsel for KSV Restructuring Inc., in its capacity as Court-appointed Monitor

LIST OF AUTHORITIES

1. *Re Target Canada Co*, 2015 ONSC 7574

***Companies' Creditors Arrangement Act*, RSC 1985, c C-36**

Stays, etc. — other than initial application

11.02 (2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

> **(a)** staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
>
> **(b)** restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
>
> **(c)** prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

11.02 (3) The court shall not make the order unless

> **(a)** the applicant satisfies the court that circumstances exist that make the order appropriate; and
>
> **(b)** in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

CITATION: Target Canada Co. (Re), 2015 ONSC 7574
COURT FILE NO.: CV-15-10832-00CL
DATE: 2015-12-11

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: **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 Morawetz

COUNSEL: *J. Swartz* and *Dina Milivojevic*, for the Target Corporation

Jeremy Dacks, for the Target Canada Entities

Susan Philpott, for the Employees

Richard Swan and *S. Richard Orzy*, for Rio Can Management Inc. and KingSett Capital Inc.

Jay Carfagnini and *Alan Mark*, for Alvarez & Marsal, Monitor

Jeff Carhart, for Ginsey Industries

Lauren Epstein, for the Trustee of the Employee Trust

Lou Brzezinski and Alexandra Teodescu, for Nintendo of Canada Limited, Universal Studios, Thyssenkrupp Elevator (Canada) Limited, United Cleaning Services, RPJ Consulting Inc., Blue Vista, Farmer Brothers, East End Project, Trans Source, E One Entertainment, Foxy Originals

Linda Galessiere, for Various Landlords

ENDORSEMENT

[1] Alvarez & Marsal Canada Inc., in its capacity as Monitor of the Applicants (the "Monitor") seeks approval of Monitor's Reports 3-18, together with the Monitor's activities set out in each of those Reports.

[2] Such a request is not unusual. A practice has developed in proceedings under the Companies' Creditors Arrangement Act ("CCAA") whereby the Monitor will routinely bring a

2015 ONSC 7574 (CanLII)

motion for such approval. In most cases, there is no opposition to such requests, and the relief is routinely granted.

[3] Such is not the case in this matter.

[4] The requested relief is opposed by Rio Can Management Inc. ("Rio Can") and KingSett Capital Inc. ("KingSett"), two landlords of the Applicants (the "Target Canada Estates"). The position of these landlords was supported by Mr. Brzezinski on behalf of his client group and as agent for Mr. Solmon, who acts for ISSI Inc., as well as Ms. Galessiere, acting on behalf of another group of landlords.

[5] The essence of the opposition is that the request of the Monitor to obtain approval of its activities – particularly in these liquidation proceedings – is both premature and unnecessary and that providing such approval, in the absence of full and complete disclosure of all of the underlying facts, would be unfair to the creditors, especially if doing so might in future be asserted and relied upon by the Applicants, or any other party, seeking to limit or prejudice the rights of creditors or any steps they may wish to take.

[6] Further, the objecting parties submit that the requested relief is unnecessary, as the Monitor has the full protections provided to it in the Initial Order and subsequent orders, and under the CCAA.

[7] Alternatively, the objecting parties submit that if such approval is to be granted, it should be specifically limited by the following words:

> "provided, however, that only the Monitor, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval."

[8] The CCAA mandates the appointment of a monitor to monitor the business and financial affairs of the company (section 11.7).

[9] The duties and functions of the monitor are set forth in Section 23(1). Section 23(2) provides a degree of protection to the monitor. The section reads as follows:

> (2) Monitor not liable – if the monitor acts in good faith and takes reasonable care in preparing the report referred to in any of paragraphs (1)(b) to (d.1), the monitor is not liable for loss or damage to any person resulting from that person's reliance on the report.

[10] Paragraphs 1(b) to (d.1) primarily relate to review and reporting issues on specific business and financial affairs of the debtor.

[11] In addition, paragraph 51 of the Amended and Restated Order provides that:

2015 ONSC 7574 (CanLII)

> … in addition to the rights, and protections afforded the Monitor under the CCAA or as an officer of the Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, including for great certainty in the Monitor's capacity as Administrator of the Employee Trust, save and except for any gross negligence or wilful misconduct on its part.

