

**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 SEARS CANADA INC., 9370-2751 QUEBEC INC.,
191020 CANADA INC., THE CUT INC., SEARS CONTACT
SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM
COMMERCE LABS INC., INITIUM TRADING AND SOURCING
CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA
INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711
CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD.,
4201531 CANADA INC., 168886 CANADA INC., and 3339611 CANADA INC.

(each an "**Applicant**", and collectively, the "**Applicants**")

MOTION RECORD OF REPRESENTATIVE COUNSEL

(Motion re: Approval of SLH Settlement Agreement)

July 8, 2022

KOSKIE MINSKY LLP
20 Queen Street West, Suite 900, Box 52
Toronto, ON M5H 3R3

Andrew J. Hatnay – LS# 31885W
Tel: 416-595-2083 / Fax: 416-204-2872
Email: ahatnay@kmlaw.ca

James Harnum - LS#: 60459F
Tel: (416) 542-6285 / Fax: (416) 204-2819
Email: jharnum@kmlaw.ca

Representative Counsel to the Retirees of
Sears Canada

TO: The Service List

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Court File No.: CV-17-11846-00CL

**ONTARIO
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IN THE MATTER OF THE *COMPANIES' CREDITORS
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(each an "**Applicant**", and collectively, the "**Applicants**")

NOTICE OF MOTION

(Motion Re: Approval of SLH Settlement Agreement, returnable July 14, 2022)

Representative Counsel to the employees and retirees of the Applicants with pension and post-retirement benefit entitlements will make a motion to Justice McEwen of the Ontario Superior Court of Justice (Commercial List) on Thursday, July 14, 2022, at 11:00 A.M. (Eastern Time), or as soon after that time as the motion can be heard, via Zoom video conference.

PROPOSED METHOD OF HEARING: The motion shall be heard, *via* Zoom video conference.

THIS MOTION IS FOR:

1. **AN ORDER**, if necessary, abridging and validating the time for service of this motion and dispensing with service on any person other than those served;
2. **AN ORDER** authorizing Representative Counsel and the Representatives to enter into the Minutes of Settlement between Representative Counsel, the Representatives of Sears Canada retirees, the CEO of the Financial Services Regulatory Authority ("**FSRA**") and LifeWorks (Canada) Ltd. (formerly Morneau Shepell) ("**LifeWorks**"), the administrator of the Sears Registered Retirement Plan, that reflects the settlement of issues arising from the subject matter of the proceedings before the Financial Services Tribunal, file number P0944-2021, in the form attached at Exhibit "A" to the affidavit of Peter Bergin sworn July 8, 2022, herein, and
3. Such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THIS MOTION ARE:

1. On June 22, 2017, Sears Canada Inc. and its affiliated companies (collectively "**Sears Canada**") were granted protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c, C-36.
2. One of Sears Canada's affiliated companies and a CCAA Applicant was SLH Transport Inc. ("**SLH**").
3. On July 13, 2017, the court issued the Representative Counsel Order for Pensions and Post-Retirement Benefits (the "**Representation Order**") appointing Koskie Minsky LLP ("**Representative Counsel**") as Representative Counsel to all former employees, retirees and

beneficiaries of Sears Canada in respect of their pension and other post-employment benefits claims in the CCAA proceedings of Sears Canada.

4. SLH did not set up its own pension plan. SLH employees participated and earned pension benefits in the Sears Registered Retirement Plan (“**Plan**”). The Plan has a total of approximately 18,000 retirees and their beneficiaries across Canada.

5. On October 16, 2017, the Ontario Superintendent of Financial Services (“**Superintendent**”) appointed LifeWorks to take over the administration of the Sears Canada Plan pursuant to s. 8(1.1) of the *Pension Benefits Act*, R.S.O. 1990, Chapter P.8 (the “**PBA**”). LifeWorks' mandate is to wind up the Plan.

