

**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**”)

**FACTUM OF THE LITIGATION INVESTIGATOR
(Re Appointment of Litigation Trustee, Lifting of Stay, and Other Relief)
(Returnable December 3, 2018)**

November 20, 2018

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Litigation Investigator

TO: **THE SERVICE LIST**

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PART I - INTRODUCTION

1. Sears Canada Inc. (“**Sears Canada**”) was, until 2017, one of Canada’s largest retailers. It operated hundreds of stores and employed tens of thousands of people across the country. In June 2017, Sears Canada and a number of its affiliates (the Applicants in this proceeding) filed for, and obtained, insolvency protection pursuant to an Order of this Court issued under the *Companies’ Creditors Arrangement Act* (the “**CCA**”).¹

2. Sears Canada’s creditors, including its employees and pension plan members, have suffered the consequences of its collapse. Sears Canada’s remaining assets can satisfy only a small fraction of the claims against the company, and its creditors are certain to endure severe losses.

3. Earlier this year, this Court appointed a Litigation Investigator to investigate and determine whether any claims should be brought on behalf of the Applicants and/or their creditors against third parties, including Sears Canada’s controlling shareholders and former directors.

4. The Litigation Investigator has identified a number of claims that it recommends should be pursued by various parties, and has recommended a procedure for bringing them that would be efficient, expeditious, and fair to all the parties. Sears Canada’s creditors will receive the funds recovered from these claims (net of costs).

5. The Litigation Investigator’s investigation suggests that Sears Canada was driven into insolvency by its controlling shareholders. With the assistance of its then-directors, these shareholders repeatedly extracted vast sums of money from Sears Canada, ignoring its obvious financial difficulties and enriching themselves rather than investing in its business.

¹ R.S.C. 1985, c. C-36.

6. The Litigation Investigator seeks an order from this Court appointing a Litigation Trustee to prosecute the identified claims on behalf of Sears Canada for the benefit of its creditors, implementing the recommended litigation procedure, lifting the stay of proceedings as against Sears Canada's former directors, and creating a fund to allow the Litigation Trustee and the Monitor to pursue the proposed claims.

7. The Monitor and the Creditors' Committee (defined below) support the relief sought by the Litigation Investigator. It is respectfully submitted that granting the proposed order would benefit creditors and further the policy objectives of the CCAA, and therefore should be granted.

PART II - SUMMARY OF FACTS

THE SEARS CANADA CCAA PROCEEDING

8. In the early 2010s, Sears Canada began to experience severe financial difficulties. Over the first half of the decade, its gross revenues declined steeply and its earnings tumbled. By 2014, Sears Canada's operating losses had reached more than \$400 million per year.²

9. Those losses were unsustainable. On June 22, 2017, Sears Canada and the other Applicants made an application under the CCAA. This Court issued an initial order commencing these proceedings (the "**Initial Order**") on the same day. FTI Consulting Canada Inc. was appointed the Monitor (the "**Monitor**") by the Initial Order.

10. In the Initial Order, the Court imposed a stay of proceedings against the Applicants, their employees and representatives, and their current and former directors (the "**Stay**") until July 22, 2017. The Stay was subsequently extended, most recently until December 18, 2018.

² Twenty-Seventh Report to the Court Submitted by FTI Consulting Canada Inc., in its Capacity as Monitor, dated November 5, 2018 ("**Monitor Report**"), p. 18.

11. In this proceeding, the claims of the Applicants' creditors far outweigh the Applicants' remaining assets. Although the claims process has not yet been completed, the Monitor estimates that unsecured creditors will likely recover less than 10% of the value of their claims.³

12. The remaining assets of the Applicants' estates include potential litigation claims against third parties.

THE LITIGATION INVESTIGATOR

13. By an order issued on March 2 and amended on April 26, 2018 (the "**LI Order**"), this Court appointed Lax O'Sullivan Lisus Gottlieb LLP (the "**Litigation Investigator**") to assess potential litigation claims and determine whether any such claims could be brought against third parties for the benefit of the Applicants and their creditors.

14. More specifically, the Litigation Investigator's mandate (the "**Mandate**") included the investigation and consideration of "any rights or claims" that the Applicants and/or any of their creditors "may have against any parties," including the Applicants' "current and former directors, officers, shareholders and advisors".⁴ The LI Order also established a committee of creditors of the Applicants (the "**Creditors' Committee**") to consult with the Litigation Investigator for the purpose of completing the Mandate.

15. The Litigation Investigator carried out the Mandate between April and September, 2018, with the assistance of the Monitor. As required by the LI Order, it presented a report of its findings to the Creditors' Committee. As a result of that report, the Creditors' Committee supported the Litigation Investigator's recommendation to bring this motion and seek the relief sought herein.

³ Monitor Report, p. 25.

⁴ LI Order, para. 2.

16. Some of the findings of the Litigation Investigator are set out in the First Report of the Litigation Investigator, dated November 5, 2018 (the “**LI Report**”), and the Supplement to the First Report of the Litigation Investigator, dated November 16, 2018 (the “**LI Report Supplement**”). The Litigation Investigator has omitted some of its findings in the LI Report so as to protect privilege, and in consideration of the fact that litigation may be commenced as recommended in the LI Report.

THE SEARS CLAIMS

17. The Litigation Investigator has identified several claims that it recommends should be pursued on behalf of the Applicants against third parties (the “**Sears Claims**”). The Sears Claims include claims against Sears Canada’s controlling shareholders (the “**Controlling Shareholders**”) and certain of its former directors (the “**Former Directors**”) for various causes of action against each of these groups, including oppression, breach of fiduciary duty and the duty of care, conspiracy, unjust enrichment, knowing assistance, and knowing receipt.⁵

18. These claims relate to the payment by Sears Canada of a dividend totalling approximately \$509 million in late 2013 (the “**2013 Dividend**”). The 2013 Dividend was authorized by Sears Canada’s Board of Directors (the “**Sears Board**”) at the behest of the Controlling Shareholders without any consideration for the near certainty that a payment of that size would destroy Sears Canada’s chances of survival as a going concern, in light of its precarious financial position at the time.⁶

⁵ LI Report, pp. 6-7.

⁶ Monitor Report, pp. 9-10.

19. The Sears Board carried out essentially no due diligence before or during the meeting at which it authorized payment of the 2013 Dividend: the agenda for the meeting did not even mention a dividend. The Sears Board did not receive independent legal or financial advice, and its independent directors did not meet separately to discuss it. The materials provided to the directors before the meeting did not contain any analysis of the dividend or the impacts that payment thereof would have on Sears Canada.⁷

20. It appears that the payment of the 2013 Dividend was not in the best interests of Sears Canada, and that there was no good reason for paying it. Instead, the amount and timing of the 2013 Dividend appear to have been tailored to meet the needs of the Controlling Shareholders, in particular Edward S. Lampert and ESL Investments Inc. (“ESL”). ESL, a hedge fund, was facing a liquidity crisis at the time and urgently required additional cash to meet large-scale redemption requests from its clients.⁸

21. The 2013 Dividend plan was developed in large part by three of the Former Directors, all of whom had previously been senior executives at ESL before being appointed to the Sears Board by Mr. Lampert.⁹

22. At the time the 2013 Dividend was paid, Sears Canada was suffering from severe financial difficulties. To survive, it required immediate and large-scale reinvestment in its operations. Instead, the Former Directors approved the sale of its most valuable assets – the leases underlying

⁷ *Ibid.*

⁸ *Id.*, pp. 10-11.

⁹ *Id.*, p. 11.

some of its largest and most lucrative stores – in order to fund a transfer of hundreds of millions of dollars to its Controlling Shareholders.¹⁰

23. The Litigation Investigator recommends that the Sears Claims be brought by a Litigation Trustee on behalf of the Applicants and their creditors, and that the Honourable J. Douglas Cunningham, Q.C., be appointed as Litigation Trustee.¹¹

THE ADDITIONAL CLAIMS

24. The Litigation Investigator has also identified a number of claims that it recommends should be brought or continued by the Monitor and/or certain creditors of the Applicants (the “**Additional Claims**”, and, collectively with the Sears Claims, the “**Claims**”). The Additional Claims are all also based on the payment of the 2013 Dividend in the circumstances referred to above. The Additional Claims include a claim by the Monitor (the “**Monitor Claim**”), claims with respect to the deficiency in the Sears Canada pension plan (the “**Pension Claims**”), and an already-filed class action claim by former franchisees of Sears Canada (the “**Class Action Claim**”).¹²

(A) The Monitor Claim

25. The Litigation Investigator recommends that the Monitor pursue a transfer at undervalue claim under section 96 of the *Bankruptcy and Insolvency Act*,¹³ as made applicable to these proceedings by section 36.1 of the *CCAA*. The Monitor Claim would seek to set aside the 2013 Dividend on the basis that it was a gratuitous transfer to the Controlling Shareholders and that Sears Canada intended to defraud, defeat or delay creditors by paying it.

¹⁰ *Id.*, pp. 16-21.

¹¹ LI Report, p. 7.

¹² *Id.*, pp. 7-9.