[12] The Monitor sets out a number of reasons why it believes that the requested relief is appropriate in these circumstances. Such approval

(a) allows the monitor and stakeholders to move forward confidently with the next step in the proceeding by fostering the orderly building-block nature of CCAA proceedings;

(b) brings the monitor's activities in issue before the court, allowing an opportunity for the concerns of the court or stakeholders to be addressed, and any problems to be rectified in a timely way;

(c) provides certainty and finality to processes in the CCAA proceedings and activities undertaken (eg., asset sales), all parties having been given an opportunity to raise specific objections and concerns;

(d) enables the court, tasked with supervising the CCAA process, to satisfy itself that the monitor's court-mandated activities have been conducted in a prudent and diligent manner;

(e) provides protection for the monitor, not otherwise provided by the CCAA; and

(f) protects creditors from the delay in distribution that would be caused by:

a. re-litigation of steps taken to date; and

b. potential indemnity claims by the monitor.

[13] Counsel to the Monitor also submits that the doctrine of issue estoppel applies (as do related doctrines of collateral attack and abuse of process) in respect of approval of the Monitor's activities as described in its reports. Counsel submits that given the functions that court approval serves, the availability of the doctrine (and related doctrines) is important to the CCAA process. Counsel submits that actions mandated and authorized by the court, and the activities taken by the Monitor to carry them out, are not interim measure that ought to remain open for second guessing or re-litigating down the road and there is a need for finality in a CCAA process for the benefit of all stakeholders.

[14] Prior to consideration of these arguments, it is helpful to review certain aspects of the doctrine of *res judicata* and its relationship to both issue estoppel and cause of action estoppel.

2015 ONSC 7574 (CanLII)

The issue was recently considered in *Forrest* v. *Vriend*, 2015 Carswell BC 2979, where Ehrcke J. stated:

> 25. "TD and Vriend point out that the doctrine of *res judicata* is not limited to issue estoppel, but includes cause of action estoppel as well. The distinction between these two related components of *res judicata* was concisely explained by Cromwell J.A., as he then was, in *Hoque* v. *Montreal Trust Co. of Canada* (1997), 162 N.S.R. (2d) 321 (C.A.) at para. 21:
>
> > 21 *Res judicata* is mainly concerned with two principles. First, there is a principle that "… prevents the contradiction of that which was determined in the previous litigation, by prohibiting the relitigation of issues already actually addressed.": see Sopinka, Lederman and Bryant, *The Law of Evidence in Canada* (1991) at p. 997. The second principle is that parties must bring forward all of the claims and defences with respect to the cause of action at issue in the first proceeding and that, if they fail to do so, they will be barred from asserting them in a subsequent action. This "… prevents fragmentation of litigation by prohibiting the litigation of matters that were never actually addressed in the previous litigation, but which properly belonged to it.": *ibid* at 998. Cause of action estoppel is usually concerned with the application of this second principle because its operation bars all of the issues properly belonging to the earlier litigation.
>
> …
>
> 30. It is salutary to keep in mind Mr. Justice Cromwell's caution against an overly broad application of cause of action estoppel. In *Hoque* at paras. 25, 30 and 37, he wrote:
>
> > 25. The appellants submit, relying on these and similar statements, that cause of action estoppel is broad in scope and inflexible in application. With respect, I think this overstates the true position. In my view, this very broad language which suggests an inflexible application of cause of action estoppel to all matters that "could" have been raised does not fully reflect the present law.
> >
> > ….
> >
> > 30. The submission that all claims that could have been dealt with in the main action are barred is not borne out by the Canadian cases. With respect to matter not actually raised and decided, the

2015 ONSC 7574 (CanLII)

> test appears to me to be that the party should have raised the matter and, in deciding whether the party should have done so, a number of factors are considered.
>
> …
>
> 37. Although many of these authorities cite with approval the broad language of *Henderson* v. *Henderson, supra*, to the effect that any matter which the parties had the opportunity to raise will be barred, I think, however, that this language is somewhat too wide. The better principle is that those issues which the parties had the opportunity to raise and, in all the circumstances, should have raised, will be barred. In determining whether the matter should have been raised, a court will consider whether proceeding constitutes a collateral attack on the earlier findings, whether it simply assets a new legal conception of facts previously litigated, whether it relies on "new" evidence that could have been discovered in the earlier proceeding with reasonable diligence, whether the two proceedings relate to separate and distinct causes of action and whether, in all the circumstances, the second proceeding constitutes an abuse of process.