6. On November 10, 2017, the Superintendent ordered that the Plan be wound up retroactive to October 1, 2017 (the “**Wind Up Date**”). The wind up crystallized the estimated funding deficit of \$260 million owing by Sears Canada to the Plan, which Sears Canada did not pay.

7. As of the Wind-Up Date, there were 408 former SLH beneficiaries in the Plan who are entitled to pension benefits payable from the Plan, of whom there were approximately 310 in Ontario, 89 in Quebec, and 9 where the jurisdiction was unclear.

8. On September 27, 2018, the Superintendent made an order declaring that the Pension Benefits Guarantee Fund (the “**PBGF**”) applies to the Plan.

9. The PBGF protects the pension benefits of members and beneficiaries of certain single employer defined benefit pension plans in Ontario. In the event of an employer's insolvency and the resulting wind up of its pension plan, the PBGF guarantees benefits payable from those plans when plans are underfunded, subject to specific maximums and specific inclusions. The PBGF is

governed by the PBA and its Regulations, and is administered by the CEO of FSRA. The PBGF insures the monthly pension benefits of eligible pension plan members up to a maximum amount of \$1,500 per month.

10. Pursuant to paragraph 4.1 of section 85 of the PBA, the pension benefits of plan members who are subject to federal regulation are governed by the *Pension Benefits Standards Act, 1985* (Canada) (“**PBSA**”) and are not guaranteed by the PBGF.

11. On May 31, 2021, a delegate of the CEO of FSRA issued a Notice of Intended Decision (the “**NOID**”) that the pension benefits accrued by Plan beneficiaries who were employed by SLH in Ontario (the “**SLH Ontario Beneficiaries**”) are subject to the PBSA and therefore are not guaranteed by the PBGF.

12. On June 30, 2021, Representative Counsel requested a hearing at the Financial Services Tribunal (“**FST**”) to determine whether the PBA applies to the SLH Ontario Beneficiaries with the result that their pension benefits are guaranteed by the PBGF.

13. The FST Proceeding commenced on January 27, 2022 and continued for four days with six witnesses.

14. Evidence emerged at the hearing which was relevant to whether the PBGF covered the pension benefits accrued by SLH Ontario Beneficiaries for the period from October 6, 1985 to December 31, 1996 (the “**SLH Ontario Service**”) which caused FSRA and LifeWorks to reconsider their position, and the Settlement was reached as reflected in a Minutes of Settlement.

The Settlement

15. The Settlement is a full and final settlement of all claims made by all present and former Plan beneficiaries arising from the subject matter of the FST proceedings. The main term of the settlement is that the Plan will be administered by treating the pension benefits accrued by SLH Ontario Beneficiaries as being subject to the PBA for the period of Ontario SLH Service, as well setting out an allocation methodology of the applicable fees incurred by LifeWorks.

16. Paragraph 3 of the Representation Order states that settlement agreements can be entered into subject to the approval of the court:

[3] THIS COURT ORDERS that, with the exception of Opt-Out Individuals, (a) the Representatives and the Representative Counsel shall represent all Represented Parties in these CCAA proceedings; (b) the Represented Parties shall be bound by the actions of the Representatives and the Representative Counsel in these CCAA proceedings; and (c) the Representatives shall be entitled, on the advice of counsel, to reach any settlement agreements, advocate on behalf of the Represented Parties for the Purpose and compromise any rights, entitlements or claims of the Represented Parties, subject to approval of this Court.

17. Based on paragraph 3 above, Representative Counsel requests the approval of the Court to enter into the Settlement.

The Settlement is fair and reasonable

18. The Settlement is the result of negotiations that arose in the midst of a contested FST hearing among represented parties, and settles the litigation with a meaningful benefit for the Ontario SLH members.

19. The Settlement provides certainty for the parties and avoids the incurring of additional legal costs.

20. The Settlement represents a fairly struck bargain that ensures fair and equitable treatment for the SLH Ontario Beneficiaries. It also ensures that the CEO of FSRA has the certainty required as administrator of the PBGF, and that LifeWorks has certainty with respect to the wind-up process.

