



JUSTICE AT WORK

Sears Canada Entities' Employee Representative Counsel
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October 29, 2020

TO: The Non-Unionized Active and Former Employees of Sears Canada Inc., The Cut Inc., Sears Contact Services Inc., Initium Logistics Services Inc., 9845488 Canada Inc. (formerly 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., 3339611 Canada Inc., and SearsConnect (collectively, the "**Sears Parties**"), 191020 Canada Inc. and 168886 Canada Inc. (together, the "**SLH Parties**") and 9370-2571 Québec Inc. ("**Former Corbeil**"), and collectively, with the Sears Parties and SLH Parties, the "**Sears Canada Entities**")

Dear Sirs/Mesdames:

Re. Proposed Amended and Restated Joint Plan of Compromise and Arrangement of the Sears Canada Entities

As you know, on June 22, 2017, Sears Canada Inc. and certain of its affiliates (as defined above, the "**Sears Canada Entities**") obtained creditor protection under the *Companies' Creditors Arrangement Act* (the "**CCAA**").

In connection with the Sears Canada Entities' CCAA proceedings, Ursel Phillips Fellows Hopkinson LLP was appointed to represent the interests of the non-unionized active and former Employees of the Sears Canada Entities. Information about the proceedings and matters of interest to employees may be found at our website at <http://upfhlaw.ca/areas-of-practice/sears-canada-employees-and-former-employees>.

As you may already know, the Sears Canada Entities have closed all stores, discontinued operations and liquidated substantially all assets in an effort to get the highest recoveries possible for their creditors, including employees. Further to this effort, FTI Consulting Canada Inc., in its capacity as Court-appointed Monitor (the "**Monitor**") and Sears Canada Inc., by its Court-appointed litigation trustee (the "**Litigation Trustee**"), pursued litigation related to the payment of certain dividends by Sears Canada Inc. to its shareholders in 2013 (the "**Estate Dividend Litigation**"). Morneau Shepell Ltd., as administrator of the Sears Canada Inc. Pension Plan ("**Pension Plan**"), and certain "Sears Hometown" store dealers, as part of a class action ("**Dealer Class Action**"), also brought claims arising from the payment of those dividends in 2013 (together with the Estate Dividend Litigation, the "**Dividend Litigation**").

All claims in the Dividend Litigation are now the subject of settlement agreements that have been approved by the Court. The settlements of the Dividend Litigation will, upon implementation, result in total settlement proceeds of \$72.5 million to the plaintiffs. 54.6% of the gross settlement proceeds will be allocated to Sears Canada Inc., with the remaining gross proceeds allocated to the Dealer Class Action plaintiffs and the Pension Plan.

In order to distribute the proceeds from the liquidation of the assets of the Sears Canada Entities and the recoveries from the Estate Dividend Litigation, the Monitor has amended its original joint plan of compromise and arrangement, which was accepted for filing by the Court on February 15, 2019 (the "**Original Plan**"). The Original Plan has now been amended and restated (as may be further amended from

time to time, “the **Plan**”).¹

This letter sets out the important terms of the Plan, including a summary of relevant amendments. Capitalized terms used that are not otherwise defined in this letter are as defined in the Plan. A copy of the Plan can be found at the following website: <http://cfcanada.fticonsulting.com/searscanada/> and details regarding the Plan are outlined below.

Voting on the Plan and Representation by Employee Representative Counsel

In order for the Plan to be approved, it must be voted on and approved by a majority in number of each class of unsecured creditors that the Plan affects (referred to in the Plan as “**Affected Unsecured Creditors**”). In each unsecured creditor class, the majority of creditors that vote in favour of the Plan must also hold at least two-thirds of the value of the total Claims of the unsecured creditors in that class who have voted on the Plan. Voting will only be conducted by proxy at a Meeting held for the purpose of voting on the Plan. Effectiveness of the Plan is also subject to the approval of the Court pursuant to the CCAA.

Ursel Phillips Fellows Hopkinson LLP, as Employee Representative Counsel, has been appointed as proxy holder for you, along with all other Employees that we represent (collectively, the “**ERC Employees**”). This means that individual Employees are not entitled or required to vote on their own behalf. Rather, Employee Representative Counsel has authority to vote on your behalf and **you do not need to complete a proxy**.

In developing the Plan, the Monitor worked closely with our firm, as well as the Court-appointed Pension Representative Counsel, the Financial Services Regulatory Authority of Ontario (the Ontario pension regulator) and Morneau Shepell Ltd., as the administrator of the Sears Canada Inc. Pension Plan (the “**Pension Plan Administrator**”, and collectively with Pension Representative Counsel and the Financial Services Regulatory Authority of Ontario, the “**Pension Parties**”).