[15] In this case, I accept the submission of counsel to the Monitor to the effect that the Monitor plays an integral part in balancing and protecting the various interests in the CCAA environment.

[16] Further, in this particular case, the court has specifically mandated the Monitor to undertake a number of activities, including in connection with the sale of the debtors assets. The Monitor has also, in its various Reports, provided helpful commentary to the court and to Stakeholders on the progress of the CCAA proceedings.

[17] Turning to the issue as to whether these Reports should be approved, it is important to consider how Monitor's Reports are in fact relied upon and used by the court in arriving at certain determinations.

[18] For example, if the issue before the court is to approve a sales process or to approve a sale of assets, certain findings of fact must be made before making a determination that the sale process or the sale of assets should be approved. Evidence is generally provided by way of affidavit from a representative of the applicant and supported by commentary from the monitor in its report. The approval issue is put squarely before the court and the court must, among other things conclude that the sales process or the sale of assets is, among other things, fair and reasonable in the circumstances.

[19] On motions of the type, where the evidence is considered and findings of fact are made, the resulting decision affects the rights of all stakeholders. This is recognized in the jurisprudence with the acknowledgment that res judicata and related doctrines apply to approval

2015 ONSC 7574 (CanLII)

of a Monitor's report in these circumstances. (See: *Toronto Dominion Bank v. Preston Spring Gardens Inc.*, [2006] O.J. No. 1834 (SCJ Comm. List); *Toronto Dominion Bank v. Preston Spring Gardens Inc.,* 2007 ONCA 145 and *Bank of America Canada v. Willann Investments Limited*, [1993] O.J. No. 3039 (SCJ Gen. Div.)).

[20] The foregoing must be contrasted with the current scenario, where the Monitor seeks a general approval of its Reports. The Monitor has in its various reports provided commentary, some based on its own observations and work product and some based on information provided to it by the Applicant or other stakeholders. Certain aspects of the information provided by the Monitor has not been scrutinized or challenged in any formal sense. In addition, for the most part, no fact-finding process has been undertaken by the court.

[21] In circumstances where the Monitor is requesting approval of its reports and activities in a general sense, it seems to me that caution should be exercised so as to avoid a broad application of res judicata and related doctrines. The benefit of any such approval of the Monitor's reports and its activities should be limited to the Monitor itself. To the extent that approvals are provided, the effect of such approvals should not extend to the Applicant or other third parties.

[22] I recognized there are good policy and practical reasons for the court to approve of Monitor's activities and providing a level of protection for Monitors during the CCAA process. These reasons are set out in paragraph [12] above. However, in my view, the protection should be limited to the Monitor in the manner suggested by counsel to Rio Can and KingSett.

[23] By proceeding in this manner, Court approval serves the purposes set out by the Monitor above. Specifically, Court approval:

(a) allows the Monitor to move forward with the next steps in the CCAA proceedings;

(b) brings the Monitor's activities before the Court;

(c) allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified,

(d) enables the Court to satisfy itself that the Monitor's activities have been conducted in prudent and diligent manners;

(e) provides protection for the Monitor not otherwise provided by the CCAA; and

(f) protects the creditors from the delay and distribution that would be caused by:

(i) re-litigation of steps taken to date, and

(ii) potential indemnity claims by the Monitor.

2015 ONSC 7574 (CanLII)

[24] By limiting the effect of the approval, the concerns of the objecting parties are addressed as the approval of Monitor's activities do not constitute approval of the activities of parties other than the Monitor.

[25] Further, limiting the effect of the approval does not impact on prior court orders which have approved other aspects of these CCAA proceedings, including the sales process and asset sales.

[26] The Monitor's Reports 3-18 are approved, but the approval the limited by the inclusion of the wording provided by counsel to Rio Can and KingSett, referenced at paragraph [7].

Regional Senior Justice G.B. Morawetz

Date: December 11, 2015

2015 ONSC 7574 (CanLII)