¹³ R.S.C. 1985, c. B-3.

26. The Litigation Investigator and the Monitor recommend that the Sears Claims and the Monitor Claim (but not the other Additional Claims) be funded by the Applicants' estates, and that a fund totalling \$12 million be set aside for this purpose.¹⁴

(B) The Pension Claims

27. The Litigation Investigator recommends that certain creditors pursue claims directly. In particular, the Litigation Investigator understands that Morneau Shepell Ltd. – the administrator of Sears Canada's pension plan (the "**Pension Administrator**") – and the Superintendent of the Financial Services Commission of Ontario ("**FSCO**") intend to pursue their own claims, as follows:

- (a) Claims by the Pension Administrator against the Former Directors, in their capacities as directors of Sears Canada (the pension administrator at the time) for breach of fiduciary duty, knowing assistance, knowing receipt and conspiracy, and claims against the Controlling Shareholders for knowing assistance, knowing receipt and conspiracy; and
- (b) Claims by FSCO against the Former Directors for oppression, breach of fiduciary duty, breach of the standard of care, knowing assistance, knowing receipt and conspiracy, and against the Controlling Shareholders for knowing assistance, knowing receipt and conspiracy.

28. The Litigation Investigator recommends that these claims be pursued in concert with the Sears Claims and the Monitors Claim.

¹⁴ LI Report, p. 10.

(C) The Class Action Claim

29. The Litigation Investigator recommends that the Class Action Claim, an existing proposed class proceeding commenced in October 2015 by a number of former “Sears Hometown” store franchisees, continue.¹⁵ The Class Action alleges that the payment of the 2013 Dividend in the face of the claimants’ previous class action suit for breaches of contract and the *Arthur Wishart Act (Franchise Disclosure), 2000* was oppressive.¹⁶

30. The Litigation Investigator further recommends that Sotos LLP and Blaney McMurtry LLP, the class action counsel, with the support of the Litigation Investigator and the Monitor, seek an order of the Court transferring the class action to the Commercial List, and promptly seek an Order certifying the action as a class action under the *Class Proceedings Act, 1992*.¹⁷

31. The Litigation Investigator believes that it is important to co-ordinate the Class Action Claim with the other Claims, as all of the proceedings deal with a significant overlap of critical facts. It would be inefficient for the Class Action Claim to proceed in a different forum and could potentially lead to inconsistent findings on the same issues.

THE PROPOSED PROCEDURE

32. The Litigation Investigator has recommended a procedure that would allow the Claims to be advanced in as efficient, expeditious, and fair a manner as possible (the “**Proposed Procedure**”) in the circumstances of this proceeding.¹⁸

¹⁵ The proceeding was commenced in Milton, Ontario and bears the court file number 4114/15.

¹⁶ S.O. 2000, c. 3.

¹⁷ S.O. 1992, c. 6.

¹⁸ LI Report, pp. 9-10.

33. The Proposed Procedure involves the issuance of separate statements of claim for each of the Claims (or, in the case of the Class Action Claim, transfer of the previously-commenced action to the Commercial List), followed by a joint discovery process and a common issues trial for all of the Claims, which all stem from the same transactions and are based on common facts.¹⁹

34. The Creditors' Committee has reviewed and approved the Sears Claims and the Proposed Procedure. The Monitor has reviewed the Proposed Procedure and the Sears Claims, and approves them on the condition that an opt-out procedure for creditors who do not wish to participate in the litigation is also implemented. The Monitor is in the process of developing such a mechanism.²⁰

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

35. The issues to be decided on this motion are:

- (a) Whether the Honourable J. Douglas Cunningham, Q.C., should be appointed Litigation Trustee to bring the Sears Claims on behalf of the Applicants and their creditors;
- (b) Whether the Proposed Procedure should be applied to the hearing of the Claims;
and
- (c) Whether the Stay should be lifted as against the Former Directors to allow the Claims to proceed against them.

¹⁹ The Proposed Procedure is set out in detail in the Common Issues Trial Protocol attached as Schedule "A" to the Litigation Investigator's proposed Litigation Trustee Appointment Order (as amended in the version attached to LI Report Supplement).

²⁰ Monitor Report, pp. 25-26.

A LITIGATION TRUSTEE SHOULD BE APPOINTED TO BRING THE SEARS CLAIMS

36. The CCAA grants this Court the power to “make any order that it considers appropriate in the circumstances.”²¹

37. A discretionary order under the CCAA is appropriate when it advances the “policy objectives underlying the CCAA.”²² The overarching objective of the statute is to achieve a “reorganization that is fair to all”, by reaching “common ground” between the parties and treating stakeholders as “advantageously and fairly as the circumstances permit.”²³

38. Litigation of the Sears Claims would further the remedial purpose of the CCAA. Successful prosecution of the Sears Claims would recover funds for the Applicants’ estates from third parties who have harmed the Applicants and their creditors, or have been improperly enriched at the Applicants’ expense. This would have the effect of increasing the recovery available to the Applicants’ creditors and maximizing the potential for agreement on a plan of compromise.

39. The ultimate beneficiaries of any recoveries from the Sears Claims will be the Applicants’ creditors. As a result, the appropriate party to bring these claims is a litigation trustee who will act on their behalf.

40. Litigation trustees have been appointed to prosecute claims on behalf of creditors in a number of previous insolvency proceedings. For example, in the CCAA proceeding of Hollinger Inc., a litigation trustee was appointed “to deal with the assets available to Hollinger’s creditors[,]”

²¹ CCAA, s. 11.

²² *Re Ted Leroy Trucking [Century Services] Ltd.*, 2010 SCC 60, para. 70.

²³ *Id.*, paras. 70, 77.

which consist almost entirely of Hollinger's claims against former officers, directors and advisors."²⁴

41. There are no reported instances of a party objecting to, or a court refusing to grant, an order for the appointment of a litigation trustee in a CCAA proceeding.

42. Appointment of a litigation trustee is particularly appropriate in a CCAA proceeding involving the insolvency of a large business like Sears Canada, since the claims to be litigated in such proceedings are often complex and high-value. Examples of cases in which litigation trustees have been appointed to prosecute complex claims in CCAA proceedings include Sino-Forest Corp.,²⁵ New Solutions Financial Corp.,²⁶ and Cash Store Financial Services Inc.²⁷

43. The Sears Claims are large and involve potentially complex issues of law. The appointment of an experienced and skilled litigation trustee, such as Mr. Cunningham, will allow the Sears Claims to be prosecuted in a manner that is as efficient, expeditious and fair as possible.²⁸

44. Mr. Cunningham has agreed to act as Litigation Trustee. Given his many years of experience as a judge, mediator and arbitrator, he is ideally suited to act as the trustee of the Sears Claims. He will be in a position to consider all of the parties' interests as necessary, and to maximize returns for the benefit of all stakeholders.

45. To prosecute the Sears Claims effectively, the Litigation Trustee must be provided with the powers necessary to do so. The powers of the Litigation Trustee set out in the proposed

²⁴ *Re Hollinger Inc.*, 2011 ONCA 579, para. 3, leave to appeal refused, 2012 CarswellOnt 5450 (S.C.C.).

²⁵ *Re Sino-Forest Corp.*, 2012 ONSC 7050, paras. 18, 35, 64 [Commercial List], leave to appeal refused, 2013 ONCA 456.

²⁶ *Re New Solutions Financial Corporation*, 2017 ONCA 553, paras. 2, 10.

²⁷ *1511419 Ontario Inc. v. KPMG LLP*, 2017 ONSC 2472, para. 10 [Commercial List].

²⁸ Mr. Cunningham's qualifications are set out in further detail in the LI Report Supplement.

Litigation Trustee Order are appropriately tailored to the Trustee's role, and are in line with orders granted in similar previous proceedings.²⁹

46. It is appropriate that the litigation of the Sears Claims, including the fees of the Litigation Trustee and any agent(s) that he deems it necessary to retain, should be funded by the Applicants' estates. It is important that the Litigation Trustee and the Monitor be funded in a manner that will allow them to prosecute the claims effectively.

47. The Litigation Trustee's prosecution of the Sears Claims should be funded by the Applicants' estates, and the Court should order the establishment of a \$12 million litigation reserve to fund the proceedings. The prosecution of the Sears Claims is for the benefit of the Applicants' estates and, ultimately, the Applicants' creditors, so it is appropriate that the Applicants' estates should fund the Claims.

48. The Monitor plans to implement an opt-out procedure as part of the claims process to ensure that all creditors will have the opportunity to choose not to participate in the litigation process.³⁰

²⁹ The order of the Superior Court of Justice (Commercial List), dated May 21, 2008, appointing a litigation trustee in the Hollinger Inc. CCAA proceeding is attached hereto as Schedule "C". The order of the Superior Court of Justice (Commercial List), dated August 27, 2014, appointing a litigation trustee in the New Solutions Financial Corp. CCAA proceeding is attached hereto as Schedule "D".

³⁰ Monitor Report, pp. 25-26. Creditors who choose not to participate in the process will not benefit from any recoveries.

