

Court File No. CV-18-00611219-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

FTI CONSULTING CANADA INC.,  
in its capacity as Court-appointed monitor in proceedings  
pursuant to the Companies' Creditors Arrangement Act, RSC 1985, c. c-36

Plaintiff

and

ESL INVESTMENTS INC., ESL PARTNERS, LP, SPE I PARTNERS, LP, SPE MASTER I, LP, ESL  
INSTITUTIONAL PARTNERS, LP, EDWARD S. LAMPERT, SEARS HOLDINGS  
CORPORATION, WILLIAM R. HARKER and WILLIAM C. CROWLEY

Defendants

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Court File No. CV-18-00611214-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

SEARS CANADA INC., by its Court-appointed Litigation Trustee,  
J. DOUGLAS CUNNINGHAM, Q.C.

Plaintiff

and

ESL INVESTMENTS INC., ESL PARTNERS LP, SPE I PARTNERS LP,  
SPE MASTER I LP, ESL INSTITUTIONAL PARTNERS LP,  
EDWARD LAMPERT, EPHRAIM J. BIRD, DOUGLAS CAMPBELL, WILLIAM  
CROWLEY, WILLIAM HARKER, R. RAJA KHANNA, JAMES MCBURNEY,  
DEBORAH ROSATI, DONALD ROSS and SEARS HOLDINGS CORPORATION

Defendants

**JOINT RESPONDING MOTION RECORD OF THE MONITOR, THE LITIGATION TRUSTEE,  
AND THE PENSION ADMINISTRATOR  
(TIMETABLE MOTION)  
(RETURNABLE SEPTEMBER 19, 2019)**

September 3, 2019

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

MORNEAU SHEPELL LTD., in its capacity as administrator of the  
Sears Canada Inc. Registered Retirement Plan

Plaintiff

and

ESL INVESTMENTS INC., ESL PARTNERS LP, SPE I PARTNERS, LP,  
SPE MASTER I, LP, ESL INSTITUTIONAL PARTNERS, LP,  
EDWARD S. LAMPERT, WILLIAM HARKER, WILLIAM CROWLEY, DONALD  
CAMPBELL ROSS, EPHRAIM J. BIRD, DEBORAH ROSATI,  
R. RAJA KHANNA, JAMES MCBURNEY, DOUGLAS CAMPBELL and SEARS  
HOLDINGS CORPORATION

Defendants

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Inc. Registered Retirement Plan

TO: **LITIGATION SERVICE LIST**

AND TO: **SERVICE LIST**

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**TAB 1**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

FTI CONSULTING CANADA INC.,  
IN ITS CAPACITY AS COURT-APPOINTED MONITOR IN PROCEEDINGS  
PURSUANT TO THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, RSC 1985, C. C-36

Plaintiff

- and -

ESL INVESTMENTS INC., ESL PARTNERS, LP, SPE I PARTNERS, LP,  
SPE MASTER I, LP, ESL INSTITUTIONAL PARTNERS, LP,  
EDWARD S. LAMPERT, WILLIAM HARKER AND WILLIAM CROWLEY

Defendants

**AFFIDAVIT OF STEVEN BISSELL  
(sworn September 3, 2019)**

I, STEVEN BISSELL, of the City of Toronto, in the Province of Ontario, MAKE OATH  
AND SAY:

1. I am a Managing Director of FTI Consulting Canada Inc. (the "**Monitor**"), the Court-appointed monitor for Sears Canada Inc. ("**SCI**"). As such, I have personal knowledge of the matters to which I hereinafter depose, except where otherwise stated. Where I have relied upon other sources of information, I have stated the source of that information and believe such information to be true.

2. I swear this affidavit in response to a Motion by the following Defendants in the Related Actions (as defined below): William Harker, William Crowley, Ephraim J. Bird, Donald Ross, James McBurney and Douglas Campbell (collectively, the "**Former Directors**") in these proceedings for:

- (a) An order varying, amending and setting aside the timetable ordered by Justice McEwen in the Related Actions (as defined below) on July 12, 2019 such that all further steps in the timetable are suspended pending either: (i) a final determination of the Coverage Application (as defined below) or, if the Ontario court declines jurisdiction, the determination of parallel proceedings for similar

relief before the courts of Illinois; or (ii) an agreement being reached to provide interim funding for the Former Directors' defence costs in these actions pending resolution of the Coverage Application; or

- (b) An order directing SCI to provide interim funding of the defence costs of the Former Directors by means of a non-recourse loan to the Former Directors that would be repaid out of reimbursement of defence costs made from one or more insurers.

(the "**Former Directors Motion**").

3. The Former Directors Motion was also served in actions commenced by 1291079 Ontario Limited (under Court File No. CV-19-617792-00CL), by Morneau Shepell Ltd. (the "**Pension Plan Administrator**"), in its capacity as administrator of the Sears Canada Inc. Registered Retirement Plan (the "**Pension Plan**") (under Court File No. CV-18-611217-00CL) and by SCI, by its court-appointed Litigation Trustee, J. Douglas Cunningham, Q.C. (the "**Litigation Trustee**") (under Court File No. CV-18-611214-00CL) (collectively, with this action, the "**Related Actions**").

#### **Events Leading to the Former Directors Motion**

4. On December 19, 2018, the Monitor, the Litigation Trustee and the Pension Administrator each commenced their Related Actions against the Former Directors, among others. The Related Actions are all based upon the same transaction – a \$509 million dividend that SCI declared in November 2013 and distributed to shareholders in December 2013. That dividend was authorized by the Former Directors.

5. The issue of insurance coverage available to the Former Directors in connection with the Related Actions and the issue of the litigation timetable have been the subject of extensive discussions, correspondence and court filings in connection with the Related Actions, including the following:

- a) January 9, 2019 I am advised by Evan Cobb of Norton Rose Fulbright Canada LLP, counsel to the Monitor, that the first case conference in connection with the Related Actions took place on this date.



b) January 25, 2019 I am advised by Mr. Cobb that a further case conference in connection with the Related Actions took place on this date and that the parties were directed to work toward a schedule that would lead to a preliminary targeted start date of February 3, 2020 for a joint trial.

c) February 12, 2019 In response to a request to inspect, counsel to the Former Directors delivered a letter to, among others, counsel to the Monitor enclosing insurance policies stated to be the policies under which an insurer may be liable to satisfy, indemnify or reimburse all or part of a judgment against the Former Directors in the Related Actions.

The insurance policies provided were policies under which Sears Holdings Corporation is listed as the “Parent Corporation” for a policy period from May 15, 2015 to May 15, 2016. The Policy limit under the primary policy layer was stated to be US \$15 million. The aggregate limits under all primary and excess policy layers was stated to be US \$150 million (the “**2015-2016 Policies**”).

d) February 21, 2019 Counsel to the Former Directors served an affidavit of John N. Birch, sworn February 21, 2019 (the “**Birch Affidavit**”). The Birch Affidavit states, among other things, that:

“On February 12, 2019, our firm produced to the Monitor and the other plaintiffs in the [Related Actions] (collectively, the “Plaintiffs”) copies of all insurance policies that the Former Directors believe may provide coverage in respect of the [Related Actions]”

“The policies that were provided to the Plaintiffs are policies purchased by Sears Holdings Corporation (“Sears Holdings”), which cover the 2015 to 2016 policy year, being the policies in effect when the 2015 Action was commenced. The insurers of Sears Holdings have taken the position that the policies from this period are the ones that may respond to the [Related Actions]”

“Accordingly, our firm has produced to the Plaintiffs all insurance policies that we believe may provide coverage in respect of the [Related Actions].”

A copy of the Birch Affidavit, without exhibits, is attached hereto as **Exhibit “A”**.

e) May 7, 2019 Covington & Burling LLP (“**Covington**”), U.S. counsel for the Former Directors, wrote to QBE Insurance Corporation (“**QBE**”), the insurer under the first excess layer in the 2015-2016 Policies, to advise that the coverage provided pursuant to the primary layer of insurance was almost exhausted and that coverage under the next layer of insurance held by QBE would soon be triggered.

f) May 16, 2019 A motion was filed by QBE in the proceedings of Sears Holdings Corporation under Chapter 11 of the United States Bankruptcy Code (the “**QBE Motion**”).

The QBE Motion sought relief from the automatic stay in the Chapter 11 proceedings of Sears Holdings Corporation to file a declaratory judgment action in the United States District Court for the Northern District of Illinois against the Former Directors, among others, in which QBE would request a judicial declaration that it has no obligation to provide coverage to the Former Directors in connection with the claims asserted against them in the Related Actions.

A copy of the QBE Motion is attached hereto as **Exhibit “B”**.

A copy of the letter from counsel to QBE to counsel for the Former Directors dated May 16, 2019 (the “**QBE May 16 Letter**”) is attached hereto as **Exhibit “C”**.

g) May 27, 2019 I am advised by Mr. Cobb that at a case conference in these proceedings on this date counsel to the Former Directors advised that QBE had denied coverage to the Former Directors in connection with the Related Actions.

h) June 6, 2019 Counsel to the Monitor wrote, with concurrence of all plaintiffs in the related actions, to counsel for the Former Directors (the “**NRFC June 6 Letter**”) advising of their surprise to learn of the QBE Motion and seeking certain additional information related to the 2015-2016 Policies.

A copy of the NRFC June 6 Letter is attached hereto as **Exhibit “D”**.

i) June 11, 2019 Counsel to the Former Directors wrote to counsel for the Monitor (the “**CBB June 11 Letter**”).

The CBB June 11 Letter enclosed a copy of a letter from counsel to QBE setting out QBE’s position on the insurance coverage issue in connection with the Related Actions.

The CBB June 11 Letter noted that “QBE was on notice of ... the likelihood that the 2015-2016 XL primary policy would be exhausted in the foreseeable future.” Attached to the June 11 Letter was the letter from QBE’s counsel to the Former Directors’ counsel dated May 16, 2019, the latter of which references the May 7, 2019 email from Covington noting that the primary policy may be exhausted “within the next few months or earlier.”

A copy of the CBB June 11 Letter is attached hereto as **Exhibit “E”**.

j) June 25, 2019 I am advised by Mr. Cobb that counsel for the parties in the Related Actions attended a without prejudice meeting on this date to negotiate a case timetable and trial start date.

k) June 27, 2019 I am advised by Mr. Cobb that, at a case conference, the Court tentatively set the trial start date in the Related Actions for May 19, 2020, based upon a consent draft timetable presented by the parties, with the dates for interim steps to be finalized.

l) July 11, 2019

A Notice of Application was issued by the Former Directors seeking, among other things, a declaration that the proceeds from the policy of insurance issued by QBE to Sears Holdings Corporation for the policy period from May 15, 2015 to May 15, 2016 applied to cover defence expenses incurred by the Former Directors in defending the Related Actions (the “**Coverage Application**”). The Coverage Application was stated to be scheduled for hearing on August 27, 2019.

The Notice of Application stated that:

“As of July 11, 2019, coverage under the 2015 XL Policy is almost exhausted”.

“XL provided periodic updates to QBE and other insurers regarding erosion of its policy limits. On May 7, 2019, QBE was advised that the first layer of coverage provided pursuant to the 2015 XL Policy was almost exhausted and that coverage under the next layer of insurance held by QBE would soon be triggered”.

This is a reference to the May 7, 2019 email from Covington to US counsel for QBE stating that:

“Based on the Former Directors’ defense expense projections in the above-referenced matter, we anticipate that the primary layer of insurance afforded by XL Policy No. ELU139040-15 (the “XL Policy”) may be exhausted within the next few months or earlier. We are working with XL and underlying counsel to calculate the precise amount of remaining limits under the XL Policy and develop a better estimate as to when exhaustion will occur.... At this point, we have not yet received QBE’s written confirmation that it will provide follow-form coverage under the QBE Policy consistent with XL’s acknowledgment of coverage under the primary XL Policy.”

Copies of the Notice of Application and the May 7<sup>th</sup> Email are attached hereto as **Exhibits “F”** and **“G”**, respectively.

m) July 12, 2019                    On the consent of all interested parties, the Court issued an endorsement approving a timetable for the Related Actions that set a joint trial of the Related Actions to commence on May 19, 2020 and run until July 10, 2020.

A copy of the endorsement of the Court is attached hereto as **Exhibit “H”**.

n) July 15, 2019                    One of the Former Directors, Donald Ross, swore an affidavit in support of the Coverage Application (the “**July 15 Ross Affidavit**”), which states, among other things:

- i.    “In early 2019, in light of payments already incurred in respect of unrelated claims under the 2015 XL Policy, it became apparent that the 2015 XL Policy would become exhausted well before the trial of the [Related Actions] was completed.”
- ii.   “the 2015 [XL] Policy limits have been or will be exhausted imminently.”
- iii.   “I am advised by John N. Birch of Cassels, Brock & Blackwell LLP (“CBB”) and believe that, as of the date of this affidavit, based on the invoices that have been rendered but remain unpaid, the 2015 XL Policy either has been exhausted or likely will be exhausted after payment of the outstanding invoices.”

A copy of the July 15 Ross Affidavit, without Exhibits, is attached hereto as **Exhibit “I”**.

- o) August 8, 2019 Counsel to the Former Directors wrote to counsel for the Plaintiffs in the Related Actions (the “**CBB August 8 Letter**”). Counsel to the Former Directors advised that: (i) the Coverage Application would likely not proceed on August 27, 2019; (ii) XL Specialty Insurance Company advised that the primary layer under the 2015-2016 Policy had been completely exhausted<sup>1</sup>; (iii) these developments impact the current litigation timetable; and (iv) the Former Directors would not be in a position to meet the August 23, 2019 deadline for filing of any production motions.

A copy of the CBB August 8 Letter is attached hereto as **Exhibit “J”**.

### **SCI Estate Claims and Assets**

6. While claims of creditors are still being reviewed and, as a result, a definitive final listing of creditors cannot be provided, set out below is a summary of creditors who have filed liquidated claims in accordance with the Claims Procedure Order granted on December 8, 2017 and the Employee and Retiree Claims Procedure Order granted on February 22, 2018 in the *Companies’ Creditors Arrangement Act* (Canada) proceedings of SCI, excluding those creditors whose claims have been disallowed, as at August 30, 2019:

Type of Creditor	Number of Creditors	Dollar Value of Claims
Employee Termination	15,200	\$184,510,000
Employee Lifetime Discount		
Employee (Other Amounts)		
Pension Beneficiaries	16,322	\$260,200,000

<sup>1</sup> The Affidavit of Donald Ross sworn August 26, 2019 states that this confirmation was delivered to counsel to the Former Directors on July 15, 2019.

Type of Creditor	Number of Creditors	Dollar Value of Claims
Retiree Supplemental Plan Retiree Benefits Retiree Discounts Retiree (Other Amounts)	23,300	\$455,500,000
Landlords	88	\$462,400,000
Construction-related Claims	10	\$5,900,000
General Unsecured Creditors	845	\$294,000,000
<b><u>Total</u></b>		<b><u>\$1,662,510,000</u></b>

7. I am advised by Hamish Dunlop of the Pension Plan Administrator that as of August 29, 2019:

- (a) there were a total of 16,322 members of the Pension Plan with defined benefit entitlements;
- (b) the vast majority (78%) of these members are at least 65 years old;
- (c) 5,055 of these members are at least 80 years old, of which 1,037 are at least 90 years old; and
- (d) the average age of the members of the Pension Plan is 73 years old.

8. I am also advised by Mr. Dunlop that since June 2017 at least 976 former Pension Plan members have died.

9. While SCI holds cash in excess of \$155 million at this time, this amount of cash would provide only for very limited recoveries to unsecured creditors as illustrated by the aggregate value of claims against SCI.

10. In accordance with the Endorsement of Justice Hainey dated December 3, 2018 authorizing the Monitor and the Litigation Trustee to proceed with their Related Actions, the SCI estate assets include a reserve of \$12,000,000. The reserve is intended for a very specific




purpose and will form part of the estate to be distributed to creditors if not used for this purpose. The reserve is intended solely to cover: (1) the Monitor's and the Litigation Trustee's fees and disbursements in the Related Actions; and (2) any and all cost awards in favour of the defendants in the Related Actions against the Monitor, the Litigation Trustee or SCI, as the case may be. The December 3, 2018 endorsement does not permit the reserve to be used to fund the costs of the Former Directors' defence in this litigation. A copy of the December 3, 2018 endorsement is attached hereto as **Exhibit "K"**.


11. Aside from the importance of maximizing recoveries to creditors generally in these proceedings, the conservation of estate assets is also relevant to the Pension Support Agreement pursuant to which the Pension Plan Administrator, the Superintendent of Financial Services, in its capacity as Administrator of the Pension Benefits Guarantee Fund, and Koskie Minsky LLP, as representative counsel to the non-unionized retirees and non-unionized active and former employees, (collectively, the "**Pension Parties**") agreed to support a Plan of Compromise and Arrangement of SCI and its affiliates. The support obligations in the Pension Support Agreement are conditional upon the proposed plan providing for total net proceeds available for distribution to general unsecured creditors of no less than \$155,000,000.

12. The Monitor does not support the request for payment of the Former Directors' defence expenses using assets of the SCI estate. Any indemnification claim by a Former Director against SCI in connection with the Related Actions is an unsecured claim against the SCI estate and is not entitled to any priority recovery. Additionally, the assets available for distribution to unsecured creditors are already very limited relative to the amount of the liquidated claims that have been filed. SCI must satisfy the asset thresholds in the Pension Support Agreement to ensure support from the Pension Parties for the proposed plan of compromise and arrangement that has been drafted, filed with the court, and circulated to creditors.

SWORN BEFORE ME at the City of  
Toronto, in the Province of Ontario, this 3<sup>rd</sup>  
day of September, 2019.

  
A Commissioner for taking Affidavits  
(or as may be)

*Geoff mens*

  
STEVEN BISSELL

This is **Exhibit "A"** referred to in the  
Affidavit of Steven Bissell  
sworn before me, this 3<sup>rd</sup> day  
of **September, 2019**



\_\_\_\_\_  
A Commissioner for taking Affidavits

*Geoff Mear*

Court File No. CV-18-00611219-00CL

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

B E T W E E N:

FTI CONSULTING CANADA INC.,  
in its capacity as Court-appointed monitor in proceedings  
pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36

Plaintiff

- and -

ESL INVESTMENTS INC., ESL PARTNERS LP, SPE I PARTNERS, LP, SPE MASTER I, LP,  
ESL INSTITUTIONAL PARTNERS, LP, EDWARD S. LAMPERT, WILLIAM HARKER  
and WILLIAM CROWLEY

Defendants

**AFFIDAVIT OF JOHN N. BIRCH  
(SWORN FEBRUARY 21, 2019)**

I, John N. Birch, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the President and director of John N. Birch Professional Corporation, which corporation is a partner of Cassels Brock & Blackwell LLP ("**Cassels**"). Cassels is counsel of record for the Defendants William Harker ("**Harker**") and William Crowley ("**Crowley**") in this action (the "**Monitor Action**").
2. As one of the members of Cassels with primary carriage of this matter, I have knowledge of the matters to which I hereinafter depose in this affidavit. To the extent that I do not have personal knowledge of any particular matter, I have identified the source of my information and I believe that information to be true.

**MOTION OF THE MONITOR**

3. I swear this affidavit in response to the motion of the plaintiff, FTI Consulting Canada Inc. in its capacity as court-appointed monitor (the "**Monitor**") in the *Companies' Creditors Arrangement Act* proceedings of Sears Canada Inc. ("**Sears Canada**"), seeking an order

- (a) waiving privilege over documents in the power, possession, or control of Sears Canada or the Monitor that are relevant to this action or the three related actions (collectively, the "**Actions**"); and
- (b) compelling Harker and Crowley to produce for inspection insurance policies that may provide indemnification for liability.

**MOTION REGARDING PRIVILEGE**

4. Neither Harker and Crowley, nor the other former directors whom we represent in the Actions (together, the "**Former Directors**"), are opposed in principle to the court allowing the Monitor to waive privilege over certain documents that are relevant to the Actions (should the court determine that it has the power to do so).

5. However, they are concerned that the broad form of waiver power that the Monitor seeks could negatively affect their legal rights.

6. With respect to certain legal advice that was provided, both Sears Canada and the Former Directors were joint clients of the law firm providing the advice and thus no individual client (*i.e.*, Sears Canada) has the ability to waive privilege relative to third parties.

7. This is the case, for example, regarding the legal advice provided in respect of the action brought by 1291079 Ontario Limited against the Former Directors and others parties (Court File No. 4114/15) (the "**2015 Action**"), given that Stikeman Elliott LLP represented Sears Canada and the Former Directors jointly.

8. In other cases, it is apparent that production of privileged information without the consent of the Former Directors would be prejudicial to their interests. For example, Sears Canada retained Stikeman Elliott LLP to represent it in the earlier action by 1291079 Ontario Limited against Sears Canada (the “**2013 Action**”) relating to the alleged treatment of Sears Hometown Dealers. The facts underlying the 2013 Action are closely related to the 2015 Action.

9. I am informed by Samaneh Hosseini of Stikeman Elliott LLP, counsel for Sears Canada in the 2013 Action, and believe, that her firm performed legal analysis of the claims in the 2013 Action, provided advice on the merits to Sears Canada, and advanced that proceeding at least to the documentary discovery stage.

10. Accordingly, I believe that the production by the Monitor of privileged materials from the 2013 Action would be harmful to the interests of the Former Directors, given that such action is closely related to the 2015 Action (which remains outstanding) and since such privileged documents and communications—if produced by the Monitor—could be unfairly used by the plaintiff in the 2015 Action.

11. Accordingly, our firm provided an alternate form of privilege order to counsel to the Monitor on or about February 14, 2019. John M. Picone, a lawyer in our office, and I subsequently discussed our proposed alternate form of privilege order with Robert Frank of Norton Rose Fulbright Canada LLP, counsel to the Monitor, on February 15, 2019.

12. Since this privilege motion brought by the Monitor has not yet been resolved, the Former Directors are now prepared to put forward, on a “with prejudice” basis, the form of order on the privilege issue that they previously proposed and would be prepared to accept. That form of order is attached as **Exhibit “A”**.

**MOTION TO PRODUCE INSURANCE POLICIES**

13. On February 12, 2019, our firm produced to the Monitor and the other plaintiffs in the Actions (collectively, the “**Plaintiffs**”) copies of all insurance policies that the Former Directors believe may provide coverage in respect of the Actions. A letter dated February 12, 2019 from Wendy Berman, a lawyer in our office, to counsel for each of the Plaintiffs, under cover of which the policies were produced, is attached as **Exhibit “B”**.

14. The policies that were provided to the Plaintiffs are policies purchased by Sears Holdings Corporation (“**Sears Holdings**”), which cover the 2015 to 2016 policy year, being the policies in effect when the 2015 Action was commenced. The insurers of Sears Holdings have taken the position that the policies from this period are the ones that may respond to the Actions.

15. Further, for several years, Sears Canada had insurance policies covering liability of directors and officers. However, those policies contain a “prior acts exclusion” endorsement that denies coverage for any claim based on “wrongful acts” occurring prior to October 15, 2014. The acts or omissions giving rise to the Actions are alleged to have occurred between November and December 2013, and possibly before then.

16. Accordingly, although our firm provided notice of the Actions to the insurers of Sears Canada, those insurers have taken the position that their policies do not respond to, or provide indemnification in respect of, the Actions.