Employee Representative Counsel believes the Plan is appropriate and in the best interests of ERC Employees, and will therefore be voting the proxy of all ERC Employees **FOR** approval of the Plan.

The Meeting to vote on the Plan will be held virtually on November 16, 2020. Details of the Meeting and the Sanction Hearing are contained in the Notice of Meetings and Sanction Hearing enclosed in this package. Remember, Employee Representative Counsel will be voting on your behalf in favour of the Plan. You are not required to attend the Meeting.

Overview of the Plan

The following information gives a high level overview of the Plan and is intended to help you understand it. You should note, however, that the governing document is the Plan.

Substantially all assets of the Sears Canada Entities have now been sold. The Plan primarily seeks to distribute the proceeds from those sales together with all other remaining assets of the Sears Canada Entities to their creditors in accordance with their legal entitlements. If the Plan is approved by the required majorities of creditors and sanctioned by the Court, the Plan will:

- (a) effect a compromise and settlement of all affected claims, in exchange for the distribution of funds to unsecured creditors (including Employees) with proven unsecured claims;
- (b) facilitate the payment of distributions in respect of proven unsecured claims, proven priority claims and proven secured claims;

¹ **What is a Plan of Compromise and Arrangement?** Generally speaking, a plan of compromise and arrangement is a proposal that a company under CCAA protection presents to its creditors, which if approved by those creditors and by the supervising court, then governs how various issues between that company and its creditors will be addressed. This typically includes how assets will be distributed, and how the claims of creditors will be compromised and settled in return for the distribution of those assets and other benefits to stakeholders under the plan.

- (c) resolve a number of significant claims against the Sears Canada Entities, including (i) claims relating to the wind-up deficit in the Sears Canada Pension Plan, and (ii) certain class action claims; and
- (d) allow those unsecured creditors of the Sears Parties who have not opted out of participation in the Estate Dividend Litigation (such creditors being “**Sears Opt-In Creditors**”), to fund the costs of the Estate Dividend Litigation and receive the benefit from the recoveries derived from the pursuit of such litigation,

all in the expectation that persons with an economic interest in the Sears Canada Entities will derive a greater benefit from the implementation of the Plan than would result from any alternative, including and in particular, a bankruptcy.

It is important to understand that if the Plan is not approved, a bankruptcy is the most likely outcome, which, as detailed in the Monitor’s Report on the Plan (a copy of which is available on the Monitor’s website: <http://cfcanada.fticonsulting.com/searscanada>), is likely to lead to significant administrative complexity and expense with respect to potential distributions to unsecured creditors, including Employees.

Classes of Unsecured Creditors (including Employees) and Voting

The Plan is a single joint Plan that will be subject to approval at the Meetings by the vote of each class of unsecured creditors, being:

- (a) the “**Sears Creditor Class**”, being unsecured creditors of any of the Sears Parties; and
- (b) the “**SLH Creditor Class**”, being unsecured creditors of any of the SLH Parties.

Since Former Corbeil has sufficient assets to pay all of its unsecured creditors in full, such creditors will have no shortfall on their claims and so will not be entitled to vote. Unsecured creditors in each class will be entitled to vote by proxy in the amount of their unsecured claim as finally determined in accordance with the applicable Claims Procedure Order and the Plan.

Estimated Recoveries and Distributions

While the value of distributions to unsecured creditors cannot be calculated with 100% certainty at this time, the current estimated range of recovery for unsecured creditors of the SLH Parties is approximately 20 to 24 cents on the dollar. For unsecured creditors of the Sears Parties who did not opt out of participation in the Dividend Litigation, this figure is currently estimated at approximately 8 to 10 cents on the dollar.

Distributions on account of the proven claims of unsecured creditors in the SLH Creditor Class and Sears Creditor Class will be based on the pro rata share of the net funds available in the SLH Parties and Sears Parties’ respective estates. This means that unsecured creditors of each of the two estates (i.e. of the Sears Parties and the SLH Parties) will recover the same percentage of their total unsecured claim against an estate as every other creditor with an unsecured claim against that estate.² As indicated above, the unsecured creditors of Former Corbeil will be paid in full.

The Monitor’s goal is to make a distribution to unsecured creditors, including ERC Employees who are still owed termination and severance payments, as soon as possible following implementation of the Plan. This distribution may not be the full amount of your dividend. Your dividend may be reduced by WEPP payments already received (see section below for more information) and/or by any overpayments of employment insurance. To the extent that any dividend may be available for you after an initial distribution, the Monitor may make one or more additional distributions at a later date. However, in an attempt to maximize the initial distribution, the Monitor intends to distribute approximately 95% of the cash available for distribution to unsecured creditors after first holding back an amount to complete the administration of the estate.