PROCEDURE PROPOSED BY THE LITIGATION INVESTIGATOR FOR LITIGATION OF THE CLAIMS SHOULD BE IMPLEMENTED

49. The *Rules of Civil Procedure* are to be applied in a manner that secures the “just, most expeditious and least expensive determination” of every civil proceeding.³¹ Implementing the Proposed Procedure is the best way of achieving those goals in this proceeding.

50. The Proposed Procedure has two main components. First, while the various Claims will remain as separate actions, they will be litigated together under a unified pre-trial process. Second, a single common issues trial will proceed to determine the issues common to all of the Claims.

51. Courts should approach the joinder of parties and causes of action in “the spirit” of eliminating the multiplicity of proceedings.³² Adoption of the Proposed Procedure achieves this goal by avoiding the unnecessary duplication of pre-trial proceedings and trials, thereby reducing wasted costs, time, and judicial resources and eliminating the possibility of inconsistent judgments.³³

52. Proceedings may be heard together when they have “a question of law or fact in common” and/or where the relief being sought “arises out of the same transaction or occurrence”.³⁴ Both are true of the Claims, which are largely focused on a single transaction – Sears Canada’s payment of the 2013 Dividend.

53. The Claims also have other features which have been recognized as justifying an order for trial together, including: interwoven issues, overlapping damages and evidence, similar parties,

³¹ R.R.O. 1990, Reg. 194, r. 1.04(1) [*Rules of Civil Procedure*].

³² *1014864 Ontario Ltd. v. 1721789 Ontario Inc.*, 2010 ONSC 3306 (Master), para. 15 [864 Ontario]; *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 138.

³³ *Grist v. Meaford*, 2015 ONSC 6051, para. 23.

³⁴ *Rules of Civil Procedure*, r. 6.01(1).

and the potential for cost savings.³⁵ Conversely, the Claims do not have features which have been found to militate against trial together, such as the applicability of different sets of rules, the potential for delay, or “undue procedural complexities.”³⁶

54. Nor would the Proposed Procedure prejudice the proposed defendants. To the contrary, a number of the specific proposals work to their benefit. For example, the plaintiffs have agreed to coordinate their examinations so that each proposed defendant will only have to be examined once.

55. Litigation of the Claims in a unified manner, in accordance with the Proposed Procedure, would be the most “convenient, efficient, and cost effective” means of resolving them.³⁷

THE STAY SHOULD BE LIFTED AS AGAINST THE FORMER DIRECTORS

56. The Claims include claims for breach of duty and several tort claims against the Former Directors – eight individuals who were directors of Sears Canada at the time the 2013 Dividend was devised, authorized, and/or paid.³⁸ Any potential claims against the Former Directors may currently be stayed by the Initial Order. None of the Former Directors is currently a directors or an officer of the Applicants, and none is involved in the CCAA proceeding on behalf of Sears Canada.

57. It is respectfully submitted that, to the extent it applies to them, the Stay should be lifted as against the Former Directors to allow prosecution of the Claims against them. Doing so would protect the interests of the Applicants’ creditors and further the objectives of the CCAA.

³⁵ *864 Ontario*, para. 18.

³⁶ *Ibid.*

³⁷ *Penson Financial Services Canada Inc. v. Connacher*, 2010 ONSC 2843, para. 3 [Commercial List].

³⁸ Those individuals are: William C. Crowley, William R. Harker, Donald Campbell Ross, Ephraim J. Bird, Deborah E. Rosati, R. Raja Khanna, James McBurney and Douglas Campbell.

58. The purpose of the stay of proceedings under the CCAA is to prevent conduct that would impair the ability of the debtor to stay in business and negotiate an orderly resolution to the insolvency proceeding.³⁹ A stay of proceedings against officers and directors has the benefit of acting “as an inducement to remain involved in the restructuring, which is benefitted by the directors’ and officers’ knowledge and expertise.”⁴⁰

59. Courts will lift a stay where there is “sound reason to do so”, based on consideration of three factors: “the balance of convenience, the relative prejudice to parties, and where relevant, the merits of the proposed action”.⁴¹

60. Here, the factors weigh strongly in favour of lifting the stay as against the Former Directors, since continuation of the Stay in their favour would not lead to any benefit in the CCAA proceeding, and would cause serious prejudice to the Applicants’ creditors. In addition, the Claims are *prima facie* meritorious.

61. Where the stay of proceedings does not assist in the achievement of the objectives of the CCAA, it serves no purpose and the balance of convenience favours lifting it, since “a stay *must be important* to the reorganization process and the court must weigh the relative prejudice arising from the stay.”⁴²

62. The Stay in favour of the Former Directors is not important to a reorganization of Sears Canada. Sears Canada is no longer in business, and there is no reasonable likelihood that it will emerge from the CCAA proceeding as a going concern. Instead, the CCAA proceeding involves

³⁹ *Re Timminco Ltd.*, 2014 ONSC 3393, para. 39.

⁴⁰ *Credit Suisse AG v. Great Basin Gold Ltd.*, 2015 BCSC 1199, para. 32 [*Credit Suisse*].

⁴¹ *Re Canwest Global Communications Corp.*, [2009] O.J. No. 5379, para. 32 (S.C.J. [Commercial List]).

⁴² *Credit Suisse*, para. 31 (emphasis added).

the liquidation and distribution of the Applicants' assets. The Former Directors are not involved in the current management of the Applicants or their estates. Thus, proceedings against them could not have any detrimental effect on the CCAA proceeding. In such a case, continued enforcement of the Stay in favour of the Former Directors serves no valid purpose.⁴³

63. On the other hand, continued enforcement of the Stay would cause significant prejudice to the Applicants' creditors, because it would prevent the prosecution of the Claims, from which the creditors stand to benefit, against the Former Directors.

64. Courts have recognized that a stay should not be enforced where doing so would "deny the plaintiff access to the courts or to substantially delay or impair the plaintiff's right to have his or her case heard", unless there is a compelling reason for doing so.⁴⁴ Here, there is no such reason, and therefore no justification to maintaining the Stay as against the Former Directors.

65. The Litigation Investigator was mandated by this Court to consider whether Sears Canada and/or its creditors have claims that should be brought against third parties. The Litigation Investigator investigated those claims and determined that the Claims should be pursued, as described above. The Litigation Investigator believes that the Claims are meritorious.

66. As discussed above, the facts demonstrate a number of bases for liability as against the Former Directors and the Controlling Shareholder.

67. The position in the Claims will be, among other allegations, that the Former Directors breached their duties to Sears by authorizing a \$509 million dividend that was not in the company's

⁴³ *Id.*, para. 39; *Re Puratone Corp.*, 2013 MBQB 171, para. 27, leave to appeal granted on other grounds, 2014 MBCA 13.

⁴⁴ *Kuchar v. Midland (Town)*, 2016 ONSC 6777, para. 21.

best interest. The 2013 Dividend provided no benefit to Sears, which was facing severe capital shortages, and desperately needed significant investments in its business. To the contrary, it was intended to assist the Controlling Shareholders, who were facing a short-term liquidity crunch. The Former Directors did not conduct even the bare minimum of due diligence before signing off on the transaction.⁴⁵

68. The Controlling Shareholders, knowing that the Former Directors were acting in breach of their duties to Sears Canada, assisted in those breaches, and received the profits thereof, as a result of which they were unjustly enriched.


69. It is respectfully submitted that each of the factors supports the lifting of the Stay of proceedings to allow the Claims to be pursued against the Former Directors.

PART IV - ORDER REQUESTED

70. The Litigation Investigator submits that the motion should be granted in the form of the proposed order attached to the LI Report Supplement.

⁴⁵ See *supra*, paras. 18-22.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 20th day of November, 2018.


for Matthew P. Gottlieb / Andrew Winton

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Litigation Investigator

SCHEDULE “A”

LIST OF AUTHORITIES

1. *Re Ted Leroy Trucking [Century Services] Ltd.*, 2010 SCC 60
2. *Re Hollinger Inc.*, 2011 ONCA 579, leave to appeal refused, 2012 CarswellOnt 5450 (S.C.C.)
3. *Re Sino-Forest Corp.*, 2012 ONSC 7050 [Commercial List], leave to appeal refused, 2013 ONCA 456
4. *Re New Solutions Financial Corporation*, 2017 ONCA 553
5. *1511419 Ontario Inc. v. KPMG LLP*, 2017 ONSC 2472 [Commercial List]
6. *1014864 Ontario Ltd. v. 1721789 Ontario Inc.*, 2010 ONSC 3306 (Master)
7. *Grist v. Meaford*, 2015 ONSC 6051
8. *Penson Financial Services Canada Inc. v. Connacher*, 2010 ONSC 2843 [Commercial List]
9. *Re Timminco Ltd.*, 2014 ONSC 3393
10. *Credit Suisse AG v. Great Basin Gold Ltd.*, 2015 BCSC 1199
11. *Re Canwest Global Communications Corp.*, [2009] O.J. No. 5379 (S.C.J. [Commercial List])
12. *Re Puratone Corp.*, 2013 MBQB 171, leave to appeal granted on other grounds, 2014 MBCA 13
13. *Kuchar v. Midland (Town)*, 2016 ONSC 6777

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY - LAWS

Rules of Civil Procedure, R.R.O. 1990, Reg. 194

1.04 (1) These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.