17. Accordingly, our firm has produced to the Plaintiffs all insurance policies that we believe may provide coverage in respect of the Actions. However, to be clear, no insurer has confirmed that it will actually indemnify Harker, Crowley, or any other of the Former Directors whom we represent in respect of any liability that they may ultimately be found to have.

SWORN BEFORE ME at the City of Toronto, in  
the Province of Ontario, on February 21, 2019

*Anna Jones*

COMMISSIONER FOR TAKING AFFIDAVITS

LSUC # 65741W

Anna Tomps

*John Birch*

JOHN N. BIRCH

FTI CONSULTING CANADA INC.  
Plaintiff

-and-

ESL INVESTMENTS INC *et al.*  
Defendants

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

PROCEEDING COMMENCED AT  
TORONTO

**AFFIDAVIT OF JOHN N. BIRCH**  
**(SWORN FEBRUARY 21, 2019)**

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Lawyers for the Defendants  
William Harker and William Crowley



This is **Exhibit "B"** referred to in the  
Affidavit of Steven Bissell  
sworn before me, this 3<sup>rd</sup> day  
of **September, 2019**



\_\_\_\_\_  
A Commissioner for taking Affidavits  
*Groff mens*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

***Return Date: June 20, 2019***

In re:

Sears Holdings Corporation, *et al.*

Debtors.<sup>1</sup>

Chapter 11

Case No. 18-BK-23538 (RDD)

Jointly Administered

**MOTION BY QBE INSURANCE CORPORATION FOR RELIEF  
FROM AUTOMATIC STAY FOR THE PUROSES OF FILING  
DECLARATORY LITIGATION IN THE UNITED STATES DISTRICT  
COURT AGAINST FORMER DIRECTORS OF SEARS CANADA, INC.**

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<sup>1</sup> The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc.(7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co.(6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); and Sears Brands Management Corporation (5365). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

QBE Insurance Corporation (“QBE”) by and through the undersigned counsel, move pursuant to 11 U.S.C. §362(d) and Fed.R.Bankr.P. 4001 for an Order:<sup>2</sup> (1) finding the automatic stay does not prohibit QBE from proceeding with the filing of a Declaratory Judgment action in the United States District Court for the Northern District of Illinois against certain former directors of Sears Canada, Inc. under Excess Liability Policy No. QPL0045025 (the “Excess Policy”)<sup>3</sup>, or (2) alternatively, granting relief from the automatic stay to allow the filing of a Declaratory Judgment action in the United States District Court for the Northern District of Illinois against certain former directors of Sears Canada, Inc. under the Excess Liability.

### **PRELIMINARY STATEMENT**

1. Klaudio Leshnjani, William R. Harker, William C. Crowley, Donald C. Ross, James McBurney, Ephraim J. Bird, Calvin R. McDonald, Ronald Boire, Deidra C. Merriwether, Douglas Campbell, Raja Khanna and Deborah Rosati are former directors of Sears Canada, Inc. (collectively the “Former Directors”). The Former Directors have been named as defendants in numerous matters filed in the context of a Companies’ Creditors Arrangement Act Proceeding initiated by Sears Canada, Inc. on June 22, 2017 (the “CCAA Proceedings”). The Former Directors have allegedly incurred and will continue to incur defense costs in connection with matters arising out of the CCAA Proceedings.

2. The Former Directors have provided notice that claims may soon be made under the Excess Policy in connection with the CCAA Proceedings. In written correspondence, QBE has informed counsel for the Former Directors that QBE intends to commence a judicial proceeding in the United States District Court for the Northern District of Illinois in which QBE

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<sup>2</sup> A copy of the proposed Order is attached as Exhibit “A” hereto.

<sup>3</sup> A copy of the Policy is attached as Exhibit “B” hereto.

will request a judicial declaration that is has no obligation to provide coverage to the Former Directors in connection with the claims asserted against them in the CCAA Proceedings.

3. QBE intends to name as defendants in its declaratory judgment action each of the Former Directors solely for the purposes of determining the availability of insurance coverage for the Former Directors under the Excess Policy. The declaratory action to be filed by QBE will not involve questions of liability of the Former Directors in the claims filed against them in the CCAA Proceedings.

4. The Excess Policy provides coverage for claims made during the policy period May 15, 2015 to May 15, 2016, would afford coverage only to the Former Directors in their capacity as current or former officers and directors of Sears Holdings Corporation (“Sears Holdings”) and its subsidiaries. There is no entity coverage, whether for indemnification claims or otherwise, under the Excess Policy. Accordingly, the proceeds of the Excess Policy are not property of Sears Holdings and its debtor affiliates (collectively, the “Debtors”) bankruptcy estate, and adjudication of coverage for the Former Directors does not implicate the automatic stay.

5. Nevertheless, in an abundance of caution and in the event that this Court determines that the automatic stay is applicable to the adjudication of coverage for the Former Directors’ claims under the Excess Policy, QBE requests that this Court enter an order lifting the stay for the purpose of permitting QBE to proceed to file a declaratory judgment action in the United States District Court for the Northern District of Illinois seeking a determination of coverage as it pertains to the Excess Policy.

### **JURISDICTION**

6. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §157. This matter is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(G). Venue is proper in this

Court pursuant to 28 U.S.C. §1408.

### **BACKGROUND**

7. On October 15, 2018 (the “Petition Date”), Debtors commenced voluntary cases under Chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101 et seq. (as amended, the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of New York under Case No. 18-23538 (RDD).

8. Upon the filing of the Chapter 11 cases, the automatic stay set forth in Section 362(a) of the Bankruptcy Code (the “Automatic Stay”) was triggered. Any new or further actions against the Debtors are automatically stayed pursuant to section 362(a) of the Bankruptcy Code, which provides that the filing of a bankruptcy petition “operates as a stay, applicable to all entities,” of, among other things “the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under [the Bankruptcy Code], or to recover a claim against the debtor that arose before the commencement of the [bankruptcy] case” and “any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.” 11 U.S.C. § 362(a)(1), (3).

9. As of the date of the Petition Date, the Former Directors had incurred and will continue to incur defense costs in connection with matters arising out of the CCAA Proceedings.

10. Sears Holdings has denied an obligation to indemnify a number of the Former Directors. For certain of the Former Directors, Sears Holdings has stated that its indemnification obligation as to them are very limited and unlikely to relate to the claims set forth in the CCAA Proceedings. Nonetheless, given that Sears Holdings and certain of its affiliates have initiated Chapter 11 cases, Sears Holdings is unable to provide indemnification to the Former Directors as

of the Petition Date.

11. The Debtors purchased a Side A Policy, Policy No. ELU139030-15, issued by XL Specialty Insurance Company (“XL”) to Sears Holding for the Policy Period of May 15, 2015 to May 15, 2016 (the “XL Policy”).<sup>4</sup> The XL Policy provides coverage for policy period for Wrongful Acts allegedly committed by directors and officers in their capacity as current or former directors or officers of Sears Holdings and/or its subsidiaries.

12. Section IV. (P) of the XL Policy provides:

In the event that a liquidation or reorganization proceeding is commenced by or against the Company pursuant to the United States Bankruptcy Code, as amended, or any similar state or local law, the Insured Persons and the Company hereby (1) waive and release any automatic stay or injunction which may apply in such proceeding in connection with this Policy or its proceeds under such Bankruptcy Code or law; and (2) agree not to oppose or object to any efforts by the Insurer or any Insured Person or the Company to obtain relief from any such stay or injunction.

13. QBE issued Excess Insurance Policy No. QPL0045025 to Sears Holdings for the Policy Period of May 15, 2015 to May 15, 2016 (the “Policy Period”). The Excess Policy, subject to its own additional or differing terms, follows the terms, conditions and limitations of the XL Policy.

14. Section IV. (P) of the XL Policy is incorporated into the Excess Policy. By operation Section IV. (P) of the XL Policy, Sears Holding, Sears Canada and the Former Directors have agreed to a release of the Automatic Stay in this matter and have agreed to not oppose or object to any efforts by QBE to obtain relief from the stay.

#### **REQUESTED RELIEF**

15. QBE believes that the Automatic Stay does not apply to the proposed declaratory

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<sup>4</sup> A copy of the XL Policy is attached as Exhibit “C” hereto.

judgment action seeking adjudication of coverage available to the Former Directors under the Excess Policy. Nevertheless, QBE seeks the entry of an order granting relief from the automatic stay provided for in Section 362(a) of the Bankruptcy Code, to the extent that it applies, to allow the proposed Declaratory Judgment action to proceed, or in the alternative to lift the automatic stay for the purposes of filing the Declaratory Judgment action.

## ARGUMENT

### The Proceeds of the Policy Are Not Property of Debtors' Estate

16. While insurance policies may generally be considered property of the estate, where a policy provides for payment only to a third party, such as payments to officers and directors, or where the debtor has a right of coverage or indemnification, but such right is speculative, courts have held that the proceeds of such a policy are not property of the bankruptcy estate. *See, e.g., In re Adelpia Communications Corp.*, 298 B.R. 49 (S.D.N.Y. 2003) (holding that insurance proceeds were not property of the estate where it had not been suggested that debtors had made any payment for which they may be entitled to indemnification under policy or that any such payments were then contemplated); *In re First Cent. Fin. Corp.*, 238 B.R. 9 (Bankr. E.D.N.Y. 1999) (proceeds of director and officer policies are not assets of the estate and belong to directors and officers as beneficiaries); *In re World Health Alternatives, Inc.*, 369 B.R. 805 (Bankr. D. Del. 2007) (when proceeds of a policy are payable to the directors and officers and not the estate, the proceeds are not property of the estate); *In re Allied Digital Techs., Corp.*, 306 B.R. 505 (Bankr. D. Del. 2004) (holding that proceeds of D&O insurance policy were not property of the estate where debtor's indemnification right under the policy was speculative and direct coverage of debtor under policy was hypothetical); *In re Louisiana World Exposition, Inc.*, 832 F.2d 1391 (5th Cir. 1987) (holding that proceeds of a D&O policy belonged only to the officers and directors and,

therefore, were not property of the estate); *In re Pintlar Corp.*, 124 F.3d 1310 (9th Cir. 1997) (directors' and officers' liability coverage was not property of the estate).

17. Here, the Excess Policy only potentially provides coverage to certain directors and officers, including the Former Directors. The disputed coverage would not provide the Debtors with coverage for indemnification claims made by officers and directors or other entity coverage and does not protect any asset of the estate. The disputed proceeds of the Excess Policy are therefore not property of the Debtors' estate.

18. Finally, by operation of Section IV. (P) of the XL Policy, Sears Holding, Sears Canada and the Former Directors have agreed to a release of the Automatic Stay in this matter and have agreed not to oppose or object to any efforts by QBE to obtain relief from the Automatic Stay. See Exhibit C, page 66.


### CONCLUSION

For all the foregoing reasons, QBE respectfully requests that the Court grant QBE's motion for relief pursuant to 11 U.S.C. §362(d).

Respectfully Submitted,

MELITO & ADOLFSON P.C.

By:

  
\_\_\_\_\_  
Michael F. Panayotou  
233 Broadway  
New York, NY 10279  
Phone: 212-238-8900  
Facsimile: 212-238-8999  
Email: [mfp@melitoadolfson.com](mailto:mfp@melitoadolfson.com)

-and-



Christopher T. Conrad (to apply for admission *pro hac vice*)

David A. Wilford (to apply for admission *pro hac vice*)

WILFORD CONRAD LLP

18 East Dundee Road

Building 6, Suite 150

Barrington, Illinois 60010

Tel: (224) 848-4721

Email: [cconrad@wilfordconrad.com](mailto:cconrad@wilfordconrad.com)

Email: [dwilford@wilfordconrad.com](mailto:dwilford@wilfordconrad.com)

*Attorneys for QBE Insurance Corporation*

# Exhibit A

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

Sears Holdings Corporation, *et al.*

Debtors.

Chapter 11

Case No. 18-BK-23538 (RDD)

Jointly Administered

**[PROPOSED] ORDER (1) FINDING THE AUTOMATIC STAY INAPPLICABLE TO  
THE EXCESS SIDE A D&O INSURANCE POLICY ISSUED BY QBE INSURANCE  
COMPANY OR (2) ALTERNATIVELY, LIFTING THE STAY UNDER 11 U.S.C. §362(d)  
TO ALLOW QBE INSURANCE CORPORATION TO PROCEED WITH THE FILING  
OF LITIGATION IN THE UNITED STATES DISTRICT COURT**

Upon the Motion By QBE Insurance Corporation For An Order (1) Finding the Automatic Stay Inapplicable, or (2) alternatively, Granting Relief from the Automatic Stay under 11 U.S.C. §362(d) to allow QBE Insurance Corporation to Proceed with the filing of a declaratory judgment action in the United States District Court for the Northern District of Illinois, dated 5.16.19 (the “Motion”), and it appearing that due and proper notice of the Motion has been given, and that no other or further notice need be given; and upon due deliberation and sufficient cause appearing therefor; it is hereby:

ORDERED that the Motion is granted to the extent set forth herein; and it is further

ORDERED that the proceeds under Side A Excess Liability Policy No. QPL0045025 (the “Excess Policy”) do not constitute property under the estate under 11 U.S.C. § 541; and it is further

ORDERED that the automatic stay is inapplicable to QBE Insurance Corporation's right to proceed with the filing of a declaratory judgment action in the United States District Court for the Northern District of Illinois; and it is further

ORDERED that the automatic stay, to the extent applicable, is lifted under 11 U.S.C. §362(d) to allow QBE Insurance Corporation's to proceed with the filing of a declaratory judgment action in the United States District Court for the Northern District of Illinois; and it is further

ORDERED that nothing in this Order shall constitute (1) a waiver, modification or limitation of QBE Insurance Corporation's reservation of all of its rights, remedies and defenses under the Side A Policy and otherwise, (2) a waiver, modification or limitation of any of the terms or conditions of any policy or (3) a finding that such sums are due and owing, or in what amount, under the Side A Policy; and it is further

ORDERED, that the Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated:

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HONORABLE ROBERT D. DRAIN  
UNITED STATES BANKRUPTCY JUDGE

# Exhibit B

**QBE® Insurance Corporation**  
A Stock Company



## **Excess Liability Policy**

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**Home Office:**

c/o CT Corporation System  
116 Pine Street, Suite 320  
Harrisburg, Pennsylvania 17101

**Administrative Office:**

Wall Street Plaza  
88 Pine Street  
New York, New York 10005  
1-877-772-6771

QBE and the links logo are registered service marks of QBE Insurance Group Limited.

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**This policy consists of:**

- Declarations
- One or more coverage parts.
- A coverage part consists of:
  - One or more coverage forms
  - Applicable forms and endorsements

**QBE Insurance Corporation**

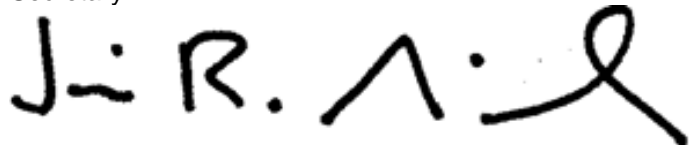
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In Witness Whereof, we have caused this policy to be executed and attested, and, if required by state law, this policy shall not be valid unless countersigned by our authorized representative.

Robert V. James  
President



Jose Ramon Gonzalez, Jr.  
Secretary





**QBE Insurance Corporation**  
Wall Street Plaza, 88 Pine Street, New York, New York 10005

Home Office: c/o CT Corporation System, 116 Pine Street, Suite 320, Harrisburg, Pennsylvania 17101

## EXCESS INSURANCE POLICY DECLARATIONS

**THIS POLICY IS A CLAIMS MADE POLICY AND COVERS ONLY CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD. THE LIMIT OF LIABILITY TO PAY JUDGMENTS OR SETTLEMENT AMOUNTS SHALL BE REDUCED AND MAY BE EXHAUSTED BY PAYMENT OF DEFENSE COSTS. PLEASE READ THIS POLICY CAREFULLY.**

**Item 1:** Named Insured: Sears Holdings Corporation  
Mailing Address: 3333 Beverly Road  
Hoffman Estates, IL 60179

**Item 2:** Policy Period From: May 15, 2015 To: May 15, 2016  
At 12:01 A.M. Standard Time at the mailing address stated in Item 1

**Item 3:** Limit of Liability \$15,000,000 excess of \$15,000,000  
A. 100% of \$ 15,000,000 any one Claim  
B. 100% of \$ 15,000,000 in the aggregate

**Item 4:** A. Followed Policy  
Insurer: XL Specialty Insurance Company  
Policy Number: ELU139030-15  
Limit of Liability: \$15,000,000  
Policy Period: May 15, 2015 To: May 15, 2016  
B. Underlying Insurance: Not Applicable

**Item 5:** Premium and Applicable Charges  
Premium: [REDACTED]

**Item 6:** A. Notice to Insurer of a Claim or circumstance:  
QBE Insurance Corporation  
Attn: The Claims Manager  
Wall Street Plaza  
88 Pine Street, 18<sup>th</sup> Floor  
New York, New York 10005  
Telephone: (877) 772-6771  
Email: [professional.liability.claims@us.qbe.com](mailto:professional.liability.claims@us.qbe.com)  
B. All Other Notices to Insurer:  
QBE Insurance Corporation  
Attn: Underwriting  
Wall Street Plaza  
88 Pine Street, 18<sup>th</sup> Floor  
New York, New York 10005  
Telephone: (877) 772-6771  
Email: [MLPLadmin@us.qbe.com](mailto:MLPLadmin@us.qbe.com)



In witness whereof, the Insurer has caused this Policy to be executed, but it shall not be valid unless also signed by a duly authorized representative of the Insurer.

Robert V. James  
President

Jose Ramon Gonzalez, Jr.  
Secretary



June 3, 2015  
Date



## EXCESS INSURANCE POLICY

### I. INSURING CLAUSE

The Insurer shall provide insurance coverage in accordance with the same terms, conditions and limitations of the **Followed Policy**, including those involving policy termination, representations and severability, notice and extended reporting period, and in accordance with the terms and conditions set forth herein.

### II. GENERAL CONDITIONS

The conditions set forth in this Section **II. GENERAL CONDITIONS** are in addition to those set forth in the **Followed Policy**, and are specific to the coverage provided by this Policy.

- (a) Coverage under this Policy shall attach only after exhaustion of the limits of liability of the **Underlying Insurance**. The Insurer shall recognize monetary contribution by or on behalf of an Insured to such exhaustion of the limits of liability of the **Underlying Insurance**.
- (b) The limits of liability set forth in Item 3 of the Declarations represent the maximum amount payable under this Policy during the Policy Period for any one Claim and in the aggregate.
- (c) If the limits of liability of the **Underlying Insurance** are reduced, this Policy shall continue in force as excess insurance for the remaining amount of the limits of liability of the **Underlying Insurance**. If the limits of liability of the **Underlying Insurance** are exhausted, this Policy shall continue in force as primary insurance, subject to any applicable retention.
- (d) The Policy does not provide excess insurance above any sub-limit of liability available under any **Underlying Insurance**, unless the Insurer has agreed to provide such excess coverage by separate endorsement to this Policy. However, where payment of amounts subject to a sublimit erode or reduce the limits of liability of the **Underlying Insurance**, this Policy shall recognize such erosion or reduction of the limits of liability of the **Underlying Insurance**.
- (e) All notices to the Insurer shall be sent to the applicable address set forth in Item 6 of the Declarations.
- (f) The Insurer may elect to effectively associate in the investigation, settlement or defense of any claim reasonably likely to be covered under this Policy.
- (g) Any change in or modification to **Underlying Insurance** or this Policy or assignment of interest under this Policy must be agreed to in writing by Insurer, and in no event shall any such change, modification or assignment affect this Policy's excess position or attachment point.

### III. EXCESS POLICY DEFINITIONS

Any term used in this Policy that is defined in the **Followed Policy** shall have the same meaning as assigned to such term in the **Followed Policy**.

- (a) **Followed Policy** means the insurance policy set forth in Item 4A. of the Declarations.
- (b) **Underlying Insurance** means the **Followed Policy** and any other insurance policies set forth in Item 4B. of the Declarations.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **INSURER RATING DOWNGRADE ENDORSEMENT**

It is hereby agreed that the Named Insured may cancel this Policy immediately upon written notice to the Insurer if the Insurer's financial strength rating for AM Best falls below "A-". If cancelled pursuant to such ratings downgrade, the Insurer shall retain the pro rata proportion of the premium.

All other terms and conditions of this Policy remain unchanged.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## LIMITS EXHAUSTION BY OTHER PARTY PAYMENTS ENDORSEMENT

It is hereby agreed that Section II. **General Conditions**, paragraph (a), of this Policy is replaced by the following:

- (a) Coverage under this Policy shall attach only after exhaustion of the limits of liability of the **Underlying Insurance**. The Insurer shall recognize monetary contribution by an Insured or any other party to such exhaustion of the limits of liability of the **Underlying Insurance**.

All other terms and conditions of this policy remain unchanged.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **DIC ENDORSEMENT**

It is hereby agreed that:

I. Section II. **General Conditions**, paragraph (a), is replaced by the following:

(a) Coverage under this Policy shall attach only after exhaustion of the limits of liability of the **Followed Policy**. The Insurer shall recognize exhaustion of the limits of liability of the **Followed Policy** due to: (1) monetary contribution by or on behalf of an Insured; or (2) a **DIC Event**. This Policy shall recognize a reduction or exhaustion in the limits of liability as result of a **DIC Event** without prejudice to its excess position, but shall only attach in the event of a **DIC Event** in the absence of any other valid and collectible **Followed Policy**.

II. For the purposes of this endorsement, **DIC Event** means when the insurer of the **Followed Policy**:

1. wrongfully refuses to pay **Loss** as required by the terms and conditions of the **Followed Policy**; or
2. fails or refuses to pay **Loss** due to (a) the appointment by any state or federal official, agency or court of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate an entity; (b) the entity becoming a debtor-in-possession pursuant to United States bankruptcy law; or (c) the equivalent status of (a) or (b) outside the United States.

All other terms and conditions of this policy remain unchanged.



# Notice to Policyholders

## U.S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL ("OFAC")

**NO COVERAGE IS PROVIDED BY THIS POLICYHOLDER NOTICE NOR CAN IT BE CONSTRUED TO REPLACE ANY PROVISIONS OF YOUR POLICY. YOU SHOULD READ YOUR POLICY AND REVIEW YOUR DECLARATIONS PAGE FOR COMPLETE INFORMATION ON THE COVERAGES YOU ARE PROVIDED.**

**THIS NOTICE PROVIDES INFORMATION CONCERNING POSSIBLE IMPACT ON YOUR INSURANCE COVERAGE DUE TO DIRECTIVES ISSUED BY OFAC.**

**PLEASE READ THIS NOTICE CAREFULLY**

The Office of Foreign Assets Control (OFAC) administers and enforces sanctions policy, based on Presidential declarations of "national emergency". OFAC has identified and listed numerous:

- Foreign agents;
- Front organizations;
- Terrorists;
- Terrorist organizations; and
- Narcotics traffickers;

As "Specially Designated Nationals and Blocked Persons". This list can be located on the United States Treasury's web site - <http://www.treas.gov/ofac>.

In accordance with OFAC regulations, if it is determined that you or any other insured, or any person or entity claiming the benefits of this insurance has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, this insurance will be considered a blocked or frozen contract and all provisions of this insurance are immediately subject to OFAC. When an insurance policy is considered to be such a blocked or frozen contract, no payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments also apply.