21. The Monitor is supportive of a resolution to this issue.

22. There is no payment to be made from the estate of Sears Canada in respect of the Settlement, and thus no prejudice to other creditors with the Settlement.

23. Such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of this motion:

1. The Affidavit of Peter Bergin sworn July 8, 2022, and the exhibit attached thereto;
2. Such further and other evidence as counsel may advise and this Court may permit.

July 8, 2022

KOSKIE MINSKY LLP
20 Queen Street West, Suite 900, Box 52
Toronto, ON M5H 3R3

Andrew J. Hatnay – LS# 31885W
Tel: 416-595-2083 / Fax: 416-204-2872
Email: ahatnay@kmlaw.ca

James Harnum - LS#: 60459F
jharnum@kmlaw.ca
Tel: (416) 542-6285 / Fax: (416) 204-2819

Representative Counsel to the Retirees of
Sears Canada

TO: The Service List

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

Court File No. CV-17-11846-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., 9370-2751 QUEBEC INC., 191020 CANADA INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

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**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**NOTICE OF MOTION
(Motion Re: Approval of SLH Settlement
Agreement, returnable July 14, 2022)**

KOSKIE MINSKY LLP

20 Queen Street West
Suite 900, Box 52
Toronto, ON M5H 3R3

Andrew J. Hatnay - LS# 31885W

Tel: 416-595-2083 / Fax: 416-204-2872

Email: ahatnay@kmlaw.ca

James Harnum - LS#: 60459F

jharnum@kmlaw.ca

Tel: (416) 542-6285 / Fax: (416) 204-2819

Representative Counsel for the Retirees of
Sears Canada

TAB 2

Court File No.: CV-17-11846-00CL

ONTARIO
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IN THE MATTER OF THE *COMPANIES' CREDITORS*
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AFFIDAVIT OF PETER BERGIN
(Sworn on July 8, 2022)

I, **PETER BERGIN**, of the City of Kingston, in the Province of Ontario, **MAKE OATH**
AND SAY:

Background

1. I am a former President of SLH Transport Inc. ("**SLH**"), which is a subsidiary of Sears Canada Inc. ("**Sears Canada**"). I was the President of SLH from January 1, 1991 until December 31, 2005. I am also a member of the Sears Canada Plan, the registered pension plan sponsored by Sears Canada while it was an active company prior to obtaining CCAA protection. As such, I have knowledge of the matters to which I hereinafter depose.

2. Where I make statements in this Affidavit which are not within my personal knowledge, I have indicated the source of that information and I believe such information to be true.

3. I swear this affidavit in support of a motion by the court-appointed Representative Counsel to the retirees of Sears Canada in its CCAA proceedings for the court to approve a settlement under paragraph 3 of the Representation Order dated July 13, 2017¹ and which is described herein as the “**Settlement**”, and reflected in a Minutes of Settlement. The Settlement has been achieved between:

- (a) Representative Counsel and the court appointed Representatives, Bill Turner, Ken Eady, and Larry Moore;
- (b) the CEO of the Financial Services Regulatory Authority (“**FSRA**”; the provincial pension regulator under the *Pension Benefits Act*, R.S.O. 1990, Chapter P.8 (the “**PBA**”), and also the administrator of the Pension Benefits Guarantee Fund under the PBA, the “**PBGF**”); and
- (c) LifeWorks (Canada) Inc. (“**LifeWorks**”; formerly Morneau Shepell Inc.), the actuarial consulting firm who is the administrator of the Sears Canada Plan, having been appointed by the CEO.