6.01 (1) Where two or more proceedings are pending in the court and it appears to the court that,

- (a) they have a question of law or fact in common;
- (b) the relief claimed in them arises out of the same transaction or occurrence or series of transactions or occurrences; or
- (c) for any other reason an order ought to be made under this rule, the court may order that,
- (d) the proceedings be consolidated, or heard at the same time or one immediately after the other; or
- (e) any of the proceedings be,
 - (i) stayed until after the determination of any other of them, or
 - (ii) asserted by way of counterclaim in any other of them.

(2) In the order, the court may give such directions as are just to avoid unnecessary costs or delay and, for that purpose, the court may dispense with service of a notice of listing for trial and abridge the time for placing an action on the trial list.

Courts of Justice Act, R.S.O. 1990, c. C.43

138 As far as possible, multiplicity of legal proceedings shall be avoided.

SCHEDULE "C"



Court File No. 07-CL-7120

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

THE HONOURABLE) **WEDNESDAY, THE**
)
MR. JUSTICE CAMPBELL) **21st DAY OF MAY, 2008**

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

**AND IN THE MATTER OF A PROPOSED PLAN OF COMPROMISE
OR ARRANGEMENT WITH RESPECT TO **HOLLINGER INC.,
4322525 CANADA INC. AND SUGRA LIMITED****

Applicants

ORDER

(Approval of Multi-Party Settlement and Cost Reduction / Asset Enhancement Program)

THESE MOTIONS, made by Hollinger Inc. ("Hollinger"), 4322525 Canada Inc. ("432") and Sugra Limited (the "Applicants"), and by Sun-Times Media Group, Inc. ("STMG") for an Order approving the terms of a settlement with STMG and Davidson Kempner Capital Management LLC and certain of its affiliates (collectively, "DK") and authorizing and approving the Applicants to take steps to restructure certain of their operations and management to reduce costs and enhance asset realizations was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Applicants dated May 14, 2008, the Seventh Report of Ernst & Young Inc. in its capacity as Court-appointed Monitor of the Applicants (the

“Monitor”), STMG’s Amended Fresh as Amended Notice of Motion dated May 15, 2008, an unredacted version of the Multi-Party Settlement (as defined herein) filed under seal and such other materials as this Court may direct be filed as part of the record herein, and on hearing from counsel for the Applicants, STMG, DK, the Indenture Trustees (as defined herein), Conrad Black, Conrad Black Capital Corporation, Barbara Amiel Black, Catalyst Fund General Partner I Inc., the Receiver of the Ravelston Corporation Limited and the Monitor and on being advised that the Service List as of May 14, 2008 was served electronically with the Applicants’ Amended Notice of Motion dated May 14, 2008 and STMG’s Amended Fresh as Amended Notice of Motion dated May 15, 2008 herein and on being advised that all material terms of the settlement are contained and disclosed in the Multi-Party Settlement;

Approval of Multi-Party Settlement

1. **THIS COURT ORDERS** that the agreement among the Applicants, STMG and DK, a redacted version of which is annexed as Schedule “A” hereto (the “Multi-Party Settlement”) and all transactions, actions and activities contemplated therein (the “Settlement Steps”), are hereby approved, the execution of the Multi-Party Settlement by the Applicants is hereby approved and ratified and the Applicants and the other parties thereto are hereby authorized and directed to carry out each of the Settlement Steps, including, without limitation, authorizing the issuance of the Additional Shares pursuant to a Consent, if necessary, and no further Order of this Court is necessary to give effect to any aspect of the Multi-Party Settlement. Terms not defined in this Order shall have the meaning described in the Multi-Party Settlement.

2. **THIS COURT ORDERS AND DECLARES** that the Multi-Party Settlement is fair and commercially reasonable.

3. **THIS COURT ORDERS AND DECLARES** that the information contained in Schedule "B" to the Multi-Party Settlement is commercially sensitive and shall be sealed pending further Order of this Court.

4. **THIS COURT ORDERS** that the Multi-Party Settlement shall be binding upon and enforceable against, and enure to the benefit of, the Applicants and any successors thereto including, without limitation, any trustee in bankruptcy, receiver or receiver and manager in respect of any or all of the Applicants and shall also be binding upon and enforceable against, and enure to the benefit of, STMG, DK, Delaware Trust Company, National Association, in its capacity as collateral agent and as trustee under the indenture dated as of March 10, 2003 with respect to the senior secured notes issued by Hollinger ("Delaware Trust"), and HSBC Bank USA, National Association, in its capacity as trustee under the indenture dated as of September 30, 2004 with respect to the senior secured notes issued by Hollinger ("HSBC"), and any other person having notice of this Order. The aforesaid indentures are collectively referred to herein as the "Indentures".

5. **THIS COURT ORDERS AND DIRECTS** Delaware Trust and HSBC (collectively, the "Indenture Trustees"), on the one hand, and the Applicants, STMG and DK, on the other, to cooperate with each other to facilitate the implementation of the Multi-Party Settlement insofar as it relates to the Indenture Trustees and their collateral. In particular, Delaware Trust is hereby directed to relinquish possession and control of the STMG Class B share certificates held by it as collateral (the "Class B Certificates") to or at the direction of the Applicants, and in exchange to simultaneously receive, upon issuance, from the Applicants or such other person at the direction of the Applicants, the certificates representing the Exchanged Shares and the Additional Shares in substitution for the Class B Certificates.

6. **THIS COURT ORDERS** that, notwithstanding any other provisions of this Order, the provisions of this Order and the Multi-Party Settlement are without prejudice to the rights, if any, of the Applicants and any other person in respect of the Class A shares of STMG currently owned by the Applicants or any of them that are not Exchanged Shares or Additional Shares or that may be subject to any escrow agreement in relation to Hollinger's Class II preference shares.

7. **THIS COURT ORDERS AND DECLARES** that nothing contained in this Order or in the Multi-Party Settlement shall:

- (a) affect the obligations of the Applicants to reimburse the Indenture Trustees in accordance with the Indentures (such reimbursable amounts being referred to herein collectively as the "Trustees' Fees and Expenses"); or
- (b) impair or modify the liens of the Indenture Trustees pursuant to the Indentures and any existing related agreements for payment of the Trustee's Fees and Expenses.

8. **THIS COURT ORDERS AND DIRECTS** the Monitor to report to this Court when all transactions, releases and acknowledgements of claims contemplated by the Multi-Party Settlement to occur on or forthwith after Court Approval have been completed or performed. The Monitor may report upon such other matters in relation to the Multi-Party Settlement at such time or times as the Monitor deems necessary or appropriate.

9. **THIS COURT ORDERS** that, without prejudice to the rights of any party pursuant to the comeback clause of the Initial Order, the Applicants, the Monitor, STMG, DK, the CRO (defined below), the Litigation Trustee or the Indenture Trustees may, at any time upon seven (7) days notice to the Service List, return to this Court to seek directions or other relief regarding the implementation of the Multi-Party Settlement or any other matter arising in relation to the Multi-Party Settlement.

10. **THIS COURT ORDERS** that notwithstanding:

- (a) the pendency of these proceedings or any ancillary proceedings;
- (b) a bankruptcy of any of the Applicants; and
- (c) the provisions of any federal or provincial statute,

none of the Multi-Party Settlement or any of the transactions contemplated thereby will be void or voidable at the instance of creditors or claimants or their representatives, including any trustee in bankruptcy, and do not constitute nor shall they be deemed to be settlements, fraudulent preferences, assignments, fraudulent conveyances or other reviewable transactions under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation and they do not constitute conduct giving rise to an oppression remedy or any other cause of action.

11. **THIS COURT ORDERS** that the approval of the Multi-Party Settlement, and in particular paragraph 16 thereof, shall not vary or be deemed to vary the Order of this Court dated February 27, 2007 in *STMG v. Conrad Black et al.* (Court File No. 06-CL-6678) and shall be without prejudice to the rights of the defendants in that action, Conrad M. Black, Barbara Amiel Black, Black-Amiel Management Inc., Conrad Black Capital Corporation, 1269940 Ontario Limited and 2753421 Canada Limited to make any arguments or take any position upon any motion seeking an Order as contemplated in paragraph 16 of the Multi-Party Settlement.

Approval of Cost Reduction and Asset Enhancement Program of the Applicants

(a) Appointment of CRO and Litigation Trustee

12. **THIS COURT ORDERS** that William E. Aziz shall be and is hereby appointed as an officer of this Court to be the Chief Restructuring Officer (“CRO”) over and in respect of all property,

assets and undertaking of the Applicants, other than the Litigation Assets, upon the terms described herein and in the Multi-Party Settlement.

13. **THIS COURT ORDERS** that justice John D. Ground (retired) is hereby appointed as an officer of this Court to be the Litigation Trustee over and in respect of all claims and causes of action in favour of the Applicants (collectively, the "Litigation Assets") on the terms described herein and in the Multi-Party Settlement.

