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EXPECT THE BEST

Target Stores Insolvency Biggest in Canadian Retail History: Creditors Working Together to Win Equitable Settlement

by Lou Brzezinski
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The biggest insolvency in national retailing history, Target stores' Canadian subsidiary, is scheduled to take key steps on the road to resolution this month and over the summer.

Target Canada applied for protection under the *Companies' Creditors Arrangement Act* (CCAA) last January 15 so that it could restructure and liquidate. It then closed all its 133 stores, eliminating the jobs of more than 14,000 employees and leaving its landlords and almost 1,800 other suppliers on the hook for close to $3 billion.

Blaney McMurtry, led by commercial litigation partner Lou Brzezinski, has been intimately involved from the beginning in the effort to assure that the insolvency process is efficient and orderly and that Target Canada's creditors recover the greatest possible share of what they are owed.

Mr. Brzezinski and Mel Solomon of Toronto-based commercial litigation counsel Solomon Rothbart Goodman LLP were appointed May 11 by Ontario Superior Court Senior Regional Justice Geoffrey Morawetz to a court-ordered "consultative committee" with which the insolvency monitor is obliged to consult "regarding the claims process."

(The monitor, restructuring and insolvency specialist Alvarez & Marsal Canada, is tracking Target Canada's ongoing operations and is supporting the filing of, and creditors' voting on, Target Canada's proposal for paying the debt it owed when it made its initial court filing. It has met with Blaneys and Solomons a number of times.)

When it applied for CCAA protection last winter, Target Canada owed approximately $2.4 billion to governments, suppliers of goods and services and employees. It has since established a trust to meet its pay and severance obligations to all employees.

The biggest chunk of the debt, $1.9 billion, is owed to Target Canada Property LLC (Target Propco), which financed Target Canada's leases. (Target Propco is wholly owned by Target Canada's parent company, Target Corporation of Minneapolis.)

Target Canada's debt to its landlords may be smaller than thought originally. It has been determined that a number of the leases were guaranteed, and must be paid, by its American parent. This could mean the Canadian company will have more money available to meet other obligations.

At present, Target Canada has approximately $720 million available to meet all obligations. The company raised some of this money by liquidating inventory and other assets and by selling some leases back to landlords.

It has until June 30 to sell whatever remaining leases other retailers and other purchasers might want to buy.

Meanwhile, the court has ordered the monitor to develop, in discussion with the consultative committee, a "comprehensive claims process" that will spell out how all claims will be presented and resolved and will detail all inter-company claims, such as Target Propco's claims for compensation from Target Canada for abandoned leases.

The monitor circulated the draft process among stakeholders May 2 and the court was to hear arguments June 11 on the monitor's motion that the process be approved.

Once the comprehensive claims process has been approved, the court will be in a position to hear motions on the establishment of ad hoc creditors' committees to represent creditors in their efforts to get paid what they are owed. Both Blaneys and Solomons have already put forward such motions.

Blaneys, on behalf of seven Target Canada creditors, including Nintendo of Canada, Universal Studios Canada, and Mars Canada, has asked that an ad hoc suppliers' committee be established to represent all creditors in relation to Target Canada's $1.9 billion debt to Target Canada Property LLC.

Blaneys is of the view that ad hoc creditors' committees increase the efficiency of the insolvency process, protect and advance creditors' interests, minimize fees and expenses and add value for all stakeholders.

The committee would argue that the inter-company claim should be extinguished or put behind the claims of unsecured creditors by virtue of the 'doctrine of equitable subordination' or to extinguish the intercorporate claim by consolidating the two estates into one by way of substantial consolidation.

Blaneys established a special dedicated website last winter (http://blaneystargetccaa.com) to provide a "landing spot" for Target Canada suppliers. It uses the website and such social media as Facebook and Twitter to update interested parties on the most recent developments. Law firms do not commonly drive the creation of ad hoc creditors' committees. Blaneys' initiative has been considered something of an innovation.

Solomons, on behalf of ISSI Inc., a supplier of baby products, has asked the court to establish an ad hoc committee of suppliers of 30-day goods. These firms are seeking to recover goods shipped between December 15, 2015 and January 15, 2015 in priority over other unsecured creditors.

The ad hoc suppliers' committee motions will not be heard until the inter-company claims and dispute processes have been decided upon in July and August. ■