¹ 3. THIS COURT ORDERS that, with the exception of Opt-Out Individuals, (a) the Representatives and the Representative Counsel shall represent all Represented Parties in these CCAA proceedings; (b) the Represented Parties shall be bound by the actions of the Representatives and the Representative Counsel in these CCAA proceedings; and (c) the Representatives shall be entitled, on the advice of counsel, to reach any settlement agreements, advocate on behalf of the Represented Parties for the Purpose and compromise any rights, entitlements or claims of the Represented Parties, subject to approval of this Court.

4. A copy of the Minutes of Settlement is attached hereto as **Exhibit "A"**.
5. On June 22, 2017, Sears Canada Inc. and its affiliated companies (collectively "**Sears Canada**") were granted protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c, C-36.
6. One of Sears Canada's affiliated companies and a CCAA Applicant was SLH Transport Inc. ("**SLH**").
7. SLH did not set up its own pension plan. SLH employees participated and earned pension benefits in the Sears Registered Retirement Plan ("**Plan**"). The Plan has a total of approximately 18,000 retirees and their beneficiaries across Canada.
8. On October 16, 2017, the Ontario Superintendent of Financial Services ("**Superintendent**") appointed LifeWorks to take over the administration of the Sears Canada Plan pursuant to s. 8(1.1) of the PBA. LifeWorks' mandate is to wind up the plan.
9. On November 10, 2017, the Superintendent ordered that the Plan be wound up retroactive to October 1, 2017 (the "**Wind Up Date**"). The wind up crystallized the estimated funding deficit of \$260 million owing by Sears Canada to the Plan, which Sears Canada did not pay.
10. As of the Wind-Up Date, there were 408 former SLH beneficiaries in the Plan who are entitled to pension benefits payable from the Plan, of whom there were approximately 310 in Ontario, 89 in Quebec, and 9 where the jurisdiction was unclear.
11. On September 27, 2018, the Superintendent made an order declaring that the PBGF applies to the Plan.

12. The PBGF protects the pension benefits of members and beneficiaries of certain single employer defined benefit pension plans in Ontario. In the event of an employer's insolvency and the resulting wind up of its pension plan in an underfunded state, the PBGF guarantees benefits payable from those plans when plans are underfunded, subject to specific maximums and specific inclusions. The PBGF is governed by the PBA and its Regulations, and is administered by the CEO of FSRA. The PBGF insures the monthly pension benefits of eligible pension plan members up to a maximum amount of \$1,500 per month.

13. I am advised by Representative Counsel and believe that pursuant to paragraph 4.1 of section 85 of the PBA, the pension benefits of plan members who are subject to federal regulation are governed by the *Pension Benefits Standards Act, 1985* (Canada) (the “**PBSA**”) and are not guaranteed by the PBGF.

14. On May 31, 2021, a delegate of the CEO of FSRA issued a Notice of Intended Decision (the “**NOID**”) that the pension benefits accrued by Plan beneficiaries who were employed by SLH in Ontario (the “**SLH Ontario Beneficiaries**”) are subject to the PBSA and therefore not guaranteed by the PBGF;

15. On June 30, 2021, Representative Counsel requested a hearing at the Financial Services Tribunal (“**FST**”) to determine whether the PBA applies to the SLH Ontario Beneficiaries with the result that their pension benefits are guaranteed by the PBGF.

16. The FST Proceeding commenced on January 27, 2022 and continued for four days with six witnesses. I was one of the witnesses.

17. I have been advised by Andrew Hatnay, Representative Counsel, that evidence emerged at the hearing which was relevant to whether the PBGF covered the pension benefits accrued by SLH Ontario Beneficiaries for the period from October 6, 1985 to December 31, 1996 (the “**SLH Ontario Service**”).