14. **THIS COURT ORDERS** that the CRO and the Litigation Trustee are hereby authorized and directed to preserve, protect and realize upon the assets of the Applicants for the benefit of the Applicants and their creditors and other stakeholders as contemplated by the Multi-Party Settlement including, in the case of the CRO, without limitation and if thought necessary or desirable by the Applicants, the preparation and delivery of a plan of arrangement in respect of the Applicants as contemplated by the Multi-Party Settlement.

15. **THIS COURT ORDERS** that the CRO and the Litigation Trustee are hereby empowered, authorized and directed to do all things, carry out all actions and perform all duties described in the Multi-Party Settlement and specifically:

- (a) to engage and give instructions to counsel and to engage and give direction to consultants, appraisers, agents, advisors, experts, auditors, accountants, managers and such other persons from time to time on whatever basis either of them may agree to assist with the exercise of their powers and duties;
- (b) to execute, assign, issue and endorse documents of whatever nature in respect of the Applicants for any purpose pursuant to this Order or the Multi-Party Settlement; and

- (c) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Applicants or any of their property and undertaking and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to any appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding.

16. **THIS COURT ORDERS** that the Litigation Trustee may obtain financing in respect of the Litigation Assets at such times, in such amounts and upon such terms as the Litigation Trustee may consider to be appropriate after seeking direction from the Advisory Committee in accordance with the Multi-Party Settlement.

17. **THIS COURT ORDERS** that nothing herein contained shall require the CRO or the Litigation Trustee to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any property, assets or undertaking of any of the Applicants that might be environmentally contaminated, that might be a pollutant or a contaminant or that might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act* or the *Ontario Occupational Health and Safety Act* and regulations thereunder (collectively, the "Environmental Legislation"), provided however that nothing herein shall exempt the CRO or the Litigation Trustee from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Applicants are, and are hereby declared to be, and shall remain, in Possession, occupation and control of all of their property, assets and undertaking, subject to further Order of this Court.

18. **THIS COURT ORDERS** that neither the CRO nor the Litigation Trustee shall, as a result of this Order or anything done pursuant to their duties and powers under this Order, deem the CRO or the Litigation Trustee to be in Possession of any property, assets or undertaking within the meaning of any Environmental Legislation.

19. **THIS COURT ORDERS** that each of the CRO and the Litigation Trustee shall incur no liability or obligation as a result of his appointment or the carrying out of any of the provisions of this Order, save and except for any gross negligence or any wilful misconduct on his part. The Applicants shall indemnify and hold harmless each of the CRO and the Litigation Trustee with respect to any liability or obligation as a result of his appointment or the fulfilling of his duties in carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on his part. No action, application or other proceeding shall be commenced directly, or by way of counterclaim, third party claim or otherwise against either the CRO or the Litigation Trustee as a result of, or relating in any way to his appointment, the fulfillment of his duties or the carrying out of any Order of this Court except with leave of this Court being obtained. Notice of any such motion seeking leave of this Court shall be served upon the Applicants, the Monitor and the CRO or Litigation Trustee (as the case may be) at least seven (7) days prior to the return date of any such motion for leave.

20. **THIS COURT ORDERS** that the Applicants' indemnity in favour of the CRO and the Litigation Trustee shall survive any termination, replacement or discharge of the CRO or Litigation Trustee. Upon any termination, replacement or discharge of the CRO or Litigation Trustee, all claims against such officers of the Court for which leave of the Court has not already been sought and obtained shall be, and are hereby forever discharged.

21. **THIS COURT ORDERS** that, without limiting any other provision of this Order, each of the CRO and the Litigation Trustee may from time to time apply to this Court for advice and directions in the discharge of his powers and duties hereunder.

22. **THIS COURT ORDERS** that the Monitor, the CRO and the Litigation Trustee may report to the Court on their activities from time to time as any of them may see fit or as this Court may order.

(b) Monitor

23. **THIS COURT ORDERS** that, in addition to its duties described in the Initial Order and the Claims Process Order of even date herewith, the Monitor is hereby authorized to perform the functions and carry out the responsibilities described herein and in the Multi-Party Settlement. Performance of these functions and responsibilities is subject to the provisions of the Initial Order, particularly paragraphs 21 through 31 thereof.

(c) Directors' Insurance

24. **THIS COURT ORDERS** that the Applicants be and are hereby authorized to purchase run-off insurance for the officers and directors of the Applicants as described in the Monitor's Seventh Report.

(d) Other Actions

25. **THIS COURT RATIFIES AND APPROVES** all actions and activities of the Applicants, including its current officers, directors and management, in authorizing any of the transactions, actions and activities or other matters approved, authorized or directed pursuant to this Order.

Extra-Territorial Assistance

26. **THIS COURT REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body in any Province of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province and any state, federal or other court or any judicial, regulatory or administrative body of the United States of America to act in aid of and to assist this Court in carrying out the terms of this Order.



REGISTERED AT / INSCRIT À TORONTO
BOOK / BOOK NO:
LE / DANS LE REGISTRE NO.:

MAY 27 2008

PER/PAR: JSN

SCHEDULE "A"

EXECUTION COPY

Multi-Party Settlement Term Sheet

The Applicants seek Court Approval, as described herein, of the following terms of agreement among the Applicants, Sun-Times Media Group, Inc. ("STMG") and Davidson Kempner Capital Management LLC and its affiliates listed in Schedule "A" hereto (collectively, "DK").

A. STMG

1. Upon Court Approval, the Court shall authorize and direct Hollinger, 432, STMG and any other necessary parties to forthwith take the steps necessary to convert Hollinger's and 432's existing Class B shares into an equal number of Class A shares (the "Conversion"), subject to and prior to the steps described in paragraphs 2 and 3 hereof.
2. If STMG's stockholders are required to approve (the "Stockholder Approval") the issuance of the Additional Shares (as defined below), then, upon Court Approval, the Court shall authorize Hollinger, and Hollinger shall approve the issuance of the Additional Shares, pursuant to a stockholder written consent (the "Consent").
3. If Stockholder Approval is required, as soon as possible after the Consent Effective Date (as defined below), Hollinger and STMG shall effect the Conversion pursuant to the Restated Certificate of Incorporation of STMG. The Consent shall be effective after all actions required by the Securities Exchange Act of 1934, as amended (the "1934 Act"), have been taken and the issuance of the Additional Shares is permitted by the 1934 Act (the "Consent Effective Date"). If no Stockholder Approval is required, Hollinger and STMG shall effect the Conversion pursuant to the Restated Certificate of Incorporation of STMG as soon as possible after Court Approval.
4. Forthwith after the later of (i) Court Approval and (ii), if Stockholder Approval is required, the Consent Effective Date, STMG will issue to Hollinger (or as it may direct) 1,499,000 additional Class A shares (the "Additional Shares"). The number of Additional Shares represents 10% of the number of Hollinger's and 432's existing Class B shares.
5. All transactions will comply with all applicable laws and regulations and rules of applicable stock exchanges.
6. Upon the later of (i) Court Approval and (ii) immediately after the next annual meeting scheduled for June 17, 2008, the six directors appointed by Hollinger to the Board of STMG (Wes Voorheis ("Voorheis"), William Aziz ("Aziz"), Edward Hannah, Peter Dey ("Dey"), Brent Baird ("Baird") and Albrecht Bellstedt ("Bellstedt")) will submit their resignations from the board of STMG. Upon submitting their resignations, each resigning director will receive: (a) a written confirmation from STMG that any existing STMG indemnity will remain in place and that such resigning director will be covered by the STMG directors and officers insurance policy in effect from time to time on the same

terms as may be applicable to any other current STMG directors; and (b) reimbursement by STMG of all reasonable legal fees incurred by the independent directors (Dey, Baird and Bellstedt) in respect of their tenure as directors of STMG. Upon payment of such fees by STMG, Hollinger will reimburse STMG for all amounts paid in respect of such legal fees, except for US\$75,000.

7. Upon Court Approval, Hollinger will pay to STMG the reasonable fees and costs, including legal fees, of STMG incurred in connection with the CCAA proceedings of the Applicants, from August 1, 2007 up to and including the date of Court Approval. However, the total amounts payable to STMG by Hollinger under this paragraph shall be subject to a cap of US\$2 million in the aggregate.
8. STMG and Hollinger will cooperate to maximize the recoverable portion of the class action insurance settlement proceeds payable to them and such proceeds shall be allocated so that STMG receives 85% of such proceeds, and Hollinger receives 15% of such proceeds.
9. Hollinger and STMG agree to divide their respective recoveries from the insolvency proceeding of Ravelston equally as between them.
10. The following claims of STMG shall be allowed as unsecured claims against the Applicants (the "STMG Allowed Claims") in the amounts indicated below, subject to confirmation of the calculations of the quantum of such claims by the Monitor:
 - (a) a claim in respect of the promissory note executed by 4322525 Canada Inc. ("432") in the amount of US \$40,545,974;
 - (b) all claims for contribution and indemnity STMG has or may assert against Hollinger in the amount of US\$28,663,588; and
 - (c) a claim for the aircraft lease settlement in the amount of CDN\$1,281,941.
11. Other than the STMG Allowed Claims, all other claims of STMG and its subsidiaries against the Applicants or any of their other subsidiaries, and all claims of the Applicants and their subsidiaries against STMG and its subsidiaries, shall be released upon Court Approval. The Applicants agree, in connection with their release of STMG, that they will not seek contribution, indemnification, reimbursement or any other form of claims over from Torys LLP or any of its predecessor or successor partnerships, F. David Radler or North American Newspapers Ltd. for any consideration paid or payable by any of the Applicants to STMG under this Term Sheet. For greater certainty, nothing contained in this paragraph shall limit or otherwise compromise in any manner, the Applicants' right to pursue or continue to pursue those named parties for any claims whatsoever, save and except only in respect of consideration paid or payable by the Applicants to STMG under this Term Sheet.
12. The total recoveries of STMG under the STMG Allowed Claims shall be capped at a maximum of US\$15 million (the "STMG Cap"). After receipt of the STMG Cap, the

balance of the STMG Allowed Claims will be assigned to the Applicants for the benefit of the Applicants' other general unsecured creditors.