# Exhibit C







**XL Professional**  
100 Constitution Plaza  
17<sup>th</sup> Floor  
Hartford, CT 06103  
Phone 860-246-1863  
Fax 860-246-1899

June 5, 2015

Chris Rafferty  
Aon  
200 East Randolph Street  
12th Floor  
Chicago, IL 60601

**Re: Sears Holdings Corporation**  
**Cornerstone A-Side Management Liability Policy**

Dear Chris,

Enclosed, please find the policy for Sears Holdings Corporation. Thank you for choosing XL Insurance. Please call if you have any questions or concerns.

Sincerely,

A handwritten signature in cursive script that reads "Gregory Lenihan".

Gregory Lenihan

sl

Policy Number: ELU139030-15  
Renewal of Number: ELU134039-14

**XL Specialty Insurance Company**

Members of the XL America Companies

**CORNERSTONE A-SIDE MANAGEMENT  
LIABILITY INSURANCE POLICY  
DECLARATIONS**

Executive Offices  
70 Seaview Avenue  
Stamford, CT 06902-6040  
Telephone 877-953-2636

**THIS IS A CLAIMS MADE POLICY. EXCEPT AS OTHERWISE PROVIDED HEREIN, THIS POLICY ONLY APPLIES TO CLAIMS FIRST MADE DURING THE POLICY PERIOD. THE LIMIT OF LIABILITY AVAILABLE TO PAY DAMAGES OR SETTLEMENTS SHALL BE REDUCED AND MAY BE EXHAUSTED BY THE PAYMENT OF DEFENSE EXPENSES. THIS POLICY DOES NOT PROVIDE FOR ANY DUTY BY THE INSURER TO DEFEND ANY INSURED. PLEASE READ AND REVIEW THE POLICY CAREFULLY.**

**Item 1. Name and Mailing Address of Parent Corporation:**

Sears Holdings Corporation  
3333 Beverly Road  
Hoffman Estates, IL 60179

**Item 2. Policy Period: From: May 15, 2015 To: May 15, 2016**

**At 12:01 A.M. Standard Time at your Mailing Address Shown Above**

**Item 3. Limit of Liability:**

\$15,000,000 Aggregate each **Policy Period** (including **Defense Expenses**)

**Item 4. Optional Extension Period and Premium:**

Length of Optional Extension Period: One Year Two Years Three Years

Optional Extension Premium: 

**Item 5. Notices required to be given to the Insurer must be addressed to:**

XL Professional Insurance  
100 Constitution Plaza, 17<sup>th</sup> Floor  
Hartford, CT 06103  
Toll Free Telephone: 877-953-2636

**Item 6. Premium:**

Premium: 

Taxes, Surcharges or Fees:

Total Policy Premium:

**Item 7. Policy Forms and Endorsements Attached at Issuance:**

CS 71 00 09 06 XL 82 01 07 07 XL 80 24 03 03 CS 72 04 05 06 CL 80 34 12 02 CL 80 99 03 05  
CL 80 84 11 04 CS 83 01 11 06 CL 80 189 06 07 XL 80 38 02 05 Manuscript 17775 06 15  
XL 80 59 03 08 XL 80 60 09 08 Manuscript 9458 05 09 Manuscript 4088 01 06 Manuscript 13794 05 12  
CL 80 68 06 04 CS 80 95 09 09 CL 80 224 04 08 CL 80 176 03 07 CS 80 111 02 10 CL 80 27 10 02  
Manuscript 15561 05 13 CL 83 96 01 08 CS 80 37 10 07 CS 80 119 06 10 CS 80 77 09 08  
CL 80 63 04 04 Manuscript 16693 05 14 Manuscript 13806 05 12 CL 80 208 11 07 CL 80 225 04 08  
Manuscript 15562 05 13 CL 83 75 01 07 CS 83 02 12 06 CS 80 195 09 13 CS 80 81 01 09  
CS 80 55 02 08 Manuscript 16691 05 14 Manuscript 16692 05 14 Manuscript 16690 05 14

Countersigned: \_\_\_\_\_ By: \_\_\_\_\_  
Date Authorized Representative

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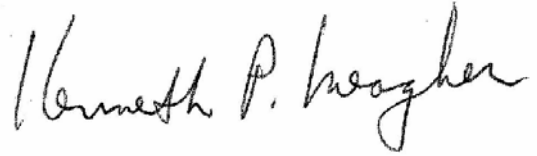
THESE **DECLARATIONS** AND THE POLICY, WITH THE ENDORSEMENTS, ATTACHMENTS, AND THE **APPLICATION** SHALL CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE INSURER AND THE **INSURED** RELATING TO THIS INSURANCE.

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**In Witness Whereof, the Insurer has caused this Policy to be executed by its authorized officers, but this Policy will not be valid unless countersigned on the Declarations page, if required by law, by a duly authorized representative of the Insurer.**



John R. Glancy  
President



Kenneth P. Meagher  
Secretary

**XL Specialty Insurance Company**

**IN WITNESS**

**XL SPECIALTY INSURANCE COMPANY**

REGULATORY OFFICE  
505 EAGLEVIEW BOULEVARD, SUITE 100  
DEPARTMENT: REGULATORY  
EXTON, PA 19341-1120  
PHONE: 800-688-1840

It is hereby agreed and understood that the following In Witness Clause supercedes any and all other In Witness clauses in this policy.

All other provisions remain unchanged.

IN WITNESS WHEREOF, the Insurer has caused this policy to be executed and attested, and, if required by state law, this policy shall not be valid unless countersigned by a duly authorized representative of the Insurer.



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Bernard R. Horovitz  
President



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Toni Ann Perkins  
Secretary

**POLICYHOLDER DISCLOSURE**  
**NOTICE OF TERRORISM**  
**INSURANCE COVERAGE**

Coverage for acts of terrorism is already included in your current policy. You are hereby notified that under the Terrorism Risk Insurance Act, as amended in 2015, the definition of act of terrorism has changed. As defined in Section 102(1) of the Act: The term “act of terrorism” means any act that is certified by the Secretary of the Treasury, in consultation with the Secretary of Homeland Security, and the Attorney General of the United States—to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion. Under your existing coverage, any losses resulting from certified acts of terrorism may be partially reimbursed by the United States Government under a formula established by federal law. Under this formula, the United States Government generally reimburses 85% through 2015; 84% beginning on January 1, 2016; 83% beginning on January 1, 2017; 82% beginning on January 1, 2018; 81% beginning on January 1, 2019; and 80% beginning on January 1, 2020, of covered terrorism losses exceeding the statutorily established deductible paid by the insurance company providing the coverage. However, your policy may contain other exclusions that may affect your coverage. The Terrorism Risk Insurance Act, as amended, contains a \$100 billion cap that limits U.S. Government reimbursement as well as insurers’ liability for losses resulting from certified acts of terrorism when the amount of such losses exceeds \$100 billion in any one calendar year. If the aggregate insured losses for all insurers exceed \$100 billion, your coverage may be reduced.

The portion of your annual premium that is attributable to coverage for acts of terrorism is: \$ **waived**. Any premium waiver is only valid for the current Policy Period.

I ACKNOWLEDGE THAT I HAVE BEEN NOTIFIED THAT UNDER THE TERRORISM RISK INSURANCE ACT, AS AMENDED, ANY LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM UNDER MY POLICY COVERAGE MAY BE PARTIALLY REIMBURSED BY THE UNITED STATES GOVERNMENT AND I HAVE BEEN NOTIFIED OF THE AMOUNT OF MY PREMIUM ATTRIBUTABLE TO SUCH COVERAGE.

Name of Insurer: **XL Specialty Insurance Company**

Policy Number: **ELU139030-15**

\_\_\_\_\_  
Signature of Insured

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Date

## NOTICE TO POLICYHOLDERS

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### U.S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL ("OFAC")

No coverage is provided by this Policyholder Notice nor can it be construed to replace any provisions of your policy. You should read your policy and review your Declarations page for complete information on the coverages you are provided.

This Policyholder Notice provides information concerning possible impact on your insurance coverage due to directives issued by OFAC and possibly the U.S. Department of State. **Please read this Policyholder Notice carefully.**

OFAC administers and enforces sanctions policy based on Presidential declarations of "national emergency". OFAC has identified and listed numerous

- Foreign agents
- Front organizations
- Terrorists
- Terrorist organizations
- Narcotics traffickers

as *Specially Designated Nationals and Blocked Persons*. This list can be found on the U.S. Department of the Treasury's web site - <http://www.treas.gov/ofac>.

The Secretary of the Treasury also has identified a number of entities in the insurance, petroleum, and petrochemicals industries determined to be owned or controlled by the Iranian government. Business transactions with any of these entities are expressly prohibited. These entities have been added to OFAC's list of *Financial Institutions Determined To Be Owned or Controlled by the Government of Iran*. This list can be found on the U.S. Department of the Treasury's web site – <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/iran.aspx>, see List of CISADA and NDAA Prohibitions or Conditions

In accordance with OFAC regulations, or any applicable regulation promulgated by the U.S. Department of State, if it is determined that you or any other insured, or any person or entity claiming the benefits of this insurance has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, this insurance will be considered a blocked or frozen contract and all provisions of this insurance will be immediately subject to OFAC. When an insurance policy is considered to be such a blocked or frozen contract, neither payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments also apply.

## NOTICE TO POLICYHOLDERS

### PRIVACY POLICY

The XL America, Inc. insurance group (the “Companies”), believes personal information that we collect about our customers, potential customers, and proposed insureds (referred to collectively in this Privacy Policy as “customers”) must be treated with the highest degree of confidentiality. For this reason and in compliance with the Title V of the Gramm-Leach-Bliley Act (“GLBA”), we have developed a Privacy Policy that applies to all of our companies. For purposes of our Privacy Policy, the term “personal information” includes all information we obtain about a customer and maintain in a personally identifiable way. In order to assure the confidentiality of the personal information we collect and in order to comply with applicable laws, all individuals with access to personal information about our customers are required to follow this policy.

#### **Our Privacy Promise**

Your privacy and the confidentiality of your business records are important to us. Information and the analysis of information is essential to the business of insurance and critical to our ability to provide to you excellent, cost-effective service and products. We understand that gaining and keeping your trust depends upon the security and integrity of our records concerning you. Accordingly, we promise that:

1. We will follow strict standards of security and confidentiality to protect any information you share with us or information that we receive about you;
2. We will verify and exchange information regarding your credit and financial status only for the purposes of underwriting, policy administration, or risk management and only with reputable references and clearinghouse services;
3. We will not collect and use information about you and your business other than the minimum amount of information necessary to advise you about and deliver to you excellent service and products and to administer our business;
4. We will train our employees to handle information about you or your business in a secure and confidential manner and only permit employees authorized to use such information to have access to such information;
5. We will not disclose information about you or your business to any organization outside the XL insurance group of Companies or to third party service providers unless we disclose to you our intent to do so or we are required to do so by law;
6. We will not disclose medical information about you, your employees, or any claimants under any policy of insurance, unless you provide us with written authorization to do so, or unless the disclosure is for any specific business exception provided in the law;
7. We will attempt, with your help, to keep our records regarding you and your business complete and accurate, and will advise you how and where to access your account information (unless prohibited by law), and will advise you how to correct errors or make changes to that information; and
8. We will audit and assess our operations, personnel and third party service providers to assure that your privacy is respected.

#### **Collection and Sources of Information**

We collect from a customer or potential customer only the personal information that is necessary for (a) determining eligibility for the product or service sought by the customer, (b) administering the product or service obtained, and (c) advising the customer about our products and services. The information we collect generally comes from the following sources:

- Submission – During the submission process, you provide us with information about you and your business, such as your name, address, phone number, e-mail address, and other types of personal identification information;
- Quotes – We collect information to enable us to determine your eligibility for the particular insurance product and to determine the cost of such insurance to you. The information we collect will vary with the type of insurance you seek;
- Transactions – We will maintain records of all transactions with us, our affiliates, and our third party service providers, including your insurance coverage selections, premiums, billing and payment information, claims history, and other information related to your account;

## NOTICE TO POLICYHOLDERS

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- **Claims** – If you obtain insurance from us, we will maintain records related to any claims that may be made under your policies. The investigation of a claim necessarily involves collection of a broad range of information about many issues, some of which does not directly involve you. We will share with you any facts that we collect about your claim unless we are prohibited by law from doing so. The process of claim investigation, evaluation, and settlement also involves, however, the collection of advice, opinions, and comments from many people, including attorneys and experts, to aid the claim specialist in determining how best to handle your claim. In order to protect the legal and transactional confidentiality and privileges associated with such opinions, comments and advice, we will not disclose this information to you; and
- **Credit and Financial Reports** – We may receive information about you and your business regarding your credit. We use this information to verify information you provide during the submission and quote processes and to help underwrite and provide to you the most accurate and cost-effective insurance quote we can provide.

### **Retention and Correction of Personal Information**

We retain personal information only as long as required by our business practices and applicable law. If we become aware that an item of personal information may be materially inaccurate, we will make reasonable effort to re-verify its accuracy and correct any error as appropriate.

### **Storage of Personal Information**

We have in place safeguards to protect data and paper files containing personal information.

### **Sharing/Disclosing of Personal Information**

We maintain procedures to assure that we do not share personal information with an unaffiliated third party for marketing purposes unless such sharing is permitted by law. Personal information may be disclosed to an unaffiliated third party for necessary servicing of the product or service or for other normal business transactions as permitted by law.

We do not disclose personal information to an unaffiliated third party for servicing purposes or joint marketing purposes unless a contract containing a confidentiality/non-disclosure provision has been signed by us and the third party. Unless a consumer consents, we do not disclose “consumer credit report” type information obtained from an application or a credit report regarding a customer who applies for a financial product to any unaffiliated third party for the purpose of serving as a factor in establishing a consumer’s eligibility for credit, insurance or employment. “Consumer credit report type information” means such things as net worth, credit worthiness, lifestyle information (piloting, skydiving, etc.) solvency, etc. We also do not disclose to any unaffiliated third party a policy or account number for use in marketing. We may share with our affiliated companies information that relates to our experience and transactions with the customer.

### **Policy for Personal Information Relating to Nonpublic Personal Health Information**

We do not disclose nonpublic personal health information about a customer unless an authorization is obtained from the customer whose nonpublic personal information is sought to be disclosed. However, an authorization shall not be prohibited, restricted or required for the disclosure of certain insurance functions, including, but not limited to, claims administration, claims adjustment and management, detection, investigation or reporting of actual or potential fraud, misrepresentation or criminal activity, underwriting, policy placement or issuance, loss control and/or auditing.

### **Access to Your Information**

Our employees, employees of our affiliated companies, and third party service providers will have access to information we collect about you and your business as is necessary to effect transactions with you. We may also disclose information about you to the following categories of person or entities:

- Your independent insurance agent or broker;



## NOTICE TO POLICYHOLDERS

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- An independent claim adjuster or investigator, or an attorney or expert involved in the claim;
- Persons or organizations that conduct scientific studies, including actuaries and accountants;
- An insurance support organization;
- Another insurer if to prevent fraud or to properly underwrite a risk;
- A state insurance department or other governmental agency, if required by federal, state or local laws; or
- Any persons entitled to receive information as ordered by a summons, court order, search warrant, or subpoena.

### **Violation of the Privacy Policy**

Any person violating the Privacy Policy will be subject to discipline, up to and including termination.

For more information or to address questions regarding this privacy statement, please contact your broker.

**NOTICE TO POLICYHOLDERS****FRAUD NOTICE**

<b>Arkansas</b>	Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.
<b>Colorado</b>	<b>It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado Division of Insurance within the Department of Regulatory Agencies.</b>
<b>District of Columbia</b>	<b>WARNING:</b> It is a crime to provide false or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment and/or fines. In addition, an insurer may deny insurance benefits if false information materially related to a claim was provided by the applicant.
<b>Florida</b>	Any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree.
<b>Kansas</b>	A "fraudulent insurance act" means an act committed by any person who, knowingly and with intent to defraud, presents, causes to be presented or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer, broker or any agent thereof, any written statement as part of, or in support of, an application for the issuance of, or the rating of an insurance policy for personal or commercial insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which such person knows to contain materially false information concerning any fact material thereto; or conceals, for the purpose of misleading, information concerning any fact material thereto.
<b>Kentucky</b>	Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance containing any materially false information or conceals, for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime.
<b>Louisiana</b>	Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.
<b>Maine</b>	It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties may include imprisonment, fines, or denial of insurance benefits.
<b>Maryland</b>	Any person who knowingly and willfully presents a false or fraudulent claim for payment of a loss or benefit or who knowingly or willfully presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.
<b>New Jersey</b>	Any person who includes any false or misleading information on an application for an insurance policy is subject to criminal and civil penalties.
<b>New Mexico</b>	<b>ANY PERSON WHO KNOWINGLY PRESENTS A FALSE OR FRAUDULENT CLAIM FOR PAYMENT OF A LOSS OR BENEFIT OR KNOWINGLY PRESENTS FALSE INFORMATION IN AN APPLICATION FOR INSURANCE IS GUILTY OF A CRIME AND MAY BE SUBJECT TO CIVIL FINES AND CRIMINAL PENALTIES.</b>

## NOTICE TO POLICYHOLDERS

<p><b>New York</b></p>	<p><b>General: All applications for commercial insurance, other than automobile insurance:</b> Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.</p> <p><b>All applications for automobile insurance and all claim forms:</b> Any person who knowingly makes or knowingly assists, abets, solicits or conspires with another to make a false report of the theft, destruction, damage or conversion of any motor vehicle to a law enforcement agency, the department of motor vehicles or an insurance company, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the value of the subject motor vehicle or stated claim for each violation.</p> <p><b>Fire:</b> Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance containing any false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime.</p> <p>The proposed insured affirms that the foregoing information is true and agrees that these applications shall constitute a part of any policy issued whether attached or not and that any willful concealment or misrepresentation of a material fact or circumstances shall be grounds to rescind the insurance policy.</p>
<p><b>Ohio</b></p>	<p>Any person who, with intent to defraud or knowing that he is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud.</p>
<p><b>Oklahoma</b></p>	<p><b>WARNING:</b> Any person who knowingly, and with intent to injure, defraud or deceive any insurer, makes any claim for the proceeds of an insurance policy containing any false, incomplete or misleading information is guilty of a felony.</p>
<p><b>Pennsylvania</b></p>	<p><b>All Commercial Insurance, Except As Provided for Automobile Insurance:</b> Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.</p> <p><b>Automobile Insurance:</b> Any person who knowingly and with intent to injure or defraud any insurer files an application or claim containing any false, incomplete or misleading information shall, upon conviction, be subject to imprisonment for up to seven years and the payment of a fine of up to \$15,000.</p>
<p><b>Puerto Rico</b></p>	<p><b>Any person who knowingly and with the intention of defrauding presents false information in an insurance application, or presents, helps, or causes the presentation of a fraudulent claim for the payment of a loss or any other benefit, or presents more than one claim for the same damage or loss, shall incur a felony and, upon conviction, shall be sanctioned for each violation by a fine of not less than five thousand dollars (\$5,000) and not more than ten thousand dollars (\$10,000), or a fixed term of imprisonment for three (3) years, or both penalties. Should aggravating circumstances [be] present, the penalty thus established may be increased to a maximum of five (5) years, if extenuating circumstances are present, it may be reduced to a minimum of two (2) years.</b></p>

## NOTICE TO POLICYHOLDERS

<b>Rhode Island</b>	Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.
<b>Tennessee</b>	<p><b>All Commercial Insurance, Except As Provided for Workers' Compensation</b> It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.</p> <p><b>Workers' Compensation:</b> It is a crime to knowingly provide false, incomplete or misleading information to any party to a workers' compensation transaction for the purpose of committing fraud. Penalties include imprisonment, fines and denial of insurance benefits.</p>
<b>Utah</b>	<b>Workers' Compensation:</b> Any person who knowingly presents false or fraudulent underwriting information, files or causes to be filed a false or fraudulent claim for disability compensation or medical benefits, or submits a false or fraudulent report or billing for health care fees or other professional services is guilty of a crime and may be subject to fines and confinement in state prison.
<b>Virginia</b>	It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.
<b>Washington</b>	It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.
<b>West Virginia</b>	Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.
<b>All Other States</b>	Any person who knowingly and willfully presents false information in an application for insurance may be guilty of insurance fraud and subject to fines and confinement in prison. (In Oregon, the aforementioned actions may constitute a fraudulent insurance act which may be a crime and may subject the person to penalties).

**ILLINOIS**

This notice is to advise you if you are having problems with your insurance company or agent, do not hesitate to contact the insurance company or agent to resolve your problem.

FOR INFORMATION, OR TO MAKE A COMPLAINT, CALL:

1-800-622-7311  
XL INSURANCE  
SEAVIEW HOUSE  
70 SEAVIEW AVENUE  
STAMFORD, CT 06902-6040

You may also contact the Public Service Division or its successor at the  
Department of Insurance at the following address:

Illinois Department of Insurance  
Consumer Division  
320 W. Washington Street  
Springfield, IL 62767

Endorsement No.: 1

Named Insured: Sears Holdings Corporation

Policy No.: ELU139030-15

Effective: May 15, 2015

12:01 A.M. Standard Time

Insurer: XL Specialty Insurance Company

## CHANGE OF PREAMBLE ENDORSEMENT

The preamble to this Policy is amended to read in its entirety as follows:

**In consideration of the payment of the premium, and in reliance on all statements made and information furnished to the Insurer identified in the Declarations (hereinafter the Insurer) including the Application and subject to all of the terms, conditions and limitations of all of the provisions of this Policy, the Insurer, the Insured Persons and the Company agree as follows:**

All other terms, conditions and limitations of this Policy shall remain unchanged.

**Endorsement No.:** 2

**Named Insured:** Sears Holdings Corporation

**Policy No.:** ELU139030-15

**Effective:** May 15, 2015

**12:01 A.M. Standard Time**

**Insurer:** XL Specialty Insurance Company

## **TERRORISM PREMIUM ENDORSEMENT**

Please note: The portion of your annual premium set forth in Item 6 of the Declarations that is attributable to coverage for acts of terrorism is: \$ waived.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 3

Named Insured: Sears Holdings Corporation

Policy No.: ELU139030-15

XL Policy 58 Pg 18 of 67

Effective: May 15, 2015

12:01 A.M. Standard Time

Insurer: XL Specialty Insurance Company

## ILLINOIS AMENDATORY ENDORSEMENT

This endorsement modifies insurance provided under the following:

### CORNERSTONE A-SIDE MANAGEMENT LIABILITY INSURANCE COVERAGE FORM

1. Section II. DEFINITIONS (E) is amended by the addition of the words "Insurer or" before the word "Company's".
2. Section II. DEFINITIONS (K) is amended by deleting the words "(including pre- & post- judgment interest, punitive or exemplary damages, or the multiplied portion of any damage award, where insurable by law)" and by the addition of the following:

In applying the foregoing, only punitive damages awarded for vicarious liability of the Insured Persons is insurable under Illinois law.

3. Section IV. CONDITIONS (I) Cancellation and Renewal of Coverage (2) is amended by the addition of the following:

Notice of cancellation will also be sent to the Insured Person's broker, if known, and to the mortgagee or lienholder, if any, at their last known address. The Insurer shall maintain proof of mailing of such notice on a recognized U.S. Post Office form or a form acceptable to the U.S. Post Office or other commercial mail delivery service.