18. This evidence caused FSRA and LifeWorks to reconsider their position and the Settlement was reached.

The terms of the Settlement

19. The Settlement is a full and final settlement of all claims made by all present and former Plan beneficiaries arising from the subject matter of the FST proceedings. The main terms of the settlement are as follows:

a) The Plan will be administered by treating the pension benefits accrued by SLH Ontario Beneficiaries as being subject to the PBA for the period of SLH Ontario Service.

b) The fees incurred by LifeWorks and its counsel with respect to the issue as to whether the pension benefits accrued by the SLH Ontario Beneficiaries should be subject to the PBA (collectively, the “**LifeWorks Fees**”) will be charged to the fund of the Plan and allocated as follows:

- (a) Up to \$300,000 of the LifeWorks Fees (including taxes and disbursements) will be paid from the assets attributable to the SLH Plan beneficiaries who are subject to Ontario jurisdiction before the PBGF payment is calculated and applied to the funding deficit;

- (b) Up to \$300,000 of the LifeWorks Fees (including taxes and disbursements) will be paid from the assets attributable to all of the SLH Plan beneficiaries as a whole, as if all of the employment of those Plan beneficiaries was subject to the Federal jurisdiction, before the PBGF payment is calculated and applied.
- (c) LifeWorks Fees in addition to the amounts above will be applied against the liabilities of the Plan as a whole.
- (d) For greater clarity,
 - (i) the same wind-up funded ratio will apply to all SLH Plan beneficiaries before taking into account the SLH Ontario Service as being subject to the PBA;
 - (ii) even though under (b), the SLH Plan beneficiaries will be treated as if all the employment of the SLH Plan beneficiaries was subject to the Federal jurisdiction with respect to this portion of the LifeWorks' fees, the PBGF will be applied to the SLH Ontario Service to guarantee the first \$1,500 of each monthly pension owing to Plan beneficiaries in respect of pension benefits accrued for the SLH Ontario Service; and
 - (iii) it is understood that applying the LifeWorks Fees to SLH as described in (b) will result in more than \$300,000 of the LifeWorks fees ultimately being allocated to the portion(s) of the Plan assets covering benefits guaranteed by the PBGF.

20. LifeWorks will file a wind-up report for the Plan (the “**Wind-Up Report**”) with FSRA as soon as is reasonably practicable, and will incorporate the above terms of the Settlement in the Wind-Up Report. Representative Counsel will receive a copy of the Wind-Up Report when it is filed and within 30 days of such receipt will advise FSRA and LifeWorks if the Settlement terms have not been properly incorporated into the Wind-Up Report.

The Settlement is fair and reasonable

21. I believe that the Settlement is the result of negotiations that arose in the midst of a contested FST hearing among represented parties, and settles the litigation with a meaningful benefit for the Ontario SLH members.

22. The Settlement provides certainty for the parties and avoids the incurring of additional legal costs.

23. The Settlement represents a fairly struck bargain that ensures fair and equitable treatment for the SLH Ontario Beneficiaries. It also ensures that the CEO of FSRA has the certainty required as administrator of the PBGF, and that LifeWorks has certainty with respect to the wind-up process.

24. The Monitor is supportive of a resolution to this issue.

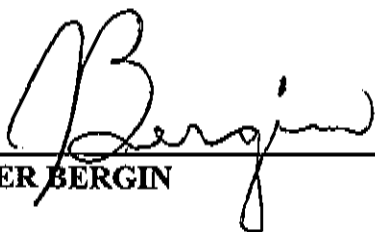
25. For all of the foregoing reasons, I respectfully request that this Court approve the Settlement.

26. I make this affidavit in good faith and in support of a motion approving the Settlement described herein and for no improper or other purpose.

SWORN remotely by Peter Bergin of the City of Kingston, in the Province of Ontario, before me at the City of Guelph, in the Province of Ontario, on July 8, 2022 in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely.*



A Commissioner for taking Affidavits, etc.
Matt Masters LSO# 66002i


PETER BERGIN

This is **Exhibit "A"**
referred to in the Affidavit of Peter Bergin
sworn before me this 8th day of July, 2022.