13. Upon STMG receiving distributions in the aggregate amount of US\$7.5 million in respect of the STMG Allowed Claims (after giving effect to any valid and effective subordination regarding distributions under the 432 promissory note referred to in paragraph 10(a) above, if any), fifty percent (50%) of all distributions thereafter payable to STMG in respect of the STMG Allowed Claims shall be assigned to the Applicants.
14. Prior to any agreement in respect of the terms contained herein, STMG will ensure that nothing herein or in any plan of arrangement (the "Plan") of the Applicants, if any, giving effect to the terms hereof or in the implementation of any such Plan will:
 - (a) cause the Rights (as defined in the STMG rights plan) to become exercisable;
 - (b) cause any Person (as defined in the STMG rights plan) to become an Acquiring Person (as defined in the STMG rights plan); or
 - (c) trigger the application of the STMG rights plan.
15. STMG will continue with its independent examination of all strategic alternatives available to STMG.
16. Subject to the terms of any existing court orders or agreements pursuant to which the Applicants may be restricted, the Applicants will support the making of an order providing STMG with equal rights in respect of the Applicants' Mareva injunction against Conrad Black and Barbara Amiel Black. STMG shall be permitted to reserve its right as to whether to seek such an order.

B. DK

17. (a) Forthwith after Court Approval, the Class A shares of STMG resulting from the Conversion (the "Exchanged Shares"), plus the Additional Shares, being 10% of the number of Hollinger's and 432's existing Class B shares, when issued shall be voted by the indenture trustees for the benefit of and at the direction of noteholders in the manner contemplated by the indentures up to that number of shares that is equal to or less than 19.999% of the aggregate number of STMG Class A shares then outstanding rounded down to the nearest whole share. The indenture trustees, for the benefit of the noteholders, may thereupon exercise all voting or other rights associated with the Exchanged Shares and the Additional Shares when issued subject to the limitation referred to in the immediately preceding sentence and subject to the rights and at the direction of the noteholders in the manner contemplated by the indentures (provided that any shares of the Applicants shall not be voted other than in favour of the election of the directors described in Schedule "C" hereto and other resolutions proposed by STMG at the next annual meeting of shareholders scheduled to occur on or about June 17, 2008 and thereafter without restriction) and may dispose of or otherwise realize upon such shares in any commercially reasonable manner and subject to the applicable law and as directed by the noteholders in a manner contemplated by the indentures (provided that

any such disposition or realization shall not be considered part of any Plan for the purposes of paragraph 14 hereof). The Applicants shall provide proxies and do such acts and things as will facilitate such rights.

(b) The Conversion and the issuance of the Additional Shares shall be subject to a registration rights agreement, to be negotiated among DK, the Applicants and STMG, all acting reasonably (the "Registration Rights Agreement") forthwith after Court Approval. In all events, such Registration Rights Agreement shall include a provision with respect to payment of fees connected with any such registration, and shall include a provision permitting STMG to postpone the filing of a registration statement or its efforts to cause such registration statement to become effective if at the time the right to delay is exercised by STMG it shall determine in good faith that such offering would interfere with any acquisition, financing or other transaction that STMG is actively pursuing and is material to STMG or would involve initial or continuing disclosure obligations that would not be in the best interests of STMG.

(c) Upon being paid in full, all principal, interest and costs and other amounts, payable under the indentures), the indenture trustees will remit any remaining shares and any surplus proceeds to Hollinger and 432.

18. (a) Subject only to a reasonable reserve for (i) administrative costs (including any applicable legal fees, advisor fees and any other costs secured by the Administration Charge and also including a reserve to pay the reasonable costs, fees and expenses in respect of DK's post-Court Approval role as described herein) and (ii) disputed claims, such reserves to be determined by the CRO (as defined in the STMG Term Sheet) and the Monitor, both acting reasonably (and subject to their right to seek directions from the Court), and in consultation with DK and STMG, and subject to the segregated funds described below, all other cash and realizable proceeds of the Applicants (including the 15% share of the insurance settlement proceeds referred to herein) and the non-applicant subsidiaries of the Applicants (other than STMG and its subsidiaries) shall be distributed as efficiently as reasonably possible to the creditors who have proved claims in accordance with the claims process for each of the Applicants. Distributions will be determined and made on a non-consolidated basis giving effect to inter-company claims but including only 50% of a claim by 432 against Hollinger in the amount of approximately CDN\$342.5 million and subject to the following payments in the priority specified below:

(i) firstly, to pay a transaction fee to DK in consideration of its agreement to the terms hereof of CDN\$1.5 million;

(ii) secondly, to pay the reasonable fees and disbursements, including reasonable legal fees and disbursements, of the indenture trustees up to and including Court Approval; and

(iii) thirdly, to pay the reasonable legal fees and disbursements of DK up to and including Court Approval;

provided that the total amount available to fund items (i) through (iii) hereof shall not exceed CDN\$4,500,000. The priority payments described herein will not affect the timing or amount of the payment to STMG described in paragraph 7 herein.

(b) The Applicants will acknowledge claims owing by 432 and also by Hollinger to the indenture trustees in the full amount of the principal, interest and costs owing under the two debentures dated March 10, 2003 and September 30, 2004, the amount of which is estimated to be US\$103,235,062 as of December 31, 2007. These claims will continue to accrue interest (unless and until the Applicants become bankrupt) in accordance with the debentures at the contractual rate until paid in full. The claims will be reduced only by distributions received by the indenture trustees from the estates of the Applicants and by amounts actually received from or in respect of the Exchanged Shares and the Additional Shares.

(c) The Monitor and the CRO, with periodic reports as requested (acting reasonably) and at least monthly to DK and STMG, will work to resolve and determine all disputed claims as efficiently as reasonably possible. The Monitor and the CRO will seek the input of DK and STMG before allowing any claims against the Applicants (other than the claims of STMG and the indenture trustees acknowledged herein). The Monitor and the CRO, in consultation with DK and STMG, will provide estimates of the net recovery to creditors based on the "waterfall" analysis of the Monitor and the information now known regarding the claims of all creditors (including the claims of STMG allowed under the STMG Term Sheet), such estimate to be updated after the claims bar dates for the Applicants and for the non-applicant subsidiaries as described herein.

(d) STMG will acknowledge that its claim against 432 in respect of the 432 loan is subordinated to and in favour of the claims of the indenture trustee for and in respect of only the senior bonds against 432.

19. DK agrees to:

- (a) withdraw its motion seeking the bankruptcies of the Applicants; and
- (b) support Court approval in the Applicants' CCAA proceeding ("Court Approval") consisting of: (i) approval of this agreement and (ii) approval of the other relief sought by the Applicants in their Notice of Motion dated April 10, 2008 to the extent not inconsistent with the terms described herein.

C. General Conditions

20. A standard CCAA claims process shall be implemented immediately for all claims against the Applicants, except claims against the Applicants by their subsidiaries (other than STMG and its subsidiaries).

21. A subsequent claims process shall be implemented in respect of the non-Applicant subsidiaries of the Applicants to ensure that all creditors of those subsidiaries are identified prior to the asset consolidation herein contemplated.
22. The Applicants, in consultation with the Monitor, shall prepare a plan to accumulate at Hollinger, on a tax-effective basis, all assets of the non-Applicant subsidiaries of the Applicants (other than STMG and its subsidiaries) after payment of all claims of creditors of such subsidiaries.
23. The Applicants agree to work with the Monitor, in consultation with DK and STMG (and subject to the right of all parties to seek directions from the Court), to realize upon any assets of the Applicants and the non-applicant subsidiaries (other than the cash, the Exchanged Shares, the Additional Shares and the Litigation Assets described herein) with a view to distributing net proceeds thereof as efficiently as reasonably possible and to provide the necessary proxies. In particular, the Applicants will consider making such distributions pursuant to periodic Court orders in the CCAA proceedings as opposed to incurring the costs associated with formalizing and approving a Plan.
24. The form and content of any Plan, if necessary or advisable to implement the terms hereof, as it relates to STMG shall be satisfactory to STMG, acting reasonably and, as it relates to DK and the indenture trustees, shall be satisfactory to DK, acting reasonably.
25. All steps and transactions described herein that are to occur upon Court Approval are intended to take place simultaneously, and the parties shall co-operate with each other to coordinate the timing of the effectiveness of such steps and transactions.
26. The information contained in Schedules "B" and "C" hereof is confidential and commercially sensitive. The parties agree to seek an order sealing Schedule "B", pending further order of the Court, and Schedule "C", until such time as the information contained therein is disclosed by STMG, and agree that Schedules "B" and "C" will be redacted from any publicly disclosed materials.