4. Section IV. CONDITIONS (I) Cancellation and Renewal of Coverage (3) is amended by deleting the words "deliver or" and by the addition of the following:

A copy of such notice will be sent to the Parent Company's broker, if known, or agent of record for the Insured Persons, if applicable, and to the mortgagee or lienholder, if applicable, at the last mailing address known by the Insurer. The notice of non-renewal will state the reason for non-renewal.

5. Section IV. CONDITIONS (J) Optional Extension Period (1) is deleted and replaced by the following:

If either the Insured Persons or the Insurer cancels or does not renew this Policy, the Insured Persons shall have the right, upon payment of the additional premium set forth in ITEM 4 of the Declarations, to an extension of the coverage provided by this Policy with respect only to any Claim first made during the period of time set forth in ITEM 4 of the Declarations after the Policy Expiration Date, but only with respect to a Wrongful Act occurring prior to the Policy Expiration Date. The Optional Extension Period offered by the Insurer shall be at least one year in length.

6. The first sentence of Section IV. CONDITIONS (J) Optional Extension Period (2) is deleted in its entirety.
7. The third sentence of Section IV. CONDITIONS (K) Representation Clause is deleted and replaced by the following:

In the event that any statements and particulars contained in the Application are untrue, inaccurate or incomplete, no coverage shall be afforded under this insurance to any Insured Person who had actual knowledge as of the Inception Date of facts or information that were not accurately or completely disclosed as required in the Application.



8. Section IV. CONDITIONS (P) Bankruptcy is amended by the addition of the following:

Provided, however, the bankruptcy or insolvency of the Insured Persons shall not relieve the Insurer of its obligations nor deprive the Insurer of its rights or defenses under this Policy.

All other terms and conditions remain unchanged.

Endorsement No.: 4

Named Insured: Sears Holdings Corporation

Policy No.: ELU139030-15

Effective: May 15, 2015

12:01 A.M. Standard Time

Insurer: XL Specialty Insurance Company

## AMEND MERGERS AND ACQUISITIONS ENDORSEMENT

In consideration of the premium charged, Section IV Conditions (C)(1) of the Policy is amended to read in its entirety as follows:

- (1) If during the Policy Period, the Company acquires any assets, acquires a Subsidiary, or acquires any entity by merger, consolidation or otherwise, or assumes any liability of another entity, coverage shall be provided for any Loss involving a Claim for a Wrongful Act occurring after the consummation of the transaction; provided however, if by reason of the transaction (or series of transactions) the entity, assets, Subsidiary or liabilities so acquired or so assumed, exceed thirty-five (35%) percent of the total assets or liabilities of the Company, as represented in the Company's most recent audited consolidated financial statements, coverage under this Policy shall be provided for a period of ninety (90) days for any Loss involving a Claim for a Wrongful Act that occurred after the transaction has been consummated. Coverage beyond the ninety (90) day period will be provided only if:
  - (a) the Insurer receives written notice containing full details of the transaction(s); and
  - (b) the Insurer at its sole discretion, agrees to provide such additional coverage upon such terms, conditions, limitations, and additional premium that it deems appropriate."

All other terms, conditions and limitations of this Policy shall remain unchanged.

**Endorsement No.: 5**

**Named Insured: Sears Holdings Corporation**

**Policy No.: ELU139030-15**

**Effective: May 15, 2015**

**12:01 A.M. Standard Time**

**Insurer: XL Specialty Insurance Company**

## **ADDITIONAL COMPANY ENDORSEMENT**

In consideration of the premium charged:

- (1) The term "Company," as defined in Section II Definitions (D) of the Policy, is amended to include Sears Foundation but solely with respect to Wrongful Acts committed or allegedly committed by such entity's Insured Persons on or after March 24, 2005.
- (2) No coverage will be available under this Policy for any Claim based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any Wrongful Act committed or allegedly committed by the Insured Persons of Sears Roebuck & Company before March 24, 2005.

All other terms, conditions and limitations of this Policy shall remain unchanged.

**Endorsement No.:** 6

**Named Insured:** Sears Holdings Corporation

**Policy No.:** ELU139030-15

**Effective:** May 15, 2015

**12:01 A.M. Standard Time**

**Insurer:** XL Specialty Insurance Company

## **DOMESTIC PARTNER ENDORSEMENT**

In consideration of the premium charged, Section II Definition (I)(3) of the Policy shall include the domestic partner of any person set forth in Section II Definition (I)(1) or (I)(2), but only to the extent the domestic partner is a party to any Claim solely in their capacity as a domestic partner of such persons and only for the purposes of any Claim seeking damages recoverable from community property, property jointly held by any such person and domestic partner, or property transferred from any such person to the domestic partner.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 7

Named Insured: Sears Holdings Corporation

Policy No.: ELU139030-15

Effective: May 15, 2015

12:01 A.M. Standard Time

Insurer: XL Specialty Insurance Company

## WHISTLEBLOWER ENDORSEMENT

In consideration of the premium charged, Section III Exclusion (A)(1) of the Policy shall not apply to the extent a Claim is brought by an employee of the Company pursuant to any federal or state whistleblower protection statute or any rule or regulation promulgated thereunder.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 8

Named Insured: Sears Holdings Corporation

Policy No.: ELU139030-15

Effective: May 15, 2015

12:01 A.M. Standard Time

Insurer: XL Specialty Insurance Company

## EXTRADITION COSTS ENDORSEMENT

In consideration of the premium charged, it is understood and agreed that, where permitted by law:

- (1) The term "Claim," as defined in Section II Definitions of the Policy, will include:
  - (a) an official request for Extradition of any Insured Person; and
  - (b) the execution of a warrant for the arrest of an Insured Person where such execution is an element of Extradition.
- (2) The term "Defense Expenses," as defined in Section II Definitions of the Policy, will include reasonable and necessary fees, costs and expenses incurred through legal counsel and consented to by the Insurer resulting from an Insured Person lawfully:
  - (a) opposing, challenging, resisting or defending against any request for or any effort to obtain the Extradition of such Insured Person; and
  - (b) appealing any order or other grant of Extradition of such Insured Person.
- (3) For the purposes of this Endorsement, the term "Extradition" means any formal process by which an Insured Person located in any country is surrendered to any other country for trial or otherwise to answer any criminal accusation.

All other terms, conditions and limitations of this Policy shall remain unchanged.

**Endorsement No.:** 9

**Named Insured:** Sears Holdings Corporation

**Policy No.:** ELU139030-15

**Effective:** May 15, 2015

**12:01 A.M. Standard Time**

**Insurer:** XL Specialty Insurance Company

## **INCONSISTENCY ENDORSEMENT**

In consideration of the premium charged, it is understood and agreed that in the event that there is an inconsistency between a state amendatory endorsement attached to this Policy and any term or condition of this Policy modified by another endorsement attached to this Policy, then where permitted by law, the Insurer shall apply those terms and conditions of the endorsement which are more favorable to the Insured.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 10

Named Insured: Sears Holdings Corporation

Policy No.: ELU139030-15

Effective: May 15, 2015

12:01 A.M. Standard Time

Insurer: XL Specialty Insurance Company

## PENSION AND WELFARE BENEFIT PLAN FIDUCIARY LIABILITY ENDORSEMENT

In consideration of the premium charged:

- (1) In addition to the coverage afforded pursuant to the Insuring Agreement of the Policy, but subject to the maximum aggregate Limit of Liability set forth in ITEM 3 of the Declarations and the provisions below, the Insurer shall pay on behalf of the Insured Persons Loss resulting from a Claim first made against the Insured Persons during the Policy Period, or, if applicable, the Optional Extension Period, for a Fiduciary Wrongful Act, except to the extent that such Loss is paid by any other Insurance Program or as indemnification from any source. If Loss is not paid by such other Insurance Program or as indemnification from any source, the Insurer will pay covered Loss on behalf of the Insured Persons, subject to all of the terms, conditions and limitations of the Policy, including but not limited to Section IV. CONDITION (B).
- (2) Solely for the purposes of this endorsement, the following terms shall have the meanings set forth below:
  - (a) "Administration" means:
    - (i) handling records in connection with Employee Benefits;
    - (ii) effecting enrollment, termination or cancellation of employees under an Employee Benefits program;
    - (iii) giving counsel to employees with respect to Employee Benefits; or
    - (iv) interpreting Employee Benefits.
  - (b) "Employee Benefits" means any Plan, workers' compensation insurance, unemployment insurance, Social Security or disability benefits.
  - (c) "Fiduciary Wrongful Act" means:
    - (i) any actual or alleged breach of duties, responsibilities or obligations imposed upon fiduciaries of any Plan by the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), any amendments to any of the foregoing, the common law or statutory law of any jurisdiction governing such Plan, or any rules or regulations promulgated under any of the foregoing;
    - (ii) any actual or alleged negligent act, error or omission by an Insured Person in the Administration of Employee Benefits;
    - (iii) any other matter claimed against an Insured Person solely by reason of his or her service or status as a fiduciary of any Plan; or
    - (iv) any actual or alleged negligent act, error or omission by an Insured Person in connection with the creation, adoption or establishment, amendment or termination of any Plan.
  - (d) "Pension Benefit Plan" means any employee pension benefit plan, as such term is defined in ERISA.
  - (e) "Plan" means:



- (i) any Pension Benefit Plan or Welfare Benefit Plan which is operated solely by a Sponsor Organization or jointly by a Sponsor Organization and a labor organization solely for the benefit of such Sponsor Organization's directors, officers, trustees, governors, management committee members, members of the Board of Managers, general partners, in-house general counsel or employees located anywhere in the world;
- (ii) any other employee benefit plan or program anywhere in the world which is not subject to ERISA and which is sponsored by a Sponsor Organization solely for the benefit of its directors, officers, trustees, governors, management committee members, managers, members of the Board of Managers, general partners, in-house general counsel or employees, including but not limited to any cafeteria plan, dependent care assistance program, fringe benefit plan, deferred compensation plan, supplemental executive retirement plan, top-hat plan, excess benefit plan or voluntary employees' beneficiary association;
- (iii) any other plan or program otherwise described in subparagraph (2)(d)(i) or (ii) above while such plan or program is being actively developed, formed or proposed by a Sponsor Organization prior to the formal creation of such plan or program; provided, that no coverage will be afforded under this Policy in respect of any Claim against an Insured Person in a settlor or similar uninsured capacity with respect to any such plan or program; and
- (iv) any other plan, fund or program specifically identified as a Plan by written endorsement attached to and made a part of this Policy.

The term "Plan" shall not include any multi-employer plan.

- (f) "Sponsor Organization" means the Company while acting in its capacity as a sponsor of a Plan for the benefit of its employees.
  - (g) "Welfare Benefit Plan" means any employee welfare benefit plan, as such term is defined in ERISA.
- (3) Solely for the purposes of the coverage provided by this endorsement:
- (a) The term "Claim," as defined in Section II. DEFINITIONS (C) of the Policy, is amended to include:
    - (i) a written notice of the commencement of a fact-finding investigation by the U.S. Department of Labor, the U.S. Pension Benefit Guaranty Corporation or any similar governmental authority located outside of the United States; or
    - (ii) a formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document;against an Insured Person for a Fiduciary Wrongful Act.
  - (b) The term "Insured Person," as defined in Section II. DEFINITIONS (I) of the Policy, is amended to include any individual identified in Section II. DEFINITIONS (I)(1) of the Policy while acting in his or her capacity as a fiduciary of a Plan.
  - (c) The term "Loss," as defined in Section II. DEFINITIONS (K) of the Policy, will not include benefits due or to become due under the terms of any Plan, unless and then only to the extent that recovery for such benefits is based on a Fiduciary Wrongful Act and is payable as the personal obligation of an Insured Person; provided, that Loss may include Defense Expenses with respect to Claims seeking benefits due or to become due under the terms of any Plan.

- (d) The term "Loss," as defined in Section II. DEFINITIONS (K) of the Policy, may include civil penalties of up to five percent (5%) imposed pursuant to Section 502(i) of ERISA for inadvertent violation of Section 406 of ERISA, and civil penalties of up to twenty percent (20%) of any settlement or judgment imposed pursuant to Section 502(l) of ERISA for breach of fiduciary duty.
- (4) The term "Interrelated Wrongful Act," as defined in Section II. DEFINITIONS (J) of the Policy, shall include Wrongful Acts and Fiduciary Wrongful Acts based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any of the same or related facts, series of related facts, circumstances, situations, transactions or events.
- (5) No coverage will be available under this endorsement for Loss in connection with Claims for Fiduciary Wrongful Acts:
- (a) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged failure by any Insured Person to comply with any law, rule or regulation concerning workers' compensation insurance, unemployment insurance, Social Security or disability benefits, whether or not such failure to comply is willful; provided, that this subparagraph (5)(a) will not apply to any actual or alleged failure by any Insured Person to comply with the Consolidated Omnibus Reconciliation Act of 1985, HIPAA, any amendments thereto or any rules or regulations promulgated thereunder;
- (b) for the failure to collect contributions owed to any Plan from any employer unless such failure is due to the negligence of an Insured Person, or for the return to any employer of any contributions if such amounts are or could be chargeable to a Plan; provided, that this subparagraph (5)(b) shall not apply to Defense Expenses, subject to the maximum aggregate Limit of Liability;
- (c) made by or on behalf of a fidelity insurer against an Insured Person whose conduct has resulted in a Loss which has been paid under a fidelity bond;
- (d) based upon, arising out of, directly or indirectly resulting, in consequence of, or in any way involving any discrimination, retaliation or wrongful termination of employment; provided that this subparagraph (5)(d) with not apply to Claims asserted under Section 510 of ERISA; or
- (e) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or Fiduciary Wrongful Act which, before the effective date of this endorsement, was the subject of any notice given under any other management liability insurance policy, directors and officers liability policy, pension and welfare benefit plan fiduciary liability insurance policy or similar policy.
- (6) For the purposes of Section IV. CONDITIONS of the Policy, the term "Wrongful Act" shall be deemed to include any Fiduciary Wrongful Act and the term "Company" shall be deemed to include any Sponsor Organization.
- (7) It is agreed that, in the event an Insured Person breaches a fiduciary obligation under ERISA, the Insurer has the right of recourse against any such Insured Person for any amount paid by the Insurer as a result of such breach of fiduciary duty, but the Insurer shall have no such right of recourse if the Policy has been purchased by the fiduciary or by an employer or employee organization.
- (8) In the event that a Claim gives rise to coverage both under this endorsement and under the Insuring Agreement of this Policy, Loss in respect of such Claim shall be paid, first, under the Insuring Agreement of this Policy, subject to its terms, conditions and limitations and all endorsements applicable thereto, and then, to the extent that any such Loss remains unpaid and any amount of the applicable Limit of Liability remains available, under this endorsement.
- (9) Nothing in this endorsement is intended, nor shall it be construed, to increase the Insurer's maximum aggregate Limit of Liability under this Policy, as set forth in ITEM 3 of the Declarations.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 11

Named Insured: Sears Holdings Corporation

Policy No.: ELU139030-15

Effective: May 15, 2015

12:01 A.M. Standard Time

Insurer: XL Specialty Insurance Company

## APPLICATION ENDORSEMENT

In consideration of the premium charged, the term "Application," as defined in Section II Definitions of the Policy, shall include any public documents filed by a Company with any federal, state, local or foreign regulatory agency (including but not limited to the Securities and Exchange Commission (SEC)) within the one (1) year period immediately preceding the Inception Date of this Policy.

All other terms, conditions and limitations of this Policy shall remain unchanged.

**Endorsement No.:** 12

**Named Insured:** Sears Holdings Corporation

**Policy No.:** ELU139030-15

**Effective:** May 15, 2015

**12:01 A.M. Standard Time**

**Insurer:** XL Specialty Insurance Company

## **RATING ENDORSEMENT**

In consideration of the premium charged, it is hereby agreed that notwithstanding anything in this policy that is contrary, this policy may be canceled by the Parent Company, if the Insurer's security rating is downgraded below an A.M. Best's rating of A- and/or a Standard & Poor's rating of A-.

Cancellation shall be effected by giving the Insurer written notice of the effective date of cancellation.

Any unearned premium by the Insurer will be computed pro rata and such return or tender of unearned premium will not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.

All other terms, conditions and limitations of this Policy shall remain unchanged.

**Endorsement No.:** 13

**Named Insured:** Sears Holdings Corporation

**Policy No.:** ELU139030-15

**Effective:** May 15, 2015

**12:01 A.M. Standard Time**

**Insurer:** XL Specialty Insurance Company

## **INDEPENDENT OUTSIDE DIRECTOR ENDORSEMENT**

In consideration of the premium charged, Section III Exclusions (A) and (B) of the Policy shall not apply to any past, present or future independent/non-interested outside director of the Company and those persons serving a functionally equivalent role for the Parent Company or any Subsidiary.

All other terms, conditions and limitations of this Policy shall remain unchanged.

**Endorsement No.:** 14

**Named Insured:** Sears Holdings Corporation

**Policy No.:** ELU139030-15

**Effective:** May 15, 2015

**12:01 A.M. Standard Time**

**Insurer:** XL Specialty Insurance Company

## **AMEND INTRODUCTIONS TO EXCLUSIONS ENDORSEMENT**

In consideration of the premium charged, the introductions to Section III. EXCLUSIONS (A) and (B) of the Policy are amended by the insertion of the words "that portion of" before the words "any Claim."

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 15

Named Insured: Sears Holdings Corporation

Policy No.: ELU139030-15

Effective: May 15, 2015

12:01 A.M. Standard Time

Insurer: XL Specialty Insurance Company

## AMEND EXCLUSION (B)(2) ENDORSEMENT

In consideration of the premium charged, Section III Exclusions (B)(2) of the Policy is amended to read in its entirety as follows:

“(2) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance or situation, transaction, event or Wrongful Act which, before the Inception Date of this Policy, was the subject of any notice accepted under any management liability insurance policy, directors’ and officers’ liability insurance policy, or fiduciary liability insurance policy.”

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 16

Named Insured: Sears Holdings Corporation

Policy No.: ELU139030-15

Effective: May 15, 2015

12:01 A.M. Standard Time

Insurer: XL Specialty Insurance Company

## OUTSIDE DIRECTORSHIP ENDORSEMENT

In consideration of the premium charged:

- (1) The term "Outside Entity", as defined in Section II Definitions of the Policy, is amended to include the following entity(ies) (each entity, "Specified Entity"):

Virtual Model  
Seritage Growth Properties, Inc.

- (2) The term "Insured Person", as defined in Section II Definitions of the Policy, is amended to include service by the following Insured Person(s) as a director or officer of a Specified Entity, but only during such time that such service is at the specific written request of the Company:

William Gabb  
Robert A. Riecker - Rob is VP and Controller/Chief Accounting Officer for SHC  
Sam Jeffrey Stollenwerck - Sam is SVP and President - Real Estate for SHC

With respect to the Specified Entity(ies) identified in paragraph (1) above, the term "Insured Person" shall not include service as a director or officer by any Insured Person other than the Insured Person(s) specifically identified in paragraph (2).

- (3) For purposes of determining the coverage available to an Insured Person with respect to one or more Specified Entity(s):
  - (a) All coverage under this Policy for Loss from Claims against an Insured Person while acting in their capacity as a director, officer, trustee, regent or governor of a Specified Entity will be specifically excess of and will not contribute with, any other insurance or indemnification available to such Insured Person from any source, including indemnification from such Specified Entity or the Company.
  - (b) The certificate of incorporation, charter, partnership agreement or other organizational and operational documents of the Company and such Specified Entity, including bylaws and resolutions, shall be deemed to provide indemnification to the Insured Person for his or her service with respect to such Specified Entity to the fullest extent permitted by law.

All other terms, conditions and limitations of this Policy shall remain unchanged.



Endorsement No.: 17

Named Insured: Sears Holdings Corporation

Policy No.: ELU139030-15

Effective: May 15, 2015

12:01 A.M. Standard Time

Insurer: XL Specialty Insurance Company

## EMAIL NOTICES ENDORSEMENT

In consideration of the premium charged, the last sentence of Section IV Condition (D) of the Policy is amended to read in its entirety as follows:

“All notices under CONDITIONS (D)(1) and (2) must be sent by:

- (a) certified mail or the equivalent to the address set forth in ITEM 5 of the Declarations: Attention Claim Department; or
- (b) electronic mail (email) to: [proclaimnewnotices@xlgroup.com](mailto:proclaimnewnotices@xlgroup.com).”

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 18

Named Insured: Sears Holdings Corporation

Policy No.: ELU139030-15

Effective: May 15, 2015

12:01 A.M. Standard Time

Insurer: XL Specialty Insurance Company

## AMEND CONDITION (I)(2) ENDORSEMENT

In consideration of the premium charged, Section IV Conditions (I)(2) of the Policy is amended to read in its entirety as follows:

- “(2) The Insurer may only cancel this Policy for nonpayment of premium. The Insurer will provide not less than ninety (90) days written notice stating the reason for cancellation and when the Policy will be canceled. Notice of cancellation will be sent to the Parent Company and the agent of record for the Insured Person, if applicable.”

All other terms, conditions and limitations of this Policy shall remain unchanged.

**Endorsement No.: 19**

**Named Insured: Sears Holdings Corporation**

**Policy No.: ELU139030-15**

**Effective: May 15, 2015**

**12:01 A.M. Standard Time**

**Insurer: XL Specialty Insurance Company**

## **AMEND CLAIM ENDORSEMENT**

In consideration of the premium charged, the term "Claim," as defined in Section II Definitions, is amended to include an investigation by the Securities and Exchange Commission or any similar state, federal or foreign agency commenced by the service of a subpoena upon an Insured Person.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 20

Named Insured: Sears Holdings Corporation

Policy No.: ELU139030-15

Effective: May 15, 2015

12:01 A.M. Standard Time

Insurer: XL Specialty Insurance Company

## AMEND DEFINITION OF CLAIM ENDORSEMENT

In consideration of the premium charged, the term "Claim," as defined in Section II Definitions (C) of the Policy, is amended to include a written request or agreement that an Insured Person toll any applicable statute of limitations.

All other terms, conditions and limitations of this Policy shall remain unchanged.

**Endorsement No.:** 21

**Named Insured:** Sears Holdings Corporation

**Policy No.:** ELU139030-15

**Effective:** May 15, 2015

**12:01 A.M. Standard Time**

**Insurer:** XL Specialty Insurance Company

## **ADD INSURED PERSON ENDORSEMENT**

In consideration of the premium charged, the term "Insured Person," as defined in Section II Definitions (I) of the Policy, is amended to include Bill Crowley in his capacity as an advisor to Sears Holdings Corporation and George L. "Mike" Miken III.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 22

Named Insured: Sears Holdings Corporation

Policy No.: ELU139030-15

Effective: May 15, 2015

12:01 A.M. Standard Time

Insurer: XL Specialty Insurance Company

## AMEND EXCLUSION (A)(2) ENDORSEMENT

In consideration of the premium charged, Section III Exclusions (A)(2) of the Policy is amended to read in its entirety as follows:

"(2) brought about or contributed to by any:

- (a) intentionally dishonest, deliberately fraudulent, or deliberately criminal act or omission or violation of any statute, rule, or law by any Insured Person; or
- (b) personal profit or remuneration gained by any Insured Person to which such Insured Person is not legally entitled;

as determined by a final, non-appealable adjudication in the underlying action;"

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 23

Named Insured: Sears Holdings Corporation

Policy No.: ELU139030-15

Effective: May 15, 2015

12:01 A.M. Standard Time

Insurer: XL Specialty Insurance Company

## AMEND EXCLUSION (B)(1) ENDORSEMENT

In consideration of the premium charged, Section III Exclusion (B)(1) of the Policy is amended to read in its entirety as follows:

- “(1) for any actual or alleged bodily injury, sickness, defamation, slander, libel, disease or death of any person, or damage or destruction of any tangible property including Loss of use thereof. EXCLUSION (B)(1) shall not apply to any Claim:
- (i) brought by a security holder of the Company or Outside Entity for any actual or alleged violation of the Securities Act of 1933, the Securities Act of 1934, or any state securities statute; or
  - (ii) a derivative action brought by or on behalf of, or in the name or right of, the Company, and brought and maintained independently of, and without solicitation, assistance, participation or intervention of the Company, Insured Person, or Outside Entity.”