A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

Matt Masters, LSO #66002I

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8 (the "**Act**"), in particular sections 85, 87 and 89;

AND IN THE MATTER OF a Notice of Intended Decision dated May 31, 2021 issued by the Head, Relationship Management and Prudential Supervision by delegated authority from the Chief Executive Officer, regarding the Sears Canada Inc. Registered Retirement Plan, Registration Number 0360065 (the "**Plan**");

AND IN THE MATTER OF a proceeding commenced through a Request for Hearing in accordance with section 89(6) of the Act.

B E T W E E N:

COURT-APPOINTED REPRESENTATIVE COUNSEL TO SEARS RETIREES

APPLICANT

- and -

**CHIEF EXECUTIVE OFFICER of the FINANCIAL SERVICES
REGULATORY AUTHORITY**

RESPONDENT

- and -

LIFEWORCS (CANADA) INC.

ADDED PARTY

MINUTES OF SETTLEMENT

WHEREAS Sears Canada Inc. and its affiliated companies (collectively "**Sears Canada**") were granted protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c, C-36 on June 22, 2017;

AND WHEREAS one of Sears Canada's affiliated companies was SLH Transport Inc. ("**SLH**");

AND WHEREAS the Applicant and Bill Turner, Ken Eady, and Larry Moore (the "**Representatives**") were appointed to represent the interests of the non-unionized retirees and non-unionized active and former employees of the Sears Canada Entities in

the Sears CCAA proceedings by court order dated July 13, 2017 (“July 13, 2017 Court Order”);

AND WHEREAS the Plan was significantly underfunded at its effective wind-up date of October 1, 2017 (the “**Wind Up Date**”);

AND WHEREAS as of the Wind Up Date, there were 408 former SLH beneficiaries entitled to benefits payable from the Plan, of whom there were approximately 310 in Ontario, 89 in Quebec and 9 where the jurisdiction is currently unclear;

AND WHEREAS the Superintendent of Financial Services made an order on September 27, 2018 declaring that Ontario’s Pension Benefit Guarantee Fund (the “**PBGF**”) applies to the Plan;

AND WHEREAS pension benefits accrued in connection with the operation of any work, undertaking or business that is within the legislative authority of the Parliament of Canada are exempted from the application of the PBGF by section 85(4.1) of the Act;

AND WHEREAS on May 31, 2021, a delegate of the Chief Executive Officer of the Financial Services Regulatory Authority of Ontario (“**FSRA**”) issued a Notice of Intended Decision (the “**NOID**”) that the pension benefits accrued by Plan beneficiaries who were employed in Ontario by SLH (“**SLH Ontario Beneficiaries**”) are subject to the *Pension Benefits and Standards Act*, 1985 (R.S.C., 1985, c. 32 (2nd Supp.)) and therefore not guaranteed by the PBGF;

AND WHEREAS the Applicant sought a hearing before the Financial Services Tribunal with respect to whether the Act applies to SLH Ontario Beneficiaries with the result that their pension benefits are guaranteed by the PBGF (the “**FST Proceeding**”);

AND WHEREAS in the FST Proceeding, evidence emerged which was relevant to whether the PBGF covered the pension benefits accrued by SLH Ontario Beneficiaries for the period from October 6, 1985 to December 31, 1996 (the “**SLH Ontario Service**”);

AND WHEREAS this evidence caused FSRA and LifeWorks (Canada) Inc. (“**LifeWorks**”) to reconsider their position on this matter;

AND WHEREAS LifeWorks has advised that, subject to the approval of the relevant regulators, the professional and legal fees that they incur with respect to the administration and wind-up of the Plan that are paid from the fund of the Plan will be allocated, to the extent practicable, to the Plan assets relating to the jurisdiction to which the professional fees relate;

AND WHEREAS the Applicant has sought and obtained court approval of the following terms by Order dated July 14, 2022, pursuant to section 3 of the July 13, 2017 Court Order;

NOW THEREFORE the Applicant, the Representatives, the Respondent, and the Added Party (the "**Parties**") agree to the following terms in full and final settlement of all claims made by all present or former Plan beneficiaries arising from the subject matter of these proceedings:

The Sears Canada Plan

1. The Plan will be administered by treating the pension benefits accrued by SLH Ontario Beneficiaries as being subject to the Act for the period of SLH Ontario Service.