D. Corporate Governance

27. Aziz, or an entity controlled by him, shall be appointed forthwith by the Court Approval order as the chief restructuring officer (the "CRO") of the Applicants and an officer of the Court in consideration of a monthly salary of \$65,000, payable in advance, plus GST as applicable and reimbursement of reasonable expenses. Such engagement shall be on a month-to-month basis and may be terminated by Aziz upon 30 days' prior written notice.
28. The CRO shall be responsible, among other things, for developing and implementing the asset consolidation and repatriation plan and assisting the Monitor with the claims process.
29. The board of directors of Hollinger shall be reduced as soon as possible to a maximum of three persons.

30. Upon Court Approval, Hollinger and Voorheis will agree to suspend payment of all monthly work fees payable under Hollinger's consulting agreement with Voorheis or any entity controlled by him and Voorheis shall resign as an officer and director of the Applicants or any subsidiary.
31. In accordance with the engagement letter between Hollinger and BMO Nesbitt Burns Inc. ("BMO"), dated June 15, 2007, payment of all monthly work fees payable to BMO ceased in February 2008.

E. Litigation Assets

32. As part of the Court Approval order, justice John D. Ground shall be appointed as an officer of the Court to perform the role of litigation trustee (the "Litigation Trustee") of all claims and causes of action in favour of the Applicants (the "Litigation Assets") on such terms as may be agreed between the Applicants and justice Ground and subject to approval by the Court.
33. The Litigation Trustee will supervise, control and administer all aspects of the Litigation Assets of the Applicants, in consultation with the Applicants and subject to monitoring by the Monitor and supervision by the Court.
34. The Litigation Trustee may, if he considers it necessary or advisable, retain the services of Voorheis or an entity controlled by him on an hourly basis to provide assistance or advice in respect of the Litigation Assets.
35. The Litigation Trustee will be responsible for administering the Litigation Assets efficiently and in a cost-effective manner with a view to maximizing the net return, after costs, from the Litigation Assets to the Applicants and their creditors and other stakeholders and shall provide periodic reports to the Advisory Committee (as defined herein) and such other reports as may be requested by any member of the Advisory Committee, acting reasonably.
36. An advisory committee shall be established to provide advice and direction to the Litigation Trustee (the "Advisory Committee") comprised of one nominee of DK, one representative of the Applicants (other than Wes Voorheis) and the Litigation Trustee. The Litigation Trustee shall act in accordance with any majority decision of the Advisory Committee. For greater certainty, in the event of any disagreement as between the representative of DK and the representative of the Applicants, the Litigation Trustee shall have a deciding vote.
37. The nominee of DK to the Advisory Committee shall not receive any remuneration for so acting other than as specified below. The representative of the Applicants shall be a senior Canadian litigation counsel and shall be paid at his or her usual hourly rate by the Applicants. At the option of DK, its nominee may receive compensation on an equivalent basis to that of the representative of the Applicants. All members of the Advisory Committee shall be indemnified in respect of any claims made against them in such capacity excepting only claims arising from their wilful misconduct or gross negligence.

38. The Litigation Trustee will supervise and administer the Litigation Assets on a day-to-day basis, including giving direction to counsel. The Litigation Trustee will seek such direction from the Advisory Committee as he deems necessary or appropriate, but, in particular, the Litigation Trustee will seek direction from the Advisory Committee with respect to litigation strategy, financing (if any) for the Litigation Assets, whether to accept or make any settlement offer and the use of proceeds of any settlement.
39. The amount described in Schedule "B" hereto shall be segregated from the general cash assets of the Applicants and used exclusively for the purpose of funding the administration of the Litigation Assets. Payment of any amount payable to Mr. Wes Voorheis shall be made as contemplated in Schedule "B".
40. The Litigation Trustee will be responsible for administering the Litigation Assets efficiently and in a cost effective manner with a view to maximizing the net return, after costs, from the Litigation Assets to the Applicants and their creditors and other stakeholders.
41. Representatives of DK and Hollinger will hold all information received by them as members of the Advisory Committee in strict confidence pursuant to a form of confidentiality agreement acceptable to Hollinger, the Litigation Trustee and such representatives, all acting reasonably.
42. DK or Hollinger may apply to Court at any time to seek such changes to the provisions of the order appointing the Litigation Trustee as either of them may deem necessary or appropriate.

Subject to Court Approval being obtained to the terms hereof, pursuant to an Order in form and content satisfactory to the parties, for consideration received, each of the undersigned agrees to the above as evidenced by their respective signatures as of this 14th day of May, 2008. This agreement may be signed in counterparts and delivered by electronic transmission.

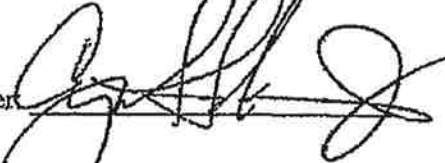
HOLLINGER INC., SUGRA LIMITED and

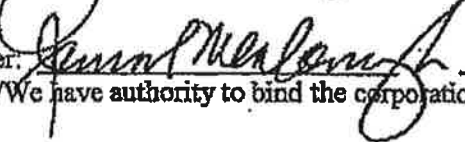
4322525 CANADA INC.

Per: 

(I have authority to bind each of the corporations)

SUN TIMES MEDIA GROUP, INC.

Per: 

Per: 
(I/We have authority to bind the corporation)

**DAVIDSON KEMPNER CAPITAL
MANAGEMENT LLC on its own behalf and
on behalf of the affiliates listed in Schedule
"A" hereto (collectively, "DK")**

Per: _____

Per: _____

(I/We have authority to bind the entities
collectively referred to as "DK")

SUN TIMES MEDIA GROUP, INC.

Per: _____

Per: _____
(I/We have authority to bind the corporation)

**DAVIDSON KEMPNER CAPITAL
MANAGEMENT LLC on its own behalf and
on behalf of the affiliates listed in Schedule
"A" hereto (collectively, "DK")**

Per: Av _____

Per: _____

(I/We have authority to bind the entities
collectively referred to as "DK")

Schedule "A"

MH Davidson Co.

Davidson Kempner International Limited

Davidson Kempner Institutional Partners

Davidson Kempner Partners

Schedule "B"

**REDACTED AND SEALED
PURSUANT TO COURT ORDER
DATED MAY 21, 2008**

Schedule "C"

The directors to be proposed for election at the annual general meeting of shareholders of STMG to be held on June 17, 2008 are the following, which, for greater clarity, are all of the current directors of STMG. The six directors referred to in paragraph 6 of the Multi-Party Settlement Term Sheet will, notwithstanding any such election, resign in accordance with paragraph 6 of the Multi-Party Settlement Term Sheet.

The Hon. Raymond G.H. Seitz
William Aziz
Brent D. Baird
Albrecht W. A. Bellstedt Q.C.
Herbert A. Denton
Peter Dey
Cyrus F. Freidheim, Jr.
Edward Hannah
Gordon A. Paris
Graham W. Savage
G. Wesley Voorheis

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 AND ARRANGEMENT OF HOLLINGER INC., 4372525 CANADA INC. AND SUGRA LIMITED

Court File No: 07-CL-7120

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER

Thornton GroutFinnigan LLP
Suite 3200, Canadian Pacific Tower
100 Wellington St. West, P.O. Box 329
Toronto-Dominion Centre
Toronto, ON M5K 1K7

Robert I. Thornton – 24266B
D.J. Miller – 34393P

Tel: (416) 304-1616
Fax: (416) 304-1313

Solicitors for the Applicants

SCHEDULE "D"

Court File No. CV-12-9674-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE



)
)
)

WEDNESDAY, THE 27th

DAY OF AUGUST, 2014

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

**APPLICATION OF NEW SOLUTIONS FINANCIAL CORPORATION, NEW
SOLUTIONS FINANCIAL (II) CORPORATION, NEW SOLUTIONS
FINANCIAL (III) CORPORATION, NEW SOLUTIONS FINANCIAL (VI)
CORPORATION, AND 2055596 ONTARIO LIMITED
(the "Applicants")**



**ORDER
(Appointment of Litigation Trustee)**

PREAMBLE:

- A. MNP Ltd. (the "**Monitor**") was appointed monitor of New Solutions Financial Corporation, New Solutions Financial (II) Corporation, New Solutions Financial (III) Corporation, New Solutions Financial (VI) Corporation (collectively "**New Solutions Group**") and 2055596 Ontario Limited (together with New Solutions Group, the "**Applicants**") pursuant to the Initial Order dated April 11, 2012 granted by Mr. Justice Morawetz pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**Initial Order**");
- B. The Monitor, on behalf of the New Solutions Group, commenced an action against Feldstein & Associates LLP and Warren Feldstein (collectively, the "**Defendants**") by Notice of Action issued on April 9, 2014 bearing Court File CV14-10509-00CL (the "**Feldstein Action**"), pursuant to leave given by the Order of Mr. Justice Penny dated April 4, 2014;
- C. A Statement of Claim was filed, but not yet served;

D. The Defendants have objected to the Monitor prosecuting the Feldstein Action on behalf of the New Solutions Group;

ON READING the Notice of Motion, and on hearing the submissions of counsel for the Monitor, the Applicants, the Defendants and such other counsel appearing on the Motion, and on being advised that no party to the Feldstein Action objects to the relief sought:

1. **THIS COURT ORDERS** that the Honourable Peter A. Cumming is hereby appointed as an officer of this Court to be the Litigation Trustee to prosecute the Feldstein Action on behalf of the New Solutions Group and for the benefit of the New Solutions Group and their creditors and other stakeholders, on the terms described herein.