² For unsecured creditors of the Sears Parties who opted out of participation in the Dividend Litigation, they will not share in the proceeds of that litigation and will receive lower recoveries.

It is important to note that the Plan provides that creditors with Affected Unsecured Claims of \$80 or less (“**De Minimis Claims**”) are not entitled to receive a distribution pursuant to the Plan in respect of such De Minimis Claims. With the recoveries for creditors of Sears Canada estimated at 8 to 10 cents on the dollar, the cost of issuing such a payment is more than the payment itself. For example, a \$80 claim would result in a distribution of between \$6.40 and \$8.00. Additionally, if the final amount remaining for distribution is an amount for which the Monitor determines the cost of such distribution relative to the amount to be distributed is not justified, no distribution of such final amount will occur but instead that amount will be paid to the Pension Plan Administrator for distribution to the Pension Plan. Therefore, if after receiving an initial distribution, the cost to distribute the remaining amount is more than the distribution itself, a second payment will not be issued. Ultimately, this method of distribution will result in the maximum amount of money being sent to you as soon as possible.

Prior Compensation from Wage Earner Protection Program (“WEPP”)

In the event that you have already received compensation for your proven unsecured claim from WEPP, the claim for which you will be entitled to receive recoveries under the Plan will be correspondingly reduced dollar for dollar by the amount of such prior compensation. Most Employees who received a WEPP payment received an amount that compensated their entire claim. As such, most Employees will not be receiving further funds from the distribution.

Moreover, the claim for which you will be entitled to receive recoveries under the Plan may be reduced by any overpayments of employment insurance as well as any applicable withholdings taxes.

Pension Claims

The Sears Canada Entities, Monitor and the Pension Parties reached a settlement pursuant to which the Pension Claims will be allowed as proven unsecured claims at the value of \$624,480,000 against the Sears Parties and \$26,020,000 against the SLH Parties, subject to certain adjustments. As part of the settlement, the Pension Parties agreed to discontinue certain motions with respect to, among other things, the priority of such Pension Claims upon implementation of the Plan. In conjunction with the settlement, the Pension Plan Administrator, as the largest creditor in the estate, has confirmed that it will vote in favour of the Plan, provided that the conditions of the settlement are met.

Summary of Amendments to Plan

The Plan includes the following amendments to the Original Plan:

- (a) Litigation Cost Recovery Amount: As a result of the settlements of the Dividend Litigation, the Plan no longer requires a mechanism to provide for ongoing funding of this litigation. The Plan now provides that Sears Canada shall be reimbursed from the proceeds of the settlement of the Estate Dividend Litigation for the costs funded by Sears Canada Inc. This reimbursed amount will be available for distribution to creditors of Sears Canada Inc. with Proven Affected Unsecured Claims, regardless of whether such creditors are Sears Opt-In Creditors. The recoveries received by Sears Canada Inc. from the settlement of the Dividend Litigation (net of the Litigation Cost Recovery Amount) will be distributed in accordance with the Plan to the Sears Opt-In Creditors holding Proven Affected Unsecured Claims, which includes ERC Employees.
- (b) D&O Claims, Director Indemnities and Claims for Contribution from the ESL Parties: The Plan no longer requires a mechanism for distributions to be made on account of indemnity claims asserted by any Director, Officer or ESL Party in connection with the Dividend Litigation. Those indemnity claims have been released as part of the settlement of the Dividend Litigation.
- (c) Releases: The Plan now provides for releases in favour of the Settling Defendants, being Edward Lampert, ESL Investments, Inc., and those former directors and officers and affiliates of ESL Investments, Inc. who were defendants in the Dividend Litigation, among others. Sears Canada is required to seek approval of these releases as a term of the settlements of the Dividend Litigation that was previously approved by the Court.

- (d) Warranty Reimbursement Pool: As a result of additional asset sale proceeds and cash inflows, the cash attributable to the Warranty Reimbursement Pool has increased from \$8,000,000 to \$9,000,000.
- (e) Revised Dates: The Plan Implementation Date must have occurred by December 31, 2020 or such later date as agreed by the Pension Parties and the Monitor.

Further Information

If you have any questions regarding the Plan, the vote, or matters with respect to the Meeting or Sanction Hearing, please contact us, your Employee Representative Counsel, by email at SearsCanadaEmployees@upflaw.ca or by phone at 1-844-855-8352.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'Ursel Phillips', is written in a cursive style.

Ursel Phillips Fellows Hopkinson LLP