The LifeWorks Fees

2. The fees incurred by LifeWorks and its counsel with respect to the issue as to whether some or all of the pension benefits accrued by the SLH Ontario Beneficiaries should be subject to the Act (collectively, the "**LifeWorks Fees**") will be charged to the fund of the Plan and will be allocated as follows:

- (a) Up to \$300,000 of the LifeWorks Fees (including taxes and disbursements) will be paid from the assets attributable to the SLH Plan beneficiaries subject to Ontario jurisdiction before the PBGF payment is calculated and applied.
- (b) Up to \$300,000 of the LifeWorks Fees (including taxes and disbursements) will be paid from the assets attributable to the SLH Plan beneficiaries as a

whole, as if all of the employment of those Plan beneficiaries was subject to the Federal jurisdiction, before the PBGF payment is calculated and applied.

- (c) LifeWorks Fees in addition to the amounts above will be applied against the liabilities of the Plan as a whole.
- (d) For greater clarity,
 - (i) the same windup funded ratio will apply to all SLH Plan beneficiaries before taking into account the SLH Ontario Service as being subject to the Act;
 - (ii) even though under (b), the SLH Plan beneficiaries will be treated as if all the employment of the SLH Plan beneficiaries was subject to the Federal jurisdiction with respect to this portion of LifeWorks' fees, the PBGF will be applied to the SLH Ontario Service to guarantee the first \$1,500 of each monthly pension owing to Plan beneficiaries in respect of pension benefits accrued for the SLH Ontario Service; and
 - (iii) it is understood that applying the LifeWorks Fees to SLH as described in (b) will result in more than \$300,000 of the LifeWorks fees ultimately being allocated to the portion(s) of the Plan assets covering benefits guaranteed by the PBGF.

3. LifeWorks will file a final wind-up report for the Plan (the “**Wind Up Report**”) with FSRA as soon as is reasonably practicable, and will incorporate the above terms of the settlement in the Wind Up Report. Representative Counsel will receive a copy of the Wind-Up Report when it is filed and within 30 days of such receipt will advise FSRA and LifeWorks if the settlement terms have not been properly incorporated into the Wind-Up Report.

Conditions, Representations, Warranties and other matters

4. These Minutes of Settlement are made without prejudice to any other matter and without admission of liability by any party and shall not be interpreted as having precedential effect. The Parties hereto agree that the implementation of these Minutes of Settlement will be in full and final satisfaction of any and all claims by the Parties, and by all current and former SLH Plan beneficiaries, with respect to or in connection with or arising from the Sears Canada Plan, including any and all claims that were raised or could have been raised in the FST Proceeding. Representative Counsel represents and warrants that it has obtained court approval confirming that it has the authority to bind all SLH Plan beneficiaries in this settlement without any further approval of any other individual or entity. Representative Counsel represents and warrants that it is not aware of any further claim by any present or former SLH Plan beneficiary that is not addressed by these Minutes of Settlement.

5. Within 10 days of execution of these Minutes of Settlement, Representative Counsel shall withdraw the Request for Hearing (Form 1) in respect of the NOID by completing a Withdrawal/Discontinuance (Form 5) and filing it with the Registrar of the Tribunal. The Parties shall take any necessary steps or execute any necessary documents to effect the termination of the FST Proceeding and implementation of the terms of these Minutes of Settlement.

6. Upon confirmation from the Tribunal that the Request for Hearing has been withdrawn and the FST Proceeding is terminated, the Parties agree that the Chief Executive Officer of FSRA, or delegate, shall issue an order in the form attached (the "**Order**").