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 24

Named Insured: Sears Holdings Corporation

Policy No.: ELU139030-15

Effective: May 15, 2015

12:01 A.M. Standard Time

Insurer: XL Specialty Insurance Company

## AMEND SECTION IV (E)(2) ENDORSEMENT

In consideration of the premium charged, Section IV Condition (E)(2) of the Policy is amended to read in its entirety as follows:

- “(2) Upon written request, the Insurer will pay within sixty (60) days of receipt of an invoice any covered Defense Expenses before the disposition of the Claim for which this Policy provides coverage. In the event of such advancement, the Insured Persons agree that they shall repay the Insurer, severally according to their interests, any Loss, including Defense Expenses, paid to or on behalf of the Insured Persons if it is finally determined that the Loss incurred is not covered under this Policy.”

All other terms, conditions and limitations of this Policy shall remain unchanged.



Endorsement No.: 25

Named Insured: Sears Holdings Corporation

Policy No.: ELU139030-15

Effective: May 15, 2015

12:01 A.M. Standard Time

Insurer: XL Specialty Insurance Company

## AMEND INSURER'S RIGHTS OF SUBROGATION

In consideration of the premium charged, it is understood and agreed that, in the event of payment under the Policy, the Insurer will not be subrogated to any Insured Person's potential or actual rights of recovery in connection therewith against any Insured Person unless it is established that Section III Exclusion (A)(2), as amended, applies to such Insured Person, and Section IV Condition (F)(2) will be deemed to have been amended accordingly.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 26

Named Insured: Sears Holdings Corporation

Policy No.: ELU139030-15

Effective: May 15, 2015

12:01 A.M. Standard Time

Insurer: XL Specialty Insurance Company

## INJUNCTIVE RELIEF ENDORSEMENT

In consideration of the premium charged, Section II Definition (C) of the Policy will specifically include any written demand for injunctive relief.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 27

Named Insured: Sears Holdings Corporation

Policy No.: ELU139030-15

Effective: May 15, 2015

12:01 A.M. Standard Time

Insurer: XL Specialty Insurance Company

## AMEND DEFINITION OF CHANGE IN CONTROL ENDORSEMENT

In consideration of the premium charged, Section II Definitions (B)(3) of the Policy is deleted in its entirety.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 28

Named Insured: Sears Holdings Corporation

Policy No.: ELU139030-15

Effective: May 15, 2015

12:01 A.M. Standard Time

Insurer: XL Specialty Insurance Company

## AMEND DEFINITION OF LOSS ENDORSEMENT

In consideration of the premium charged:

(1) Section II Definition (K) of the Policy is amended to read in its entirety as follows:

"(K) 'Loss' means damages, judgments, settlements, pre-judgment and post-judgment interest or other amounts (including punitive, exemplary or multiple damages, where insurable by law) and Defense Expenses that the Insured Persons are obligated to pay. Loss will not include:

(1) fines, penalties or taxes imposed by law; provided that Loss will specifically include (subject to the terms, conditions and limitations of this Policy, including but not limited to Section III Exclusion (A)(2)):

(a) civil fines and penalties;

(b) taxes that an Insured Person is obligated to pay if such taxes are insurable by law and imposed in connection with such Insured Person's service with respect to an entity included within the definition of Company that is financially insolvent;

(c) SOX 304/Dodd-Frank 954 Costs; and

(d) Freedom Protection Costs; or

(2) matters which are uninsurable under the law pursuant to which this Policy is construed provided that the Insurer will not assert that the portion of any Defense Expenses, settlement or judgment in a Claim arising from an initial or subsequent public offering of the Company's securities constitutes uninsurable loss due to the alleged violations of Section 11 and/or 12 of the Securities Act of 1933 as amended (including alleged violations of Section 11 and/or 12 of the Securities Act of 1933 by a Controlling Person pursuant to Section 15 of the Securities Act of 1933).

Note: With respect to judgments in which punitive, exemplary or multiplied damages, or such civil fines, penalties or taxes as set forth in (K)(1) above, are awarded, the law of the jurisdiction most favorable to the insurability of such amounts shall control."

(2) Solely for the purposes of this endorsement, "SOX 304/Dodd-Frank 954 Costs" shall mean reasonable and necessary fees, costs and expenses (including the premium or origination fee for a loan or bond) incurred by any Insured Person solely to facilitate the return of amounts required to be repaid by such Insured Person pursuant to Section 304(a) of the Sarbanes-Oxley Act of 2002 or Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. SOX 304/Dodd Frank 954 Costs shall not include any amounts requested or required to be repaid by an Insured Person pursuant to Section 304(a) or Section 954.

(3) Solely for purposes of this endorsement, "Freedom Protection Costs" shall mean:

(a) reasonable and necessary fees, costs and expenses consented to by the Insurer and incurred by an Insured Person in order for an Insured Person to lawfully seek his or her release from any pre-Claim arrest or confinement to a (i) specified residence or (ii) secure custodial premises operated by or on behalf of any law enforcement authority; or

(b)

- (b) reasonable and necessary fees, costs and expenses consented to by the Insurer and incurred by an Insured Person for a bond or other financial instrument to guarantee the contingent obligation of the Insured Person for a specified amount required by a court that are incurred or required outside the United States of America during the Policy Period, if such premiums (i) arise out of an actual or alleged Wrongful Act, or (ii) are incurred solely by reason by such Insured Person's status as an Insured Person; and, in either case, no Claim has been made or arrest or confinement occurred prior to the inception of the Policy Period.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 29

Named Insured: Sears Holdings Corporation

Policy No.: ELU139030-15

Effective: May 15, 2015

12:01 A.M. Standard Time

Insurer: XL Specialty Insurance Company

## AMEND CONDITION (B)(1) ENDORSEMENT

In consideration of the premium charged, Section IV Conditions (B)(1) of the Policy is amended to read in its entirety as follows:

- “(1) The Insured Persons and the Company understand and agree that all coverage under this Policy shall be specifically excess over, and shall not contribute with:
- (a) all indemnification and advancement to which an Insured Person may be entitled from any source, including but not limited to the Company or any Outside Entity; and
  - (b) any Insurance Program maintained by the Company or any Outside Entity, whether such other insurance is stated to be primary, contributing, excess or otherwise.

However, if Loss is not paid by such other insurance or as indemnification or advancement within sixty (60) days of the submission of a request for the payment of such other insurance, indemnification or advancement by the Insured Persons, this Policy will respond on behalf of the Insured Persons as if it were primary, subject to all of its terms, conditions and limitations and without prejudice to the Insurer's excess position.”

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 30

Named Insured: Sears Holdings Corporation

Policy No.: ELU139030-15

Effective: May 15, 2015

12:01 A.M. Standard Time

Insurer: XL Specialty Insurance Company

## AMEND REPRESENTATIONS CLAUSE ENDORSEMENT

In consideration of the premium charged, Section IV Conditions (K) of the Policy is amended to read in its entirety as follows:

“(K) Representation Clause

The Application for coverage shall be construed as a separate Application for coverage for each Insured Person. Each Insured Person represents that the statements and particulars contained in the Application are true, accurate and complete, and agree that this Policy is issued in reliance on the truth of that representation, and that such particulars and statements, which are deemed to be incorporated into and constitute a part of this Policy, are the basis of this Policy. No knowledge or information possessed by any Insured Person will be imputed to any other Insured Person for the purposes of determining the availability of coverage with respect to Claims made against any other Insured Person.”

All other terms, conditions and limitations of this Policy shall remain unchanged.

**Endorsement No.:** 31

**Named Insured:** Sears Holdings Corporation

**Policy No.:** ELU139030-15

**Effective:** May 15, 2015

**12:01 A.M. Standard Time**

**Insurer:** XL Specialty Insurance Company

## AMEND NOTICE ENDORSEMENT

In consideration of the premium charged, it is understood and agreed that the late notice of any Claim to the Insurer, as described in Section IV Condition (D)(1) of the Policy, will not be a defense to coverage unless the Insurer proves that it was actually prejudiced thereby.

All other terms, conditions and limitations of this Policy shall remain unchanged.



**Endorsement No.:** 32

**Named Insured:** Sears Holdings Corporation

**Policy No.:** ELU139030-15

**Effective:** May 15, 2015

**12:01 A.M. Standard Time**

**Insurer:** XL Specialty Insurance Company

## **AMEND DEFINITION OF CLAIM ENDORSEMENT**

In consideration of the premium charged, the term "Claim," as defined in Section II Definition (C) of the Policy, is amended to include a written request by a federal, state or foreign governmental entity for an Insured Person to appear for a formal interview with respect to such Insured Person's capacity in the Company or a Company's business activities.

All other terms, conditions and limitations of this Policy shall remain unchanged.

**Endorsement No.: 33**

**Named Insured: Sears Holdings Corporation**

**Policy No.: ELU139030-15**

**Effective: May 15, 2015**

**12:01 A.M. Standard Time**

**Insurer: XL Specialty Insurance Company**

## **FORMER INSURED PERSON ENDORSEMENT**

In consideration of the premium charged, Section III Exclusion (A)(1) of the Policy shall not apply to the extent a Claim is brought and maintained by an Insured Person:

- (a) who has not served as a director, officer, member of the Board of Managers, or employee of the Company for at least two (2) years prior to the date such Claim is first made; and
- (b) who is acting independently of, and without the solicitation, assistance, participation or intervention of an Insured Person or the Company.

All other terms, conditions and limitations of this Policy shall remain unchanged.

**Endorsement No.:** 34

**Named Insured:** Sears Holdings Corporation

**Policy No.:** ELU139030-15

**Effective:** May 15, 2015

**12:01 A.M. Standard Time**

**Insurer:** XL Specialty Insurance Company

## **CREDITORS COMMITTEE ENDORSEMENT**

In consideration of the premium charged, Section III Exclusion (A)(1) will not apply to the extent a Claim is brought by any creditors' committee established in any bankruptcy proceeding, receivership, conservatorship, rehabilitation or liquidation with respect to the Company or such Outside Entity.

All other terms, conditions and limitations of this Policy shall remain unchanged.

**Endorsement No.: 35**

**Named Insured: Sears Holdings Corporation**

**Policy No.: ELU139030-15**

**Effective: May 15, 2015**

**12:01 A.M. Standard Time**

**Insurer: XL Specialty Insurance Company**

## **AMEND NOTICE OF CLAIM ENDORSEMENT**

In consideration of the premium charged, Section IV Conditions (D)(1) of the Policy is amended to read in its entirety as follows:

- “(1) As a condition precedent to any right to payment under this Policy with respect to any Claim, the Insured Persons or the Company shall give written notice to the Insurer of any Claim as soon as practicable after it is first made and the Risk Manager or General Counsel of the Parent Company first becomes aware of such Claim.”

All other terms, conditions and limitations of this Policy shall remain unchanged.

**Endorsement No.: 36**

**Named Insured: Sears Holdings Corporation**

**Policy No.: ELU139030-15**

**Effective: May 15, 2015**

**12:01 A.M. Standard Time**

**Insurer: XL Specialty Insurance Company**

## **AMEND DEFINITION OF CLAIM ENDORSEMENT**

In consideration of the premium charged, it is understood and agreed that the term "Claim" will include a civil, criminal, administrative or regulatory investigation of an Insured Person once such Insured Person is identified in writing by a relevant investigating authority as a person against whom a proceeding as described in Section II. DEFINITIONS (C)(1), (2) or (3) may be commenced, including but not limited to any "Wells" or other notice from the Securities and Exchange Commission or a similar state or foreign governmental authority that describes actual or alleged violations of securities or other laws by such Insured Person, and Section II. DEFINITIONS (C) will be deemed to have been amended accordingly.

All other terms, conditions and limitations of this Policy shall remain unchanged.

Endorsement No.: 37

Named Insured: Sears Holdings Corporation

Policy No.: ELU139030-15

Effective: May 15, 2015

12:01 A.M. Standard Time

Insurer: XL Specialty Insurance Company

## AMEND DEFINITION OF “CLAIM” ENDORSEMENT

In consideration of the premium charged, the term “Claim,” as defined in Section II. DEFINITIONS (C) of the Policy, will be deemed to have been amended to include a subpoena received by an Insured Person in connection with an investigation of the Company by the Securities and Exchange Commission, the United States Department of Justice, or any similar federal, state or foreign governmental agency or authority.

All other terms, conditions and limitations of this Policy shall remain unchanged.

**Endorsement No.:** 38

**Named Insured:** Sears Holdings Corporation

**Policy No.:** ELU139030-15

**Effective:** May 15, 2015

**12:01 A.M. Standard Time**

**Insurer:** XL Specialty Insurance Company

## **AMEND DEFINITION OF CLAIM ENDORSEMENT**

In consideration of the premium charged, the term "Claim," as defined in Section II Definition (C) of the Policy is amended to include any mediation proceeding.

All other terms, conditions and limitations of this Policy shall remain unchanged.

**Endorsement No.: 39**

**Named Insured: Sears Holdings Corporation**

**Policy No.: ELU139030-15**

**Effective: May 15, 2015**

**12:01 A.M. Standard Time**

**Insurer: XL Specialty Insurance Company**

## **AMEND EXCLUSION (A)(1) ENDORSEMENT**

In consideration of the premium charged, Section III Exclusion (A)(1) of the Policy shall not apply to the extent such Claim is brought by the Company or Outside Entity in its capacity as a debtor in possession under Title 11 of the United States Code.

All other terms, conditions and limitations of this Policy shall remain unchanged.



**Endorsement No.: 40**

**Named Insured: Sears Holdings Corporation**

**Policy No.: ELU139030-15**

**Effective: May 15, 2015**

**12:01 A.M. Standard Time**

**Insurer: XL Specialty Insurance Company**

## **AMEND CONDITION (F)(1) ENDORSEMENT**

In consideration of the premium charged, Section IV Condition (F)(1) of the Policy is amended to read in its entirety as follows:

- “(1) The Insured Persons and the Company agree to provide the Insurer with all information, assistance and cooperation that the Insurer may reasonably request, and further agree that they will do nothing that in any way increases the Insurer’s exposure under this Policy or in any way prejudices the Insurer’s potential or actual rights of recovery. The failure of an Insured Person or the Company to provide information, assistance or cooperation shall not impair the rights of any other Insured Person under this Policy.”

All other terms, conditions and limitations of this Policy shall remain unchanged.

## CORNERSTONE A-SIDE MANAGEMENT LIABILITY INSURANCE COVERAGE FORM

THIS IS A CLAIMS MADE POLICY WITH DEFENSE EXPENSES INCLUDED IN THE LIMIT OF LIABILITY. PLEASE READ AND REVIEW THE POLICY CAREFULLY.

In consideration of the payment of the premium, and in reliance on all statements made and information furnished to Executive Liability Underwriters, the Underwriting Manager for the Insurer identified on the Declarations Page (hereinafter, the "Insurer") including the Application and subject to all of the terms, conditions and limitations of all the provisions of this Policy, the Insurer, the Insured Persons and the Company agree as follows:

### I. INSURING AGREEMENT

The Insurer will pay on behalf of the **Insured Persons Loss** resulting from a **Claim** first made against the **Insured Persons** during the **Policy Period** or, if applicable, the Optional Extension Period, for a **Wrongful Act**, except to the extent that such **Loss** is paid by any other **Insurance Program** or as indemnification or advancement from any source. In the event that **Loss** is not paid by such other insurance or as indemnification or advancement, this Policy will respond on behalf of the **Insured Persons** as if it were primary, subject to all of its terms, conditions (including, but not limited to, CONDITION (B)) and limitations and without prejudice to the Insurer's excess position.

### II. DEFINITIONS

(A) "**Application**" means:

- (1) the **Application** attached to and forming part of this Policy; and
- (2) any materials submitted therewith, which shall be retained on file by the Insurer and shall be deemed to be physically attached to this Policy.

(B) "**Change In Control**" means:

- (1) the merger or acquisition of the **Parent Company**, or of all or substantially all of its assets, by another entity such that the **Parent Company** is not the surviving entity;
- (2) the acquisition by any person, entity, or affiliated group or persons or entities of the right to vote for, select, or appoint more than fifty percent (50%) of the directors of the **Parent Company**; or
- (3) the court appointment of any person or entity with authority comparable to that of the **Insured Persons**, as defined in DEFINITION (I)(1), to liquidate or reorganize the **Parent Company**.

(C) "**Claim**" means:

- (1) a written demand for monetary or non-monetary relief;
- (2) any civil or criminal judicial proceeding in a court of law or equity, arbitration or other alternative dispute resolution; or
- (3) a formal civil, criminal, administrative, or regulatory proceeding or formal investigation.

(D) "**Company**" means the **Parent Company** and any **Subsidiary** created or acquired on or before the Inception Date set forth in ITEM 2 of the Declarations or during the **Policy Period**, subject to CONDITION (C).

(E) "**Defense Expenses**" means reasonable legal fees and expenses incurred in the defense or investigation of any **Claim**. **Defense Expenses** will not include the **Company's** overhead expenses or any salaries, wages, fees, or benefits of its directors, officers, or employees.

(F) "**Employment Practices Claim**" means a **Claim** alleging an **Employment Practices Wrongful Act**.

- (G) **“Employment Practices Wrongful Act”** means any actual or alleged:
- (1) wrongful termination of employment whether actual or constructive;
  - (2) employment discrimination of any kind;
  - (3) sexual or other harassment in the workplace; or
  - (4) wrongful deprivation of career opportunity, employment-related misrepresentation, retaliatory treatment against an employee of the **Company**, failure to promote, demotion, wrongful discipline or evaluation, or refusal to hire.
- (H) **“Insurance Program”** means
- (1) any existing Management Liability insurance, Directors’ and Officers’ Liability insurance, or similar insurance; and
  - (2) any other existing insurance under which coverage may be owed.
- (I) **“Insured Person”** means:
- (1) any past, present, or future director or officer, general counsel, or member of the Board of Managers of the **Company** and any person serving in a functionally equivalent role for the **Parent Company** or any **Subsidiary** operating or incorporated outside the United States; and
  - (2) the lawful spouse of any person set forth in DEFINITION (I)(1), but only to the extent the spouse is a party to any **Claim** solely in his or her capacity as a spouse of such person and only for the purposes of any **Claim** seeking damages recoverable from marital community property, property jointly held by any such person and his or her spouse, or property transferred from any such person to his or her spouse.

In the event of the death, incapacity or bankruptcy of an **Insured Person**, any **Claim** against the estate, heirs, legal representatives or assigns of such **Insured Person** will be deemed to be a **Claim** against such **Insured Person**.

- (J) **“Interrelated Wrongful Acts”** means **Wrongful Acts** based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any of the same or related, or series of related, facts, circumstances, situations, transactions, or events.
- (K) **“Loss”** means damages, judgments, settlements or other amounts (including pre- & post-judgment interest, punitive or exemplary damages, or the multiplied portion of any damage award, where insurable by law) and **Defense Expenses** that the **Insured Persons** are obligated to pay. **Loss** will not include:
- (1) matters which are uninsurable under the law pursuant to which this Policy is construed; or
  - (2) fines, penalties or taxes imposed by law; provided, that this DEFINITION (K)(2) will not apply to fines, penalties or taxes that an **Insured Person** is obligated to pay if such fines, penalties or taxes are insurable by law and are imposed in connection with such **Insured Person’s** service with respect to an entity included within the definition of **Company** that is financially insolvent.

Note: With respect to coverage for punitive, exemplary or multiplied damages or fines, penalties or taxes, the law of the applicable jurisdiction most favorable to the insurability of such amounts shall control.

- (L) **“Outside Capacity Wrongful Act”** means any actual or alleged act, error, or omission, misstatement, misleading statement, neglect, or breach of duty by any **Insured Person**, as defined in DEFINITION (I)(1), while acting in his or her capacity as a director, officer, trustee, regent, or governor of any **Outside Entity**, if serving in such capacity at the specific request of the **Company**.

- (M) **"Outside Entity"** means any corporation or organization other than the **Company** of which any **Insured Person**, as defined in DEFINITION (I)(1), serves as a director, officer, trustee, regent, or governor, but only if such service is at the specific request of the **Company**.
- (N) **"Parent Company"** means the entity named in ITEM 1 of the Declarations.
- (O) **"Policy Period"** means the period from the Inception Date to the Expiration Date set forth in ITEM 2 of the Declarations or to any earlier cancellation date.
- (P) **"Subsidiary"** means any entity during any time in which the **Parent Company** owns, directly or through one or more **Subsidiary(ies)**, more than fifty percent (50%) of the outstanding securities representing the right to vote for the election of such entity's directors.
- (Q) **"Wrongful Act"** means:
- (1) any actual or alleged act, error, or omission, misstatement, misleading statement, neglect, or breach of duty by any **Insured Person**, as defined in DEFINITION (I)(1), while acting in his or her capacity as a director, officer, general counsel, or member of the Board of Managers of the **Company** or a functionally equivalent role for the **Parent Company** or any **Subsidiary** operating or incorporated outside the United States;
  - (2) any matter asserted against an **Insured Person** solely by reason of his or her status as a director, officer, general counsel, or member of the Board of Managers of the **Company**;
  - (3) any **Employment Practices Wrongful Act**; and
  - (4) any **Outside Capacity Wrongful Act**.

### III. EXCLUSIONS

- (A) Except for **Defense Expenses**, the Insurer shall not pay **Loss** in connection with any **Claim**:
- (1) brought by or on behalf of, or at the direction of, the **Company** or, with respect to any **Claim** for an **Outside Capacity Wrongful Act**, an **Outside Entity**, except and to the extent such **Claim**:
    - (a) is brought and maintained by a security holder of the **Company** or such **Outside Entity**, but only if such security holder is acting independently of, and without the solicitation, assistance, participation or intervention of, the **Company**, any **Insured Person**, or any **Outside Entity**;
    - (b) is brought by the Bankruptcy Trustee or Examiner of the **Company** or such **Outside Entity**, or any assignee of such Trustee or Examiner, or any Receiver, Conservator, Rehabilitator, or Liquidator or comparable authority of the **Company** or such **Outside Entity**;
    - (c) is brought and maintained in a non-common law jurisdiction outside the United States of America or its territories or possessions; or
    - (d) is made after the **Parent Company** has undergone a **Change of Control**; or
  - (2) brought about or contributed to in fact by any:
    - (a) intentionally dishonest, fraudulent, or criminal act or omission or any willful violation of any statute, rule, or law; or
    - (b) profit or remuneration gained by any **Insured Person** to which such **Insured Person** is not legally entitled;
- as determined by a final adjudication in the underlying action.