2. **THIS COURT ORDERS** that the Litigation Trustee is hereby empowered, authorized and directed to do all things and carry out all actions necessary to prosecute the Feldstein Action, including:

- (a) to engage, give instructions and pay counsel as well as consultants, appraisers, agents, advisors, experts, auditors, accountants, managers and such other persons from time to time on whatever basis the Litigation Trustee may agree, to assist with the exercise of his powers and duties. Notwithstanding such authority, the Litigation Trustee shall be under no obligation to consult with its counsel, consultants, appraiser, agents, advisors, experts, auditors, accountants, managers and its good faith determination not to do so shall not result in the imposition of liability on the Litigation Trustee, unless such determination is based on gross negligence or willful misconduct;
- (b) to execute, assign, issue and endorse documents of whatever nature in the name of and on behalf of the New Solutions Group for any purpose pursuant to this Order; and
- (c) to continue the prosecution of the Feldstein Action, defend any counter claim, third party claim or other claim brought against the New Solutions Group, and to settle or compromise, abandon, dismiss or otherwise dispose of such proceeding. The authority hereby conferred shall extend to any appeals or applications for judicial review in respect of any order or judgment pronounced in such proceeding.

3. **THIS COURT ORDERS** that the New Solutions Group and the Monitor shall take all further actions as the Litigation Trustee may reasonably request in order to evidence and effect the transfer of the Feldstein Action, including providing all information and copies of all documents reasonably required.

4. **THIS COURT ORDERS** that the Litigation Trustee may obtain financing in respect of the Feldstein Action at such times, in such amounts and upon such terms as the Litigation Trustee may consider to be appropriate.

5. **THIS COURT ORDERS** that the Litigation Trustee and his designated agents, representatives and professionals, shall incur no liability or obligation as a result of his appointment or in carrying out of any of the provisions of this Order, save and except for any gross negligence or any willful misconduct. The New Solutions Group shall indemnify and hold harmless the Litigation Trustee and his designated agents, representatives and professionals with respect to any liability or obligations as a result of his appointment or the fulfillment of his duties in carrying out the provisions of this Order, save and except for any gross negligence or willful misconduct. For clarity, in no event shall the Litigation Trustee be personally liable for any costs awarded against the New Solutions Group in the Feldstein Action. Any such costs awarded shall be a claim solely against the New Solutions Group estates. No action, application or other proceeding shall be commenced against the Litigation Trustee as a result of, or relating in any way to his appointment, the fulfillment of his duties or the carrying out of any Order of this Court except with leave of this Court being obtained. Notice of any such motion seeking leave of this Court shall be served upon the New Solutions Group, the Monitor and the Litigation Trustee at least seven (7) days prior to the return date of any such motion for leave.

6. **THIS COURT ORDERS** that the indemnity pursuant to paragraph 5 above shall survive any termination, replacement or discharge of the Litigation Trustee. Upon any termination, replacement or discharge of the Litigation Trustee, all claims against the Litigation Trustee, his designated agents, representatives and professionals for which leave of the Court has not already been sought and obtained shall be, and are hereby forever discharged.

7. **THIS COURT ORDERS** that, without limiting any other provisions of this Order, the Litigation Trustee may from time to time apply to this Court for advice and directions in the discharge of his powers and duties hereunder.

8. **THIS COURT ORDERS** that nothing herein contained shall require the Litigation Trustee to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any property, assets or undertakings of any of the New Solutions Group that might be environmentally polluted or contaminated, or that might cause or contribute to a spill, discharge, release or deposit of the substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, *Canadian Environmental Protection Act*, the *Ontario Water Resources Act* or the *Ontario Occupational Health and Safety Act* and regulations thereunder (collectively, the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Litigation Trustee from any duty to report or make disclosure imposed by applicable Environmental Legislation. The New Solutions Group are, and are hereby declared to be, and

shall remain, in possession, occupation and control of all their property, assets and undertaking, subject to further Order of this Court.

9. **THIS COURT ORDERS** that the Litigation Trustee shall not, as a result of this Order or anything done in pursuance of the Litigation Trustee's duties and powers under this Order, be deemed to be in possession of any property, assets or undertakings within the meaning of any Environmental Legislation.

10. **THIS COURT ORDERS** that the Litigation Trustee may report to the Court on his activities from time to time as he may see fit or as this Court may order.

11. **THIS COURT ORDERS** that the Litigation Trustee and counsel to the Litigation Trustee (collectively, the "**Litigation Trustee Parties**") shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the New Solutions Group as part of the costs of these proceedings. The New Solutions Group are authorized and directed to pay the accounts of the Litigation Trustee Parties on a bi-weekly basis (or such other interval as may be mutually agreed upon) and, in addition, the New Solutions Group are hereby authorized to pay to the Litigation Trustee Parties retainers not exceeding \$50,000 each, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

12. **THIS COURT ORDERS** that the New Solutions Group shall pay all reasonable fees and disbursements of the Litigation Trustee Parties incurred prior to the date of this Order.

13. **THIS COURT ORDERS** that the Litigation Trustee Parties shall pass their accounts from time to time, and for this purpose the accounts of the Litigation Trustee Parties are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

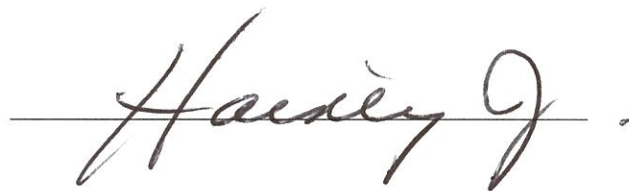
14. **THIS COURT ORDERS** that the Litigation Trustee Parties shall be entitled to the benefit of and are hereby granted a charge in the maximum amount of \$500,000 (the "**Litigation Trustee's Charge**") on the "Property" of the New Solutions Group as defined by paragraph 4 of the Initial Order ranking *pari passu* with the Administration Charge (as defined in the Initial Order) in priority to all other security interests, trusts (statutory or otherwise), liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any person, including all charges granted by the Initial Order (other than the Administration Charge) and all other Orders of this Court granted in these proceedings

15. **THIS COURT ORDERS** that the filing, registration or perfection of the Litigation Trustee's Charge shall not be required, and that the Litigation Trustee's Charges shall be valid and enforceable for all purposes, notwithstanding any such failure to file, register, record or perfect.

16. **THIS COURT ORDERS** that the granting of the Litigation Trustee's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Litigation Trustee's Charge shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declaration of insolvency herein; (b) any application(s) for bankruptcy order(s) issued pursuant to *Bankruptcy and Insolvency Act* (Canada) (the "BIA"), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; or (d) the provisions of any federal or provincial statutes, and notwithstanding any provision to the contrary in any agreement.

17. **THIS COURT ORDERS** that the payments made by the New Solutions Group pursuant to this Order and the granting of the Litigation Trustee's Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

18 **THIS COURT ORDERS** that MNP Ltd. is replaced by the Litigation Trustee in the title of proceedings in the Feldstein Action, without costs, and the title of proceedings shall be amended accordingly.



ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:



AUG 27 2014

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

Court File No. CV-12-9674-00CL

APPLICATION OF NEW SOLUTIONS FINANCIAL CORPORATION, NEW SOLUTIONS FINANCIAL
(II) CORPORATION, NEW SOLUTIONS FINANCIAL (III) CORPORATION, NEW SOLUTIONS
FINANCIAL (VI) CORPORATION AND 2055596 ONTARIO LIMITED

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at TORONTO

ORDER
(Appointment of Litigation Trustee)

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Barristers and Solicitors
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Harvey Chaiton

LSUC Registration No. 21592F
Tel: (416) 218-1129
Fax: (416) 218-1849
Email: Harvey@chaitons.com

Lawyers for the Monitor

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.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

FACTUM OF THE LITIGATION INVESTIGATOR

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Litigation Investigator

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
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CANADA INC.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

FACTUM OF THE LITIGATION INVESTIGATOR
(Re Appointment of Litigation Trustee, Lifting of Stay, and
Other Relief)
(Returnable December 3, 2018)

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