7. The Applicant agrees that it will take no steps to challenge the Order.

8. The Parties acknowledge that, upon issuance of the Order contemplated in paragraph 6, these Minutes of Settlement and the Order are public and may be published by FSRA on its public website (or that of its successor) along with a press release that summarizes these Minutes of Settlement and the Order. The Parties agree not to make

representations to any member of the public or media or in a public forum that are inconsistent with these Minutes of Settlement or the Order.

9. Subject to paragraph 2, this settlement is on a without-costs basis and no party shall be liable for any legal costs, taxes or disbursements of any other party.

10. These Minutes of Settlement shall enure to the benefit of and shall be binding upon the Parties, including the SLH Plan beneficiaries, and their respective heirs, executors, administrators, successors and permitted assigns.

11. These Minutes of Settlement shall be governed by and interpreted in accordance with the laws of Ontario and shall be subject to the exclusive jurisdiction of the courts of Ontario.

12. The Parties each agree that they understand the terms of these Minutes of Settlement, have had an opportunity to obtain independent legal advice about the content and effect of these Minutes, that they are content with the consideration received and will not challenge same, and that they are executing this document voluntarily and with the intent of bringing an end to any and all disputes between each person or entity signing this document below, including the SLH Plan beneficiaries. The Parties agree that they have not been induced to enter into these Minutes of Settlement by reason of any representation or warranty of any nature or kind whatsoever, and that there is no condition express or implied or collateral agreement affecting the said settlement.

13. These Minutes of Settlement represent the entire terms of settlement.

14. No amendment to these Minutes of Settlement shall be effective unless made in writing and signed by authorized representatives of each of the Parties.

15. The Parties agree to execute any other document or documents that may reasonably be required to give effect to this settlement.

16. These Minutes of Settlement can be signed in counterparts and electronic copies of the signatures are deemed to be and count as originals in all respects, and such counterparts together shall constitute one and the same executed document.

IN WITNESS WHEREOF the undersigned have executed these Minutes of Settlement on the dates set out below.

Date: July , 2022

Andrew Fung, Head, Relationship
Management and Prudential Supervision,
by delegated authority from the Chief
Executive Officer of the Financial Services
Regulatory Authority

Date: July , 2022

LifeWorks (Canada) Inc.

Date: July , 2022

Court-Appointed Representative Counsel to
Sears Retirees

Date: July , 2022

Bill Turner

Date: July , 2022

Ken Eady

Date: July , 2022

Larry Moore

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.C-36, AS Court File No. CV-17-11846-00CL
AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., 9370-2751 QUEBEC INC., 191020 CANADA INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

(each an "Applicant", and collectively, the "Applicants")

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**AFFIDAVIT OF PETER BERGIN
(SWORN JULY 8, 2022)**

KOSKIE MINSKY LLP

20 Queen Street West
Suite 900, Box 52
Toronto, ON M5H 3R3

Andrew J. Hatnay - LS# 31885W

Tel: 416-595-2083 / Fax: 416-204-2872

Email: ahatnay@kmlaw.ca

James Harnum - LS#: 60459F

jharnum@kmlaw.ca

Tel: (416) 542-6285 / Fax: (416) 204-2819

Representative Counsel for the Retirees of
Sears Canada

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

Court File No. CV-17-11846-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., 9370-2751 QUEBEC INC., 191020 CANADA INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

(each an "**Applicant**", and collectively, the "**Applicants**")

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**MOTION RECORD
(Motion re: Approval of SLH Settlement
Agreement)**

KOSKIE MINSKY LLP

20 Queen Street West
Suite 900, Box 52
Toronto, ON M5H 3R3

Andrew J. Hatnay - LS# 31885W

Tel: 416-595-2083 / Fax: 416-204-2872

Email: ahatnay@kmlaw.ca

James Harnum - LS#: 60459F

Tel: (416) 542-6285 / Fax: (416) 204-2819

Email: jharnum@kmlaw.ca

Representative Counsel for the Retirees of
Sears Canada