- (B) The Insurer shall not be liable to make any payment for **Loss** in connection with any **Claim**:

- (1) for any actual or alleged bodily injury, sickness, mental anguish, emotional distress, defamation, slander, libel, disease or death of any person, or damage or destruction of any tangible property including **Loss** of use thereof; provided, that this EXCLUSION (B)(1) shall not apply to any **Claim**:
- (a) brought by a security holder of the **Company** or, with respect to any **Claim** for an **Outside Capacity Wrongful Act**, an **Outside Entity** for any actual or alleged violation of the Securities Act of 1933, the Securities Act of 1934, or any state securities statute; or
- (b) in the form of a derivative action, but only if such **Claim** is brought by or on behalf of, or in the name or right of, the **Company** or, with respect to any **Claim** for an **Outside Capacity Wrongful Act**, an **Outside Entity** and is brought and maintained independently of, and without the solicitation, assistance, participation or intervention of the **Company**, any **Insured Person**, or any **Outside Entity**; or
- (2) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or **Wrongful Act** which, before the Inception Date of this Policy, was the subject of any notice given under any other Management Liability insurance, Directors' and Officers' insurance, or other similar insurance.

Note: EXCLUSION (B)(1) will not apply to any allegation of libel, slander, defamation, mental anguish or emotional distress if and only to the extent that such allegations are made as part of an **Employment Practices Claim** for an **Employment Practices Wrongful Act**.

No **Wrongful Act** of any **Insured Person** will be imputed to any other **Insured Person** to determine the application of any of the above EXCLUSIONS.

#### IV. CONDITIONS

##### (A) Limit of Liability

The amount set forth in ITEM 3 of the Declarations shall be the maximum aggregate Limit of Liability of the Insurer under this Policy. Payment of **Loss**, including **Defense Expenses**, by the Insurer shall reduce the Limit of Liability.

##### (B) Indemnification and Other Insurance

- (1) The **Insured Persons** and the **Company** understand and agree that all coverage under this Policy shall be specifically excess over, and shall not contribute with:
- (a) all indemnification and advancement to which an **Insured Person** may be entitled from any source, including but not limited to the **Company** or any **Outside Entity**; and
- (b) any **Insurance Program** maintained by the **Company** or any **Outside Entity**, whether such other insurance is stated to be primary, contributing, excess or otherwise.

However, if **Loss** is not paid by such other insurance or as indemnification or advancement, this Policy will respond on behalf of the **Insured Persons** as if it were primary, subject to all of its terms, conditions and limitations and without prejudice to the Insurer's excess position.

- (2) This Policy shall not be subject to the terms or conditions of any other insurance. The Insurer does not waive, compromise or release any of its rights to recover **Loss** paid under this Policy from the issuers of any other insurance under which coverage may be owed, or from any person or entity from which an **Insured Person** is entitled to indemnification or advancement, including the **Company** and any **Outside Entity**.

##### (C) Mergers and Acquisitions

- (1) If, during the **Policy Period**, the **Company** acquires any assets, acquires a **Subsidiary**, or acquires any entity by merger, consolidation or otherwise, or assumes any liability of another entity, coverage

shall be provided for any **Loss** involving a **Claim** for a **Wrongful Act** occurring after the consummation of the transaction.

- (2) With respect to the acquisition, assumption, merger, consolidation or other of any entity, asset, **Subsidiary** or liability as described in CONDITION (C)(1) above, there will be no coverage available under this Policy for any **Claim** made against any **Insured Person** for any **Wrongful Act** in connection with the acquired, assumed, merged, or consolidated entity, asset, **Subsidiary** or liability committed at any time during which such entity, asset, **Subsidiary** or liability is not included within the definition of "**Company**."
- (3) If, during the **Policy Period**, any entity ceases to be a **Subsidiary**, the coverage provided under this Policy shall continue to apply to the **Insured Persons** who because of their service with such **Subsidiary** were covered under this Policy but only with respect to a **Claim** for a **Wrongful Act** that occurred or allegedly occurred prior to the time such **Subsidiary** ceased to be a **Subsidiary** of the **Company**.
- (4) If, during the **Policy Period**, there is a **Change In Control**, the coverage provided under this Policy shall continue to apply but only with respect to a **Claim** for a **Wrongful Act** committed or allegedly committed prior to the time of the **Change In Control**, and
  - (a) coverage will cease with respect to any **Claim** for a **Wrongful Act** committed subsequent to the **Change In Control**; and
  - (b) the entire premium for the Policy will be deemed to be fully earned immediately upon the consummation of a **Change In Control**.

(D) **Notice**

- (1) As a condition precedent to any right to payment under this policy with respect to any **Claim**, the **Insured Persons** or the **Company** shall give written notice to the Insurer of any **Claim** as soon as practicable after it is first made.
- (2) If, during the **Policy Period**, the **Insured Persons** first becomes aware of a specific **Wrongful Act** and if, during the **Policy Period**, the **Insured Persons** or the **Company**:
  - (a) provide the Insurer with written notice of the specific **Wrongful Act**, the consequences which have resulted or may result therefrom (including but not limited to actual or potential damages), the identities of the potential claimants, and the circumstances by which the **Insured Persons** first became aware of such **Wrongful Act**; and
  - (b) request coverage under this Policy for any subsequently resulting **Claim** for such **Wrongful Act**;

then any **Claim** subsequently made arising out of such **Wrongful Act** will be treated as if it had been first made during the **Policy Period**.

All notices under CONDITIONS (D) (1) and (2) must be sent by certified mail or the equivalent to the address set forth in ITEM 5 of the Declarations; Attention: Claim Department.

(E) **Defense and Settlement of Claims**

- (1) It shall be the duty of the **Insured Persons** and not the duty of the Insurer to defend **Claims**. No **Insured Person** may incur any **Defense Expenses** or admit liability for, make any settlement offer with respect to, or settle any **Claim** without the Insurer's consent, such consent not to be unreasonably withheld.
- (2) Upon written request, the Insurer will pay on a current basis any covered **Defense Expenses** before the disposition of the **Claim** for which this Policy provides coverage. In the event of such advancement, the **Insured Persons** agree that they shall repay the Insurer, severally according to

their interests, any **Loss**, including **Defense Expenses**, paid to or on behalf of the **Insured Persons** if it is finally determined that the **Loss** incurred is not covered under this Policy.

- (3) Except for such **Defense Expenses**, the Insurer shall pay **Loss** only upon the final disposition of any **Claim**.

(F) **Assistance, Cooperation and Subrogation**

- (1) The **Insured Persons** and the **Company** agree to provide the Insurer with all information, assistance and cooperation that the Insurer may reasonably request, and further agree that they will do nothing which in any way increases the Insurer's exposure under this Policy or in any way prejudices the Insurer's potential or actual rights of recovery.
- (2) In the event of any payment under this Policy, the Insurer shall be subrogated to all of the potential or actual rights of recovery of the **Insured Persons**, including any such rights of recovery against the **Company** or any **Outside Entity**. The **Insured Persons** shall execute all papers required and will do everything necessary to secure such rights including but not limited to the execution of such documents as are necessary to enable the Insurer to effectively bring suit in their name, and will provide all other assistance and cooperation which the Insurer may reasonably require.

(G) **Interrelated Claims**

All **Claims** arising from **Interrelated Wrongful Acts** shall be deemed to constitute a single **Claim** and shall be deemed to have been made at the earliest time at which the earliest such **Claim** is made or deemed to have been made pursuant to CONDITION (D)(1) or (2) above, if applicable.

(H) **Exhaustion**

If the Insurer's Limit of Liability as set forth in ITEM 3 of the Declarations is exhausted by the payment of **Loss**, the premium as set forth in ITEM 6 of the Declarations will be fully earned, all obligations of the Insurer under this Policy will be completely fulfilled and exhausted, and the Insurer will have no further obligations of any kind whatsoever under this Policy.

(I) **Cancellation and Renewal of Coverage**

- (1) The Chairman of the Board of Directors and the Chief Executive Officer of the **Parent Company** shall have the exclusive right to cancel this Policy on behalf of the **Insured Persons**. Such cancellation may be effected by mailing to the Insurer written notice stating when such cancellation shall be effective, provided the date of cancellation is not later than the Expiration Date set forth in ITEM 2 of the Declarations. In such event, the Insurer shall retain the customary short rate portion of the earned premium. Return or tender of the unearned premium is not a condition of cancellation.
- (2) The Insurer may cancel this Policy only for nonpayment of premium. The Insurer will provide not less than twenty (20) days written notice stating the reason for cancellation and when the Policy will be canceled. Notice of cancellation will be sent to the **Parent Company** and the agent of record for the **Insured Persons**, if applicable.
- (3) The Insurer is under no obligation to renew this Policy upon its expiration. Once the Insurer chooses to non-renew this Policy, the Insurer will deliver or mail to the **Parent Company** written notice stating such at least sixty (60) days before the Expiration Date set forth in ITEM 2 of the Declarations.
- (4) The Insurer shall not be entitled under any circumstances to rescind this Policy, other than for non-payment of premium.

(J) **Optional Extension Period**

- (1) If either the **Insured Persons** or the Insurer does not renew this Policy, the **Insured Persons** shall have the right, upon payment of the additional premium set forth in ITEM 4 of the Declarations, to an extension of the coverage provided by this Policy with respect only to any **Claim** first made during the

period of time set forth in ITEM 4 of the Declarations after the Policy Expiration Date, but only with respect to a **Wrongful Act** occurring prior to the Policy Expiration Date.

- (2) As a condition precedent to the right to purchase the Optional Extension Period the total premium for this Policy must have been paid in full. The right of the **Insured Persons** to purchase the Optional Extension Period will be immediately terminated if the Insurer does not receive written notice by the **Insured Persons** advising they wish to purchase the Optional Extension Period together with full payment of the premium for the Optional Extension Period within thirty (30) days after the Policy Expiration Date.
- (3) If the **Insured Persons** elect to purchase the Optional Extension Period as set forth in CONDITIONS (J)(1) and (2) above, the entire premium for the Optional Extension Period will be deemed to be fully earned at the Inception Date for the Optional Extension Period.
- (4) The purchase of the Optional Extension Period will not in any way increase the Limit of Liability set forth in ITEM 3 of the Declarations, and the Limit of Liability with respect to **Claims** made during the Optional Extension Period shall be part of and not in addition to the Limit of Liability for all **Claims** made during the **Policy Period**.

(K) **Representation Clause**

The **Application** for coverage shall be construed as a separate **Application** for coverage for each **Insured Person**. Each **Insured Person** represents that, to the best of his or her knowledge, the statements and particulars contained in the **Application** are true, accurate and complete, and each **Insured Person** agrees that this Policy is issued in reliance on the truth of that representation and that such particulars and statements, which are deemed to be incorporated into and constitute a part of this Policy, are the basis of this Policy. In the event that any statements and particulars contained in the **Application** are untrue, inaccurate or incomplete, this Policy will be void with respect to any **Insured Person** who had actual knowledge as of the Inception Date of facts or information that were not accurately or completely disclosed as required in the **Application**. No knowledge or information possessed by any **Insured Person** will be imputed to any other **Insured Person** for the purposes of determining the availability of coverage with respect to **Claims** made against such other **Insured Person**.

(L) **Action Against the Insurer, Assignment, and Changes to Policy**

- (1) No action may be taken against the Insurer unless, as a condition precedent thereto:
  - (a) there has been full compliance with all of the terms and conditions of this Policy; and
  - (b) the amount of the obligation of the **Insured Person** has been finally determined either by judgment against the **Insured Person** after actual trial, or by written agreement of the **Insured Person**, the claimant and the Insurer.
- (2) Nothing contained herein shall give any person or entity any right to join the Insurer as a party to any **Claim** against the **Insured Persons** to determine their liability, nor may the **Insured Persons** implead the Insurer in any **Claim**.
- (3) Assignment of interest under this Policy shall not bind the Insurer unless its consent is endorsed hereon.
- (4) Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the Insurer will not cause a waiver or change in any part of this Policy or prevent the Insurer from asserting any right under the terms, conditions and limitations of this Policy. The terms, conditions and limitations of this Policy may only be waived or changed by written endorsement signed by the Insurer.

(M) **Authorization and Notices**



It is understood and agreed that, except as provided elsewhere in this Policy, the **Parent Company** will act on behalf of the **Company** and the **Insured Persons** with respect to:

- (1) the payment of the premiums,
- (2) the receiving of any return premiums that may become due under this Policy,
- (3) the giving of all notices to the Insurer as provided herein, and
- (4) the receiving of all notices from the Insurer.

(N) **Entire Agreement**

The **Insured Persons** agree that the Declarations, the Policy, including any endorsements and attachments, and the **Application** shall constitute the entire agreement between the Insurer or any of its agents and the **Insured Persons** in relation to the insurance.

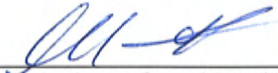
(O) **Worldwide Coverage**

In consideration of the premium charged, coverage under this Policy shall extend anywhere in the world.

(P) **Bankruptcy**

In the event that a liquidation or reorganization proceeding is commenced by or against the **Company** pursuant to the United States Bankruptcy Code, as amended, or any similar state or local law, the **Insured Persons** and the **Company** hereby (1) waive and release any automatic stay or injunction which may apply in such proceeding in connection with this Policy or its proceeds under such Bankruptcy Code or law; and (2) agree not to oppose or object to any efforts by the Insurer or any **Insured Person** or the **Company** to obtain relief from any such stay or injunction.

This is **Exhibit "C"** referred to in the  
Affidavit of Steven Bissell  
sworn before me, this 3<sup>rd</sup> day  
of **September, 2019**



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A Commissioner for taking Affidavits  
*Geoff Mens*

# WILFORD|CONRAD|LLP

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May 16, 2019

## VIA E-MAIL ONLY

Mr. Andrew Hahn  
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<b>Re:</b>	<b>Insured:</b>	<b>Sears Holdings Corporation</b>
	<b>Matter:</b>	<b>Claims Against Former Directors of Sears Canada, Inc.</b>
	<b>Insurer:</b>	<b>QBE Insurance Corporation</b>
	<b>Policy No.:</b>	<b>QPL0045025</b>
	<b>Policy Type:</b>	<b>Excess Liability Policy (Side A Only)</b>
	<b>Policy Period:</b>	<b>May 15, 2015 to May 15, 2016</b>
	<b>QBE Claim No.:</b>	<b>627951N</b>
	<b>Our Claim No.:</b>	<b>48-0004</b>

Dear Mr. Hahn & Ms. Maurier:

As you know, we have been retained to represent the interests of QBE Insurance Corporation ("QBE"), which issued Excess Liability Policy No. QPL0045025 to Sears Holdings Corporation ("SHC") for the period May 15, 2015 to May 15, 2016 (the "Excess Policy"). We are directing this correspondence to you as the authorized representatives of Klaudio Leshnjani, William R. Harker, William C. Crowley, Donald C. Ross, James McBurney, Ephraim J. Bird, Calvin R. McDonald, Ronald Boire, Deidra C. Merriwether, Douglas Campbell, Raja Khanna and Deborah Rosati (the "Former Directors") for insurance coverage purposes in the above-referenced matter. This letter is intended to supplement any prior communications from QBE with respect to the potential coverage available under the Excess Policy.

For the reasons discussed below, we regret to inform you that the Excess Policy does not provide coverage for the claims made against the Former Directors in the underlying litigation.

Please understand that QBE's position is based, in part, upon review of the unsubstantiated allegations contained in the underlying matters. QBE does not intend to suggest that those allegations have any legal or factual merit. Additionally, please understand that the discussion set

Mr. Andrew Hahn  
Ms. Jesslyn Maurier  
Re: Claims Against Former Directors of Sears Canada, Inc.  
May 16, 2019  
Page 2 of 12

forth below is not intended to provide an exhaustive analysis of all potentially applicable coverage issues. Coverage under the Excess Policy is subject to certain terms, conditions, and exclusions, the application of which cannot be finally ascertained until the conclusion of the underlying proceedings or further investigation into this matter. To the extent necessary, QBE reserves its rights to supplement their coverage position set forth in this correspondence.

## **I. RELEVANT FACTUAL BACKGROUND**

### **A. The 2015 Ontario Proceeding and CCAA Proceeding**

It is our understanding that each of the above individuals is a former director of Sears Canada, Inc. (“SCI”). The Former Directors are the subject of a proceeding filed on October 21, 2015 on behalf of 1291079 Ontario Limited (“129 Ontario”) in the Ontario Superior Court of Justice (the “2015 Ontario Proceeding”) and three additional proceedings that have been filed in the context of a CCAA Proceeding involving SCI initiated on June 22, 2017 (the “CCAA Proceeding”).<sup>1</sup> The 2015 Ontario Proceeding was first notified to QBE on September 10, 2018. QBE subsequently was made aware of the CCAA Proceeding on October 25, 2018.

The 2015 Ontario Proceeding was filed on behalf of 129 Ontario, individually, and as the proposed representative for a class of plaintiffs described as “all persons carrying on business as a Hometown store under a Dealer Agreement with Sears at any time on or after January 1, 2011”. The 2015 Ontario Proceeding was filed for the express purpose of protecting 129 Ontario’s ability to recover any potential award rendered in a prior class action proceeding filed by 129 Ontario against SCI in the Ontario Superior Court of Justice on July 5, 2013 (the “2013 Ontario Proceeding”).<sup>2</sup> Specifically, in the 2015 Ontario Proceeding, 129 Ontario alleges that, since the initiation of the 2013 Ontario Proceeding, the Former Directors have acted “in a manner that was oppressive and unfairly prejudicial to, and that unfairly disregarded the interests of, the Class” by stripping SCI of valuable assets, such that “Sears would likely be bankrupt or insolvent by the time the Class succeeded” in the 2013 Ontario Proceeding. To that end, the 2015 Ontario Proceeding seeks the same damages as requested in the 2013 Ontario Proceeding (*i.e.* recovery of damages in excess of \$100,000,000 plus pre- and post-judgment interest, and costs).

129 Ontario alleges that, in 2011, SCI began incurring large operating losses. By 2013, media sources reported that SCI was on the verge of collapse. Although SCI was losing money through its operations, SCI held valuable capital assets, particularly long-term leases in prime

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<sup>1</sup> It is our understanding that the Former Directors were being indemnified in the 2015 Ontario Proceeding by SCI prior to the initial order being entered in the CCAA Proceeding on June 22, 2017 at which time the 2015 Ontario Proceeding was stayed.

<sup>2</sup> The 2013 Ontario Proceeding was certified to proceed on a class basis on September 8, 2014. The certified class includes “all corporations, partnerships, and individuals carrying on business as a Sears Hometown Store under a Dealer Agreement with Sears at any time from July 5, 2011 to June 22, 2017.”

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shopping centers that operated at below fair market value rental rates. Between June 2013 and November 2013, SCI allegedly began liquidating those assets at the direction of and for the benefit of SHC and ESL Investments, Inc. and its affiliates (“ESL”), and at the expense of its creditors, including 129 Ontario and other plaintiffs in the 2013 Ontario Proceeding. Rather than reinvesting these funds to offset losses and save the company, SCI discharged employees and ceased services which were critical to the success of the Hometown stores and paid substantial dividends to SHC and ESL.

On November 19, 2013, despite reporting poor third quarter financial results, SCI declared an extraordinary cash dividend in the amount of \$509 million to be paid primarily to SHC and ESL on December 6, 2013 (the “Extraordinary Dividend”). According to 129 Ontario, the Extraordinary Dividend was declared by the Former Directors and paid by SCI “with knowledge by the defendants that the Sears Hometown store network was and would continue to be abandoned by SCI, and also that the class members were experiencing – and would continue experiencing – massive losses that would lead to their financial demise.”

The 2015 Ontario Proceeding alleges that on November 26, 2013, after the Extraordinary Dividend was declared but prior to its payment, counsel for 129 Ontario in the 2013 Ontario Proceeding<sup>3</sup> wrote to SCI requesting assurances that, given SCI financial condition, “it had set aside a sufficient reserve to satisfy a judgement against SCI should the Class Action be certified and succeed on the merits”. SCI allegedly did not respond.

Further, the 2015 Ontario Proceeding alleges that, on December 3, 2013, counsel for 129 Ontario in the 2013 Ontario Proceeding “wrote to each Director to put them on notice that should SCI be unable to satisfy an eventual judgment in the [2013 Ontario Proceeding], that each Director who authorized the Extraordinary Dividend may be jointly and severally liable with SCI for such damages” (the “2013 Letter”). According to the pleading, no answer was provided in response to that correspondence and on December 6, 2013, SCI paid the Extraordinary Dividend.

129 Ontario maintains that by directing and authorizing SCI to pay the Extraordinary Dividend and its other actions as described above, the Former Directors engaged in conduct that was prejudicial to 129 Ontario, as well as the putative class.

On December 4, 2018, the stay entered in connection with the 2015 Ontario Proceeding was lifted. On January 18, 2019, 129 Ontario filed a motion seeking to certify the same class of plaintiffs that was previously certified in the 2013 Ontario Proceeding.

On December 19, 2018, the following Statements of Claim for which the Former Directors seek coverage were formally filed in the CCAA Proceeding:

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<sup>3</sup> 129 Ontario is represented by the same counsel, David Sterns of Sotos LLP, in the 2013 Ontario Proceeding and the 2015 Ontario Proceeding.

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- 1) The SCI Registered Pension Plan Claim (the “Pension Plan Claim”);<sup>4</sup>
- 2) The SCI Monitor Transfer Under Value Claim (the “TUV Claim”); and
- 3) The SCI Litigation Trustee Claim.

Generally, each of these claims seek the recovery of damages, including rescission and disgorgement, under a variety of theories of liability, from the Former Directors as a result of their alleged wrongful approval of the payment of an Extraordinary Dividend in November 2013. The claims allege that the “primary recipients” of these distributions were SHC, ESL, and Edward Lampert. The claims further allege that the payment of the Extraordinary Dividend diverted funds from SCI, when the Former Directors knew or ought to have known that the best interests of SCI would be best served by reinvesting the funds in the business and that as a result of their actions SCI was rendered insolvent and unable to fulfill its obligations to its creditors.

#### **B. The 2013 Ontario Proceeding**

The 2013 Ontario Proceeding was filed by 129 Ontario on behalf of itself and approximately 260 corporations which operate as retailers under Sears’ Hometown Store Program throughout Canada.<sup>5</sup> The Hometown Store Program is a network of locally owned businesses, which entered into Dealer Agreements with SCI in order to sell Sears-brand products. The 2013 Ontario Proceeding asserts that the Home Store Program is a “predatory scheme” through which SCI concealed the economic reality of the program from prospective dealers by disregarding franchise disclosure laws, maintaining an “impossible” compensation structure and sales tactics, including the “poaching” of customers, and operated to benefit SCI and harm the Hometown dealers. The 2013 Ontario Proceeding also alleges that since 2014, SCI has failed to reasonably protect its Hometown dealers by cutting financial support and personnel and eroding the “Sears” brand in the public eye. Accordingly, the plaintiffs in the 2013 Ontario Proceeding seek of \$100,000,000 plus pre- and post-judgment interest, and costs.

#### **C. The 2013 Letter**

As alleged in the 2015 Ontario Proceeding, the 2013 Letter was issued to the Former Directors by counsel for 129 Ontario in the 2013 Ontario Proceeding after declaration but prior to

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<sup>4</sup> Morneau Shepell Ltd. was appointed as administrator of the Sears Canada Inc. Registered Pension Plan on October 16, 2017. As such, this matter is also referred to in various pleadings and correspondence as the “Morneau Shepell Ltd. Claim”. We also note that a separate claim previously advanced by the Superintendent of Financial Services (Ontario) will now be handled as part of the Pension Plan Claim.

<sup>5</sup> This number has apparently grown to approximately 351 corporations. *See*, Notice of Motion (Certification), Pg. 3, Para. 2 (filed on January 18, 2019).

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payment of the Extraordinary Dividend.<sup>6</sup> The 2013 Letter also references the prior request for assurances made by counsel for 129 Ontario that SCI had sufficient reserves to satisfy any judgment in the 2013 Ontario Proceeding.

In addition, the 2013 Letter included a link to a copy of the Statement of Claim in the 2013 Ontario Proceeding and advised the Former Directors that they were being “put...on notice that should Sears be unable to satisfy an eventual judgment against Sears in the Class Action, that each Director who authorized the Extraordinary Dividend may be jointly and severally liable with Sears for such damages.” The 2013 Letter also directed the Former Directors to the relevant Canadian statute providing for a personal liability of directors if a dividend is improperly declared.

## II. COVERAGE ANALYSIS

QBE issued Excess Insurance Policy No. QPL0045025 to Sears Holdings Corporation for the policy period of May 15, 2015 to May 15, 2016 (the “Policy Period”). The Excess Policy, subject to its own additional or differing terms, follows the terms, conditions and limitations of the primary policy, Policy No. ELU139030-15, issued by XL Specialty Insurance Company (“XL”) to SHC for the same Policy Period (the “Primary Policy”). The Excess Policy contains a \$15 million any one Claim and aggregate Limit of Liability<sup>7</sup> excess of \$15 million in Underlying Insurance.<sup>8</sup>

The Excess Policy’s Insuring Clause provides that:

The Insurer shall provide coverage in accordance with the same terms, conditions and limitations of the **Followed Policy**, including those involving policy termination, representations and severability, notice and extended reporting period, and in accordance with the terms and conditions set forth herein.<sup>9</sup>

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<sup>6</sup> QBE notes that, despite its request of December 4, 2018, the 2013 Letter was not provided by counsel for the Former Directors but was instead obtained through an independent review by QBE of certain pleadings filed in the CCAA Proceedings.

<sup>7</sup> By virtue of a prior confidential settlement, the remaining aggregate Limit of Liability under the Excess Policy is \$13 million.

<sup>8</sup> Section II (as amended by endorsement), General Conditions, Para. (a) of the Excess Policy provides that any obligation that QBE might have with respect to the Former Directors is not be triggered until the exhaustion of the Limit of Liability of the Primary Policy. By email dated May 7, 2019, counsel for the Former Directors advised that it is anticipated that the Limit of Liability of the Primary Policy may be exhausted “within the next few months or earlier.”

<sup>9</sup> The Excess Policy should be reviewed together with this letter, which does not modify the terms of the Excess Policy.

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As previously advised, while the Excess Policy generally follows form to the Primary Policy, QBE is not obligated to adopt, accept or agree with any coverage position taken by XL under the Primary Policy, including but not limited to any relatedness or allocation positions. QBE controls its own position as to the availability of coverage for any matter independent of any decision made by XL.

Section I of the Primary Policy provides coverage to Insured Persons for Loss resulting from a Claim first made during the Policy Period for a Wrongful Act, but only to the extent that such Loss has not been paid by any other Insurance Program, indemnified, or advanced from any source.

Pursuant to Definition II(I)(1), “**Insured Persons**” means, in relevant part, “any past, present, or future director or officer, general counsel, or member of the Board of Managers of the **Company** and any person serving in a functionally equivalent role for the **Parent Company** or any **Subsidiary** operating or incorporated outside the United States”. Until October 15, 2014, SCI was a Subsidiary of SCH, as that term is defined in the Primary Policy. The Former Directors are alleged to have served on the board of directors of SCI prior to October 15, 2014. As such, the Former Directors constitute Insured Persons under the Primary Policy.

Definition II(C) defines “**Claim**” to include:

- (1) a written demand for monetary or non-monetary relief;
- (2) any civil or criminal judicial proceeding in a court of law or equity, arbitration or other alternative dispute resolution; ...

\* \* \*

“**Wrongful Act**” is defined, in relevant part, at Definition II(Q) as:

- (1) any actual or alleged act, error, or omission, misstatement, misleading statement, neglect or breach of duty by an **Insured Person**, as defined in DEFINITION (I)(1), while acting in his or her capacity as a director, officer, general counsel, or member of the Board of Managers of the **Company** or a functionally equivalent role for the **Parent Company** or any **Subsidiary** operating or incorporated outside of the United States.
- (2) any matter asserted against an **Insured Person** solely by reason of his or her status as a director, officer, general counsel or member of the Board of Managers of the **Company**.



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Based upon the foregoing provisions, coverage for Insured Persons is contingent upon a Claim being first made during the Policy Period.<sup>10</sup> It is undisputed that the Pension Plan Claim, the TUV Claim and the SCI Litigation Trustee Claim, in and of themselves, do not constitute Claims first made during the Policy Period as they were asserted only after SCI initiated the CCAA Proceeding on June 22, 2017 – more than a year after the expiration of the Policy Period. It is our understanding that the Former Directors seek coverage from QBE for these matters on the basis that they constitute “**Interrelated Claims**” with the 2015 Ontario Proceeding and would be deemed first made on October 21, 2015 when the 2015 Ontario Proceeding was filed.

However, QBE has determined that coverage is not available under the Excess Policy for the Former Directors with respect to any of the above-referenced matters because these matters are not Claims first made during the Policy Period. Although the 2015 Ontario Proceeding was filed during the Policy Period, albeit not noticed until September 2018, the claims asserted therein were first made against the Former Directors in the 2013 Letter.

#### **A. Claim First Made Prior to the Policy Period**

Initially, Section IV(G) of the Primary Policy defines “**Interrelated Claims**” as follows:

All **Claims** arising from **Interrelated Wrongful Acts** shall be deemed to constitute a single **Claim** and shall be deemed to have been made at the earliest time at which the earliest such **Claim** is made or deemed to have been made pursuant to CONDITION (D)(1) or (2) above, if applicable.

Definition II(J) of the Primary Policy defines “**Interrelated Wrongful Acts**” as:

**Wrongful Acts** based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any of the same or related, or series of related, facts, circumstances, situations, transactions, or events.

As noted above, “**Claim**” is defined to include a written demand for non-monetary relief. The 2013 Letter directed to the Former Directors, in their capacity as directors of SCI, sought to prevent the payment of the Extraordinary Dividend declared by the Former Directors after requests for assurances that SCI had sufficient reserves to cover any judgment entered in the 2013 Ontario Proceeding went unanswered. To this end, the 2013 Letter provided a hyperlink to the Statement of Claim in the pending 2013 Ontario Proceeding against SCI. Counsel for 129 Ontario, the named plaintiff in the 2013 Ontario Proceeding, noted that the Extraordinary Dividend was due to be paid

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<sup>10</sup> In addition, coverage is limited to the extent that any Loss is paid by any other Insurance Program or is indemnified or advanced from any source. Based on presently available information, QBE continues to reserve all rights with respect to the availability of indemnity with respect to these matters, including whether and to what extent indemnification is, was, or will be provided by SHC, SCI, ESL, and/or any other source to the Former Directors in connection with these claims.

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three days after the 2013 Letter. The 2013 Letter cited the relevant Canadian statute providing for personal liability of company directors where a dividend is declared that would leave the company unable to pay its liabilities – the same statute the Former Directors are alleged to have violated in the subsequent 2015 Ontario Proceedings. In the letter, counsel for 129 Ontario advised the Former Directors that “should Sears be unable to satisfy an eventual judgment against Sears in the Class Action, that each Director who authorized the Extraordinary Dividend may be jointly and severally liable with Sears for such damages.”

The 2013 Letter constitutes a Claim first made on December 3, 2013 as it is a written demand for non-monetary relief, including a demand for assurances of sufficient reserves and injunctive relief to prevent the payment of the Extraordinary Dividend, directed to the Former Directors in their capacity as directors of SCI. In the 2013 Letter, counsel for the plaintiffs’ alleges, among other things, that the Former Directors failed to respond to requests for assurances of sufficient reserves to fund any judgment in the 2013 Ontario Proceeding and may have breached their fiduciary duties related to declaration of the Extraordinary Dividend.

The Primary Policy provides that “[a]ll **Claims** arising from **Interrelated Wrongful Acts** shall be deemed to constitute a single **Claim** and shall be deemed to have been made at the earliest time at which the earliest such **Claim** is made or deemed to have been made....”

The alleged Wrongful Acts by the Former Directors in the 2015 Ontario Proceeding are based on, arise out of, result from, are a consequence of or involve the same or related, facts, circumstances or situations described in the 2013 Letter. In this regard, both the 2013 Letter and the 2015 Ontario Proceeding are based on, arise out of, result from or involve the Former Directors alleged improper declaration of the Extraordinary Dividend in November 2013 and its subsequent payment by SCI on December 6, 2013. The 2013 Letter was issued for the purpose of reiterating the request for assurances of sufficient reserves, seeking injunctive relief to prevent the payment of the Extraordinary Dividend by the Former Directors, and placing the Former Directors “on notice” of the claims and damages that are now asserted in the 2015 Ontario Proceeding. As such, the 2015 Ontario Proceeding is an Interrelated Claim with the 2013 Letter and is therefore deemed to constitute a single Claim first made on December 3, 2013 pursuant to Section IV(G) of the Primary Policy. Thus, coverage is not available under the Excess Policy for the 2015 Ontario Proceeding.

As noted above, the Pension Plan Claim, the TUV Claim, and the SCI Litigation Trustee Claim do not constitute Claims first made during the Policy Period. Rather, we understand that the Insureds believe coverage is triggered for such matters as they constitute Interrelated Claims with the 2015 Ontario Proceeding. However, as explained above, the 2015 Ontario Proceeding is an Interrelated Claim with the 2013 Letter and is therefore deemed to constitute a single Claim first made on December 3, 2013, prior to the inception of the Excess Policy. Accordingly as the 2015 Ontario Proceeding does not constitute a Claim first made during the Policy Period, coverage is also unavailable for the Pension Plan Claim, the TUV Claim or the SCI Litigation Trustee Claim under the Excess Policy.

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QBE respectfully suggests that the Former Directors immediately notify any and all insurers providing coverage to SCH or SCI for the policy period during which the 2013 Letter was sent to the Former Directors.

**B. Additional Reservations**

Notwithstanding the above, and out of an abundance of caution, QBE also wishes to direct your attention to certain policy provisions which may preclude or otherwise limit the availability of coverage under the Excess Policy for the Former Directors.

Initially, a review of the 2013 Ontario Proceeding and the 2015 Ontario Proceeding clearly establishes that there is a substantial common nexus of facts and circumstances between such matters. Both lawsuits involve the same plaintiff and similar, if not identical, damages. In fact, the 2015 Ontario Proceeding expressly alleges that the 2015 Ontario Proceeding was filed solely in effort to ensure a recovery from SCI in the 2013 Ontario Proceeding.<sup>11</sup> Moreover, the 2013 Letter and the 2015 Ontario Proceeding are a simply a continuation of the allegations originally asserted in the 2013 Ontario Proceeding. More specifically, these matters stem from allegations that the defendants engaged in a pattern of oppressive and unfair conduct designed to benefit SCI (and ultimately SCH and ESL) to the financial detriment of the Hometown stores. The 2013 Ontario Proceeding is repeatedly referenced in the 2015 Ontario Proceeding. As such, the 2013 Letter and the 2015 Ontario Proceeding may constitute Interrelated Claims with the 2013 Ontario Proceeding resulting in the Claim being deemed first made on July 5, 2013.

In addition, Section I of the Primary Policy only provides coverage to **Insured Persons** to the extent that **Loss** has not been paid by any other Insurance Program, indemnified, or advanced from any source. To the extent that any Former Director has been indemnified or is entitled to indemnification from any source, including but not limited to SCI, SCH or ESL, no coverage is available under the Excess Policy. As such, QBE must hereby reserve its right to assert this defense in the future.

QBE next directs your attention to Section III, (B) (2) of the Primary Policy, as amended by Endorsement 15, which provides as follows:

(B) The Insurer shall not be liable to make any payment for **Loss** in connection with any **Claim**:

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<sup>11</sup> In correspondence dated November 28, 2018 from Paul Stein of Gowling WLG (Canada) LLP, counsel for XL with respect to the primary policy issued to SCI for the 2016-17 policy period, to John Birch of Cassels Brock, as defense counsel for the Former Directors, Mr. Stein stated that the 2015 Ontario Proceeding "essentially duplicates" the 2013 Ontario Proceeding. It does not appear that any representative for the Former Directors objected to Mr. Stein's characterization.

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- (2) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or **Wrongful Act** which, before the Inception Date of this Policy, was the subject of any notice given under any other management liability insurance, directors' and officers' liability insurance policy, or fiduciary liability insurance policy.

QBE has requested, but has yet to receive, confirmation as to whether notice of the 2013 Letter (or the November 26, 2013 letter referenced in the 2015 Ontario Proceeding) was provided under any other insurance. To the extent that notice of the 2013 Ontario Proceeding, 2013 Letter and/or 2015 Ontario Proceeding was provided to another insurer by SCH, SCI or the Former Directors, the above-referenced exclusion may operate to preclude coverage for this matter. As such, QBE reserves its rights with respect to the potential applicability of this exclusion.

QBE next directs your attention to Section III, (A) (2) of the Primary Policy, as amended by Endorsements 14 and 22, which sets forth the Primary Policy's conduct exclusions. Pursuant to (A)(2), except for Defense Costs, coverage is excluded for any intentional or fraudulent act or omission or personal profit or remuneration gained by an Insured Person. In this regard, the 2015 Ontario Proceeding alleges the Former Directors intentionally stripped SCI of its most valuable assets and siphoned money away from SCI for the benefit of SCH and ESL and to the detriment of SCI's creditors. Further, the TUV Claim alleges, *inter alia*, certain Former Directors may have obtained an improper benefit as a result of the payment of the Extraordinary Dividend. To the extent that a final, non-appealable adjudication is rendered in any matter for which any Former Director seeks coverage finding that an individual Former Director engaged in the conduct set forth above, coverage under the Policy will not be available for any amounts, except Defense Expenses.

Finally, in light of the allegations that improper payments, including the Extraordinary Dividend, were paid to certain Former Directors, directly or indirectly, SHC or ESL and the relevant claims seek the disgorgement of those payments by the Former Directors, such disgorgement may not constitute covered Loss under the Primary Policy pursuant to Section II (K) of the Primary Policy, as amended by Endorsement No. 28., which provides that **Loss** will not include matters that "are uninsurable under the law pursuant to which this Policy is construed."

### **III. CONCLUSIONS AND RESERVATION OF RIGHTS**

In closing, QBE wishes to again advise that coverage under the Excess Policy is subject to certain terms, conditions, and exclusions, the application of which cannot be ascertained until the conclusion of the underlying proceedings, further development of the matters reported to QBE, or until such time that QBE has had the opportunity to fully review each of the matters submitted to QBE, including the information previously requested. Neither this letter nor QBE's investigation is or should be construed as a waiver of any terms, conditions, exclusions or other provisions of the Excess Policy or any other policies of insurance issued by QBE or any other QBE North

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America member company. QBE expressly reserves all of its rights, remedies, and defenses under the Primary Policy, Excess Policy, at law, and in equity, including, but not limited to, the right to assert additional defenses to any claims for coverage and to modify its coverage position if subsequent information indicates that such action is warranted.

The Former Directors should be advised that QBE intends to seek relief from the automatic stay in the SHC bankruptcy proceeding currently pending in the United States District Court for the Southern District of New York for the purposes of filing a judicial proceeding in the United States District Court for the Northern District of Illinois in which QBE will request a judicial declaration that it has no obligation to provide coverage for the Former Directors in connection with any of the matters described above. Please note that Section IV. (P) of the Primary Policy provides:

In the event that a liquidation or reorganization proceeding is commenced by or against the **Company** pursuant to the United States Bankruptcy Code, as amended, or any similar state or local law, the **Insured Persons** and the **Company** hereby (1) waive and release any automatic stay or injunction which may apply in such proceeding in connection with this Policy or its proceeds under such Bankruptcy Code or law; and (2) agree not to oppose or object to any efforts by the Insurer or any **Insured Person** or the **Company** to obtain relief from any such stay or injunction.

Upon review of the above, if any Former Director wishes to withdraw his or her claim for coverage under the Excess Policy, I ask that you please notify me immediately.

Again, QBE respectfully suggests that the Former Directors immediately notify any and all insurers providing coverage to SCH or SCI for the policy period during which the 2013 Letter was sent to the Former Directors.

Should you have any additional information that you feel would cause QBE to review its position, we ask that you advise us as soon as possible.

Please do not hesitate to contact me with any questions.

Very truly yours,



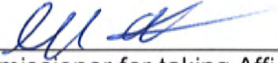
David A. Wilford

Mr. Andrew Hahn  
Ms. Jesslyn Maurier  
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cc: Johanna Fricano (via e-mail only)

David A. Luttinger, Jr. (via e-mail only)  
dluttinger@cov.com

This is **Exhibit "D"** referred to in the  
Affidavit of Steven Bissell  
sworn before me, this 3<sup>rd</sup> day  
of **September, 2019**



\_\_\_\_\_  
A Commissioner for taking Affidavits

*Geoff Mens*

June 6, 2019

**Sent By E-mail**

Ms. Wendy Berman and  
Mr. John Birch  
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Scotia Plaza  
40 King Street West  
Suite 2100  
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**Robert Frank**  
416.202.6741  
[robert.frank@nortonrosefulbright.com](mailto:robert.frank@nortonrosefulbright.com)

Dear Counsel:

**FTI Consulting Canada Inc., in its capacity as Court-appointed monitor v.  
ESL Investments Inc., et al.  
Court File No. CV-18-00611219-00CL**

We are writing with the concurrence of all of the plaintiffs in the related actions.

We were surprised to learn of the motion brought by QBE Insurance Corporation (“QBE”) for relief of the automatic stay in the United States Bankruptcy Court, Southern District of New York (the “QBE Motion”), for the purposes of filing declaratory litigation against your clients seeking “a judicial declaration that it has no obligation to provide coverage to the Former Directors in connection with the claims asserted against them in the CCAA Proceedings”.

QBE is the first excess insurer in the 2015-2016 insurance tower which you have repeatedly asserted to apply, subject to insurers’ reservations or right, to all “Dividend Matters” (as defined in the letter of Tammy Yuen of Skarzynski Marick & Black LLP dated April 15, 2019) against your clients. We note that Mr. Birch swore a solicitor’s affidavit dated February 21, 2019, in which he stated, at paragraph 14:

The policies that were provided to the Plaintiffs are policies purchased by Sears Holdings Corporation (“Sears Holdings”), which cover the 2015 to 2016 policy year, being the policies in effect when the 2015 Action was commenced. The insurers of Sears Holdings have taken the position that the policies from this period are the ones that responded to the Actions. [emphasis added]

Further, our motion for the production of insurance policies was adjourned on consent on the basis of a letter from Ms. Yuen on behalf of XL Speciality Insurance Company (“XL”), the primary insurer in the 2015-2016 tower, which asserts that “. . . coverage for the Dividend Matters and any other matter arising from Interrelated Wrongful Acts is limited to the Sears Holdings 2015-2016 Policy”.

These assertions that policies from the 2015-2016 period are the exclusive source of directors’ and officers’ liability coverage for your clients, appear to be at odds with QBE’s proposed litigation. The plaintiffs in the Canadian proceedings have repeatedly requested copies of correspondence with underwriters setting out their coverage positions in respect of your clients but these have not been provided. In light of this seemingly incongruous information about your clients’ insurance coverage and the 2015-2016 underwriters’ positions we must demand that you immediately produce:

1. Copies of all communications with QBE relating to the coverage of your clients for any Dividend Matters, including any notices and coverage positions; and

CAN\_DMS: \127861073

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Ms. Wendy Berman and  
Mr. John Birch  
Cassels Brock & Blackwell LLP  
June 6, 2019

2. Copies of all communications with XL and any other carrier in the 2015-2016 tower relating to the coverage of your clients for any dividend-related claims, including any notices and coverage positions.

The plaintiffs reserve their rights to seek additional documents and information once these materials are produced and to resume the production motion if they are not forthcoming.

Yours truly,

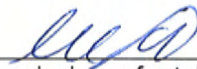


Robert Frank

RF/si

Copies to: Mr. John Picone / Mr. Christopher Horkins  
Mr. Richard B. Swan / Mr. Sean Zweig  
Mr. Matthew Gottlieb / Mr. Andrew Winton / Mr. Philip Underwood  
Mr. Michael E. Barrack / Mr. Kiran Patel  
Mr. David Sterns / Mr. Andy Seretis  
Mr. Lou Brzezinski  
Mr. Orestes Pasparakis / Mr. Evan Cobb

This is **Exhibit "E"** referred to in the  
Affidavit of Steven Bissell  
sworn before me, this 3<sup>rd</sup> day  
of **September, 2019**

  
\_\_\_\_\_  
A Commissioner for taking Affidavits  
Geoff News



**CASSELS BROCK**  
LAWYERS

June 11, 2019

Robert Frank  
Norton Rose Fulbright Canada LLP  
Royal Bank Plaza  
South Tower  
Toronto, ON M5J 2Z4

jbirch@casselsbrock.com  
tel: +1 416 860 5225  
fax: +1 416 640 3057

Dear Mr. Frank:

**Re: FTI Consulting Canada Inc. in its capacity as Court-Appointed Monitor  
vs. ESL Investments Inc. et al (Court File No. CV-18-611219-00CL)**

I am responding to your letter of June 6, 2019 that was addressed to Ms. Berman and me.

We, too, were surprised by the position only recently communicated by QBE Insurance Corporation (“**QBE**”) in relation to coverage under the 2015-2016 directors’ and officers’ (“**D&O**”) excess policy it issued to Sears Holdings Corporation (“**SHC**”) as named insured. Until we received the letter from QBE late on May 16, 2019 (a copy of which letter is enclosed), we had received no indication that QBE (or any other excess insurer), as issuers of follow-form excess policies for the 2015-16 policy period, would deviate from the prior coverage determination by XL Specialty Insurance Company (“**XL**”) under its primary policy issued to SHC for that period. XL previously acknowledged coverage under the 2015-16 XL primary policy and agreed to (and did) fund defence costs under that policy. Enclosed is XL’s October 23, 2018 letter acknowledging coverage under the 2015-16 XL primary policy.

We are providing you with the two enclosed pieces of correspondence without waiving our position that we are not obligated to produce any of such correspondence.

**Background Facts**

In March 2018, shortly after our firm was retained by our clients (the “**Former Directors**”) in late February 2018, we prepared and submitted Claims Notices to the D&O insurers of both SHC and Sears Canada Inc. (“**SCI**”) with respect to the 2017-2018 policy year (in the case of SHC) and the 2016-2018 policy year (in the case of SCI). The notices referenced the then-threatened litigation (being the pension claim, the Monitor Claim and the matters being investigated by the Litigation Investigator) which arose after SCI became the subject of proceedings under the *Companies’ Creditors Arrangement Act* (“**CCAA**”). At that time, we understood that a number of other parties also had made potentially related claims reports to the D&O insurers both before and after the CCAA Initial Order was granted.

In August 2018, XL took the position, for the first time, that the above-mentioned claims were interrelated with an earlier action by 1291079 Ontario Limited (“**129 Claim**”) commenced against the directors in October 2015—i.e., during the May 15, 2015 to May 15, 2016 policy period. XL

further asserted that the 129 Claim and the three other threatened actions (i.e., the pension claim, Litigation Investigator Claim and Monitor Claim) therefore involved a single interrelated claim first made in the 2015-2016 policy period. Promptly upon learning XL's position, supplemental notice was given to all other D&O insurers in the 2015-2016 SHC insurance tower.

With regard to the 2015-2016 SHC primary policy, XL initially disputed coverage on a separate ground, namely, whether SCI was a covered "Subsidiary" under any of SHC's XL policies, including the 2015-2016 XL primary policy. XL also denied coverage of these claims under the 2016-2018 SCI D&O policy, based upon the "prior acts" exclusion in that policy.

We vigorously contested XL's position under the 2015-2016 SHC primary policy. Thereafter, in October 2018, XL reversed its coverage position under that policy and advised the Former Directors that XL would reimburse defence costs relating to the four above-mentioned claims under the 2015-2016 SHC policy, subject to a reservation of rights and obtaining a lift-stay order by the bankruptcy court overseeing the SHC Chapter 11 proceedings confirming that such payments were permitted. That order was finally obtained in April 2019.

QBE was on notice of the above facts and the likelihood that the 2015-2016 XL primary policy would be exhausted in the foreseeable future. In December 2018, QBE requested additional information regarding the claims against the directors by letter addressed to the directors' coverage counsel. Through coverage counsel, the directors provided the additional information in January 2019. At no time prior to issuing its May 16, 2019 denial letter did QBE request any additional information, much less give any indication that it would not adhere to XL's coverage analysis and determination under its own primary policy, to which the QBE policy follows form.

The May 16, 2019 letter from counsel for QBE was also the first time that any insurer suggested that the 2013-2014 policy year might be implicated by the claims involving the Former Directors. No other excess insurer in the 2015-2016 SHC D&O policy tower has, to our knowledge, indicated an intention to deviate from XL's coverage position.

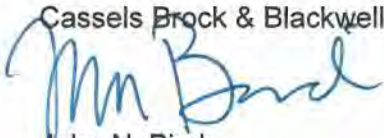
As is clear from what I have said above, the information contained in my affidavit dated February 21, 2019 was entirely correct. Both our firm and our clients were moving forward on the basis that coverage would be provided under the 2015-2016 policies issued to SHC, given that XL (as primary insurer) had determined to pay defence costs under such policy and given that no other D&O insurer of SHC for that policy period had taken or suggested any contrary position. We settled the previous outstanding production motion with you in exchange for providing you with a letter from XL's counsel confirming its coverage position.

I am sure that you can appreciate that when the primary insurer determines to provide coverage under a specific policy year (in this case, 2015-2016), both the insureds and their counsel are entitled to proceed on the basis that all excess insurers in the same period whose policies follow form to the primary policy will provide continuous coverage to the same extent upon the exhaustion of the underlying policy limits. Unfortunately, QBE failed to disclose its novel and untenable coverage theory until many months later, in its denial letter dated May 16, 2019.

We are deeply disappointed by the actions of QBE, especially the fact that it "lay in the weeds" for so long. Our clients are reserving all of their rights and are actively considering their options in the circumstances.

Yours truly,

Cassels Brock & Blackwell LLP



John N. Birch

Services rendered through a Professional Corporation

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May 16, 2019

**VIA E-MAIL ONLY**

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<b>Re:</b>	<b>Insured:</b>	<b>Sears Holdings Corporation</b>
	<b>Matter:</b>	<b>Claims Against Former Directors of Sears Canada, Inc.</b>
	<b>Insurer:</b>	<b>QBE Insurance Corporation</b>
	<b>Policy No:</b>	<b>QPL0045025</b>
	<b>Policy Type:</b>	<b>Excess Liability Policy (Side A Only)</b>
	<b>Policy Period:</b>	<b>May 15, 2015 to May 15, 2016</b>
	<b>QBE Claim No.:</b>	<b>627951N</b>
	<b>Our Claim No.:</b>	<b>48-0004</b>

Dear Mr. Hahn & Ms. Maurier:

As you know, we have been retained to represent the interests of QBE Insurance Corporation ("QBE"), which issued Excess Liability Policy No. QPL0045025 to Sears Holdings Corporation ("SHC") for the period May 15, 2015 to May 15, 2016 (the "Excess Policy"). We are directing this correspondence to you as the authorized representatives of Klaudio Leshnjani, William R. Harker, William C. Crowley, Donald C. Ross, James McBurney, Ephraim J. Bird, Calvin R. McDonald, Ronald Boire, Deidra C. Merriwether, Douglas Campbell, Raja Khanna and Deborah Rosati (the "Former Directors") for insurance coverage purposes in the above-referenced matter. This letter is intended to supplement any prior communications from QBE with respect to the potential coverage available under the Excess Policy.

For the reasons discussed below, we regret to inform you that the Excess Policy does not provide coverage for the claims made against the Former Directors in the underlying litigation.

Please understand that QBE's position is based, in part, upon review of the unsubstantiated allegations contained in the underlying matters. QBE does not intend to suggest that those allegations have any legal or factual merit. Additionally, please understand that the discussion set

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forth below is not intended to provide an exhaustive analysis of all potentially applicable coverage issues. Coverage under the Excess Policy is subject to certain terms, conditions, and exclusions, the application of which cannot be finally ascertained until the conclusion of the underlying proceedings or further investigation into this matter. To the extent necessary, QBE reserves its rights to supplement their coverage position set forth in this correspondence.

## **I. RELEVANT FACTUAL BACKGROUND**

### **A. The 2015 Ontario Proceeding and CCAA Proceeding**

It is our understanding that each of the above individuals is a former director of Sears Canada, Inc. (“SCI”). The Former Directors are the subject of a proceeding filed on October 21, 2015 on behalf of 1291079 Ontario Limited (“129 Ontario”) in the Ontario Superior Court of Justice (the “2015 Ontario Proceeding”) and three additional proceedings that have been filed in the context of a CCAA Proceeding involving SCI initiated on June 22, 2017 (the “CCAA Proceeding”).<sup>1</sup> The 2015 Ontario Proceeding was first notified to QBE on September 10, 2018. QBE subsequently was made aware of the CCAA Proceeding on October 25, 2018.

The 2015 Ontario Proceeding was filed on behalf of 129 Ontario, individually, and as the proposed representative for a class of plaintiffs described as “all persons carrying on business as a Hometown store under a Dealer Agreement with Sears at any time on or after January 1, 2011”. The 2015 Ontario Proceeding was filed for the express purpose of protecting 129 Ontario’s ability to recover any potential award rendered in a prior class action proceeding filed by 129 Ontario against SCI in the Ontario Superior Court of Justice on July 5, 2013 (the “2013 Ontario Proceeding”).<sup>2</sup> Specifically, in the 2015 Ontario Proceeding, 129 Ontario alleges that, since the initiation of the 2013 Ontario Proceeding, the Former Directors have acted “in a manner that was oppressive and unfairly prejudicial to, and that unfairly disregarded the interests of, the Class” by stripping SCI of valuable assets, such that “Sears would likely be bankrupt or insolvent by the time the Class succeeded” in the 2013 Ontario Proceeding. To that end, the 2015 Ontario Proceeding seeks the same damages as requested in the 2013 Ontario Proceeding (*i.e.* recovery of damages in excess of \$100,000,000 plus pre- and post-judgment interest, and costs).

129 Ontario alleges that, in 2011, SCI began incurring large operating losses. By 2013, media sources reported that SCI was on the verge of collapse. Although SCI was losing money through its operations, SCI held valuable capital assets, particularly long-term leases in prime

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<sup>1</sup> It is our understanding that the Former Directors were being indemnified in the 2015 Ontario Proceeding by SCI prior to the initial order being entered in the CCAA Proceeding on June 22, 2017 at which time the 2015 Ontario Proceeding was stayed.

<sup>2</sup> The 2013 Ontario Proceeding was certified to proceed on a class basis on September 8, 2014. The certified class includes “all corporations, partnerships, and individuals carrying on business as a Sears Hometown Store under a Dealer Agreement with Sears at any time from July 5, 2011 to June 22, 2017.”

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shopping centers that operated at below fair market value rental rates. Between June 2013 and November 2013, SCI allegedly began liquidating those assets at the direction of and for the benefit of SHC and ESL Investments, Inc. and its affiliates (“ESL”), and at the expense of its creditors, including 129 Ontario and other plaintiffs in the 2013 Ontario Proceeding. Rather than reinvesting these funds to offset losses and save the company, SCI discharged employees and ceased services which were critical to the success of the Hometown stores and paid substantial dividends to SHC and ESL.

On November 19, 2013, despite reporting poor third quarter financial results, SCI declared an extraordinary cash dividend in the amount of \$509 million to be paid primarily to SHC and ESL on December 6, 2013 (the “Extraordinary Dividend”). According to 129 Ontario, the Extraordinary Dividend was declared by the Former Directors and paid by SCI “with knowledge by the defendants that the Sears Hometown store network was and would continue to be abandoned by SCI, and also that the class members were experiencing – and would continue experiencing – massive losses that would lead to their financial demise.”

The 2015 Ontario Proceeding alleges that on November 26, 2013, after the Extraordinary Dividend was declared but prior to its payment, counsel for 129 Ontario in the 2013 Ontario Proceeding<sup>3</sup> wrote to SCI requesting assurances that, given SCI financial condition, “it had set aside a sufficient reserve to satisfy a judgement against SCI should the Class Action be certified and succeed on the merits”. SCI allegedly did not respond.

Further, the 2015 Ontario Proceeding alleges that, on December 3, 2013, counsel for 129 Ontario in the 2013 Ontario Proceeding “wrote to each Director to put them on notice that should SCI be unable to satisfy an eventual judgment in the [2013 Ontario Proceeding], that each Director who authorized the Extraordinary Dividend may be jointly and severally liable with SCI for such damages” (the “2013 Letter”). According to the pleading, no answer was provided in response to that correspondence and on December 6, 2013, SCI paid the Extraordinary Dividend.

129 Ontario maintains that by directing and authorizing SCI to pay the Extraordinary Dividend and its other actions as described above, the Former Directors engaged in conduct that was prejudicial to 129 Ontario, as well as the putative class.

On December 4, 2018, the stay entered in connection with the 2015 Ontario Proceeding was lifted. On January 18, 2019, 129 Ontario filed a motion seeking to certify the same class of plaintiffs that was previously certified in the 2013 Ontario Proceeding.

On December 19, 2018, the following Statements of Claim for which the Former Directors seek coverage were formally filed in the CCAA Proceeding:

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<sup>3</sup> 129 Ontario is represented by the same counsel, David Sterns of Sotos LLP, in the 2013 Ontario Proceeding and the 2015 Ontario Proceeding.



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- 1) The SCI Registered Pension Plan Claim (the “Pension Plan Claim”);<sup>4</sup>
- 2) The SCI Monitor Transfer Under Value Claim (the “TUV Claim”); and
- 3) The SCI Litigation Trustee Claim.

Generally, each of these claims seek the recovery of damages, including rescission and disgorgement, under a variety of theories of liability, from the Former Directors as a result of their alleged wrongful approval of the payment of an Extraordinary Dividend in November 2013. The claims allege that the “primary recipients” of these distributions were SHC, ESL, and Edward Lampert. The claims further allege that the payment of the Extraordinary Dividend diverted funds from SCI, when the Former Directors knew or ought to have known that the best interests of SCI would be best served by reinvesting the funds in the business and that as a result of their actions SCI was rendered insolvent and unable to fulfill its obligations to its creditors.

#### **B. The 2013 Ontario Proceeding**

The 2013 Ontario Proceeding was filed by 129 Ontario on behalf of itself and approximately 260 corporations which operate as retailers under Sears’ Hometown Store Program throughout Canada.<sup>5</sup> The Hometown Store Program is a network of locally owned businesses, which entered into Dealer Agreements with SCI in order to sell Sears-brand products. The 2013 Ontario Proceeding asserts that the Home Store Program is a “predatory scheme” through which SCI concealed the economic reality of the program from prospective dealers by disregarding franchise disclosure laws, maintaining an “impossible” compensation structure and sales tactics, including the “poaching” of customers, and operated to benefit SCI and harm the Hometown dealers. The 2013 Ontario Proceeding also alleges that since 2014, SCI has failed to reasonably protect its Hometown dealers by cutting financial support and personnel and eroding the “Sears” brand in the public eye. Accordingly, the plaintiffs in the 2013 Ontario Proceeding seek of \$100,000,000 plus pre- and post-judgment interest, and costs.

#### **C. The 2013 Letter**

As alleged in the 2015 Ontario Proceeding, the 2013 Letter was issued to the Former Directors by counsel for 129 Ontario in the 2013 Ontario Proceeding after declaration but prior to

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<sup>4</sup> Morneau Shepell Ltd. was appointed as administrator of the Sears Canada Inc. Registered Pension Plan on October 16, 2017. As such, this matter is also referred to in various pleadings and correspondence as the “Morneau Shepell Ltd. Claim”. We also note that a separate claim previously advanced by the Superintendent of Financial Services (Ontario) will now be handled as part of the Pension Plan Claim.

<sup>5</sup> This number has apparently grown to approximately 351 corporations. See, Notice of Motion (Certification), Pg. 3, Para. 2 (filed on January 18, 2019).

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payment of the Extraordinary Dividend.<sup>6</sup> The 2013 Letter also references the prior request for assurances made by counsel for 129 Ontario that SCI had sufficient reserves to satisfy any judgment in the 2013 Ontario Proceeding.

In addition, the 2013 Letter included a link to a copy of the Statement of Claim in the 2013 Ontario Proceeding and advised the Former Directors that they were being “put...on notice that should Sears be unable to satisfy an eventual judgment against Sears in the Class Action, that each Director who authorized the Extraordinary Dividend may be jointly and severally liable with Sears for such damages.” The 2013 Letter also directed the Former Directors to the relevant Canadian statute providing for a personal liability of directors if a dividend is improperly declared.

## II. COVERAGE ANALYSIS

QBE issued Excess Insurance Policy No. QPL0045025 to Sears Holdings Corporation for the policy period of May 15, 2015 to May 15, 2016 (the “Policy Period”). The Excess Policy, subject to its own additional or differing terms, follows the terms, conditions and limitations of the primary policy, Policy No. ELU139030-15, issued by XL Specialty Insurance Company (“XL”) to SHC for the same Policy Period (the “Primary Policy”). The Excess Policy contains a \$15 million any one Claim and aggregate Limit of Liability<sup>7</sup> excess of \$15 million in Underlying Insurance.<sup>8</sup>

The Excess Policy’s Insuring Clause provides that:

The Insurer shall provide coverage in accordance with the same terms, conditions and limitations of the **Followed Policy**, including those involving policy termination, representations and severability, notice and extended reporting period, and in accordance with the terms and conditions set forth herein.<sup>9</sup>

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<sup>6</sup> QBE notes that, despite its request of December 4, 2018, the 2013 Letter was not provided by counsel for the Former Directors but was instead obtained through an independent review by QBE of certain pleadings filed in the CCAA Proceedings.

<sup>7</sup> By virtue of a prior confidential settlement, the remaining aggregate Limit of Liability under the Excess Policy is \$13 million.

<sup>8</sup> Section II (as amended by endorsement), General Conditions, Para. (a) of the Excess Policy provides that any obligation that QBE might have with respect to the Former Directors is not be triggered until the exhaustion of the Limit of Liability of the Primary Policy. By email dated May 7, 2019, counsel for the Former Directors advised that it is anticipated that the Limit of Liability of the Primary Policy may be exhausted “within the next few months or earlier.”

<sup>9</sup> The Excess Policy should be reviewed together with this letter, which does not modify the terms of the Excess Policy.

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As previously advised, while the Excess Policy generally follows form to the Primary Policy, QBE is not obligated to adopt, accept or agree with any coverage position taken by XL under the Primary Policy, including but not limited to any relatedness or allocation positions. QBE controls its own position as to the availability of coverage for any matter independent of any decision made by XL.

Section I of the Primary Policy provides coverage to Insured Persons for Loss resulting from a Claim first made during the Policy Period for a Wrongful Act, but only to the extent that such Loss has not been paid by any other Insurance Program, indemnified, or advanced from any source.

Pursuant to Definition II(I)(1), “**Insured Persons**” means, in relevant part, “any past, present, or future director or officer, general counsel, or member of the Board of Managers of the **Company** and any person serving in a functionally equivalent role for the **Parent Company** or any **Subsidiary** operating or incorporated outside the United States”. Until October 15, 2014, SCI was a Subsidiary of SCH, as that term is defined in the Primary Policy. The Former Directors are alleged to have served on the board of directors of SCI prior to October 15, 2014. As such, the Former Directors constitute Insured Persons under the Primary Policy.

Definition II(C) defines “**Claim**” to include:

- (1) a written demand for monetary or non-monetary relief;
- (2) any civil or criminal judicial proceeding in a court of law or equity, arbitration or other alternative dispute resolution; ...

\* \* \*

“**Wrongful Act**” is defined, in relevant part, at Definition II(Q) as:

- (1) any actual or alleged act, error, or omission, misstatement, misleading statement, neglect or breach of duty by an **Insured Person**, as defined in DEFINITION (I)(1), while acting in his or her capacity as a director, officer, general counsel, or member of the Board of Managers of the **Company** or a functionally equivalent role for the **Parent Company** or any **Subsidiary** operating or incorporated outside of the United States.
- (2) any matter asserted against an **Insured Person** solely by reason of his or her status as a director, officer, general counsel or member of the Board of Managers of the **Company**.

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Based upon the foregoing provisions, coverage for Insured Persons is contingent upon a Claim being first made during the Policy Period.<sup>10</sup> It is undisputed that the Pension Plan Claim, the TUV Claim and the SCI Litigation Trustee Claim, in and of themselves, do not constitute Claims first made during the Policy Period as they were asserted only after SCI initiated the CCAA Proceeding on June 22, 2017 – more than a year after the expiration of the Policy Period. It is our understanding that the Former Directors seek coverage from QBE for these matters on the basis that they constitute “**Interrelated Claims**” with the 2015 Ontario Proceeding and would be deemed first made on October 21, 2015 when the 2015 Ontario Proceeding was filed.

However, QBE has determined that coverage is not available under the Excess Policy for the Former Directors with respect to any of the above-referenced matters because these matters are not Claims first made during the Policy Period. Although the 2015 Ontario Proceeding was filed during the Policy Period, albeit not noticed until September 2018, the claims asserted therein were first made against the Former Directors in the 2013 Letter.

#### **A. Claim First Made Prior to the Policy Period**

Initially, Section IV(G) of the Primary Policy defines “**Interrelated Claims**” as follows:

All **Claims** arising from **Interrelated Wrongful Acts** shall be deemed to constitute a single **Claim** and shall be deemed to have been made at the earliest time at which the earliest such **Claim** is made or deemed to have been made pursuant to CONDITION (D)(1) or (2) above, if applicable.

Definition II(J) of the Primary Policy defines “**Interrelated Wrongful Acts**” as:

**Wrongful Acts** based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any of the same or related, or series of related, facts, circumstances, situations, transactions, or events.

As noted above, “**Claim**” is defined to include a written demand for non-monetary relief. The 2013 Letter directed to the Former Directors, in their capacity as directors of SCI, sought to prevent the payment of the Extraordinary Dividend declared by the Former Directors after requests for assurances that SCI had sufficient reserves to cover any judgment entered in the 2013 Ontario Proceeding went unanswered. To this end, the 2013 Letter provided a hyperlink to the Statement of Claim in the pending 2013 Ontario Proceeding against SCI. Counsel for 129 Ontario, the named plaintiff in the 2013 Ontario Proceeding, noted that the Extraordinary Dividend was due to be paid

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<sup>10</sup> In addition, coverage is limited to the extent that any Loss is paid by any other Insurance Program or is indemnified or advanced from any source. Based on presently available information, QBE continues to reserve all rights with respect to the availability of indemnity with respect to these matters, including whether and to what extent indemnification is, was, or will be provided by SHC, SCI, ESL, and/or any other source to the Former Directors in connection with these claims.

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three days after the 2013 Letter. The 2013 Letter cited the relevant Canadian statute providing for personal liability of company directors where a dividend is declared that would leave the company unable to pay its liabilities – the same statute the Former Directors are alleged to have violated in the subsequent 2015 Ontario Proceedings. In the letter, counsel for 129 Ontario advised the Former Directors that “should Sears be unable to satisfy an eventual judgment against Sears in the Class Action, that each Director who authorized the Extraordinary Dividend may be jointly and severally liable with Sears for such damages.”

The 2013 Letter constitutes a Claim first made on December 3, 2013 as it is a written demand for non-monetary relief, including a demand for assurances of sufficient reserves and injunctive relief to prevent the payment of the Extraordinary Dividend, directed to the Former Directors in their capacity as directors of SCI. In the 2013 Letter, counsel for the plaintiffs’ alleges, among other things, that the Former Directors failed to respond to requests for assurances of sufficient reserves to fund any judgment in the 2013 Ontario Proceeding and may have breached their fiduciary duties related to declaration of the Extraordinary Dividend.

The Primary Policy provides that “[a]ll **Claims** arising from **Interrelated Wrongful Acts** shall be deemed to constitute a single **Claim** and shall be deemed to have been made at the earliest time at which the earliest such **Claim** is made or deemed to have been made....”

The alleged Wrongful Acts by the Former Directors in the 2015 Ontario Proceeding are based on, arise out of, result from, are a consequence of or involve the same or related, facts, circumstances or situations described in the 2013 Letter. In this regard, both the 2013 Letter and the 2015 Ontario Proceeding are based on, arise out of, result from or involve the Former Directors alleged improper declaration of the Extraordinary Dividend in November 2013 and its subsequent payment by SCI on December 6, 2013. The 2013 Letter was issued for the purpose of reiterating the request for assurances of sufficient reserves, seeking injunctive relief to prevent the payment of the Extraordinary Dividend by the Former Directors, and placing the Former Directors “on notice” of the claims and damages that are now asserted in the 2015 Ontario Proceeding. As such, the 2015 Ontario Proceeding is an Interrelated Claim with the 2013 Letter and is therefore deemed to constitute a single Claim first made on December 3, 2013 pursuant to Section IV(G) of the Primary Policy. Thus, coverage is not available under the Excess Policy for the 2015 Ontario Proceeding.

As noted above, the Pension Plan Claim, the TUV Claim, and the SCI Litigation Trustee Claim do not constitute Claims first made during the Policy Period. Rather, we understand that the Insureds believe coverage is triggered for such matters as they constitute Interrelated Claims with the 2015 Ontario Proceeding. However, as explained above, the 2015 Ontario Proceeding is an Interrelated Claim with the 2013 Letter and is therefore deemed to constitute a single Claim first made on December 3, 2013, prior to the inception of the Excess Policy. Accordingly as the 2015 Ontario Proceeding does not constitute a Claim first made during the Policy Period, coverage is also unavailable for the Pension Plan Claim, the TUV Claim or the SCI Litigation Trustee Claim under the Excess Policy.

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QBE respectfully suggests that the Former Directors immediately notify any and all insurers providing coverage to SCH or SCI for the policy period during which the 2013 Letter was sent to the Former Directors.

**B. Additional Reservations**

Notwithstanding the above, and out of an abundance of caution, QBE also wishes to direct your attention to certain policy provisions which may preclude or otherwise limit the availability of coverage under the Excess Policy for the Former Directors.

Initially, a review of the 2013 Ontario Proceeding and the 2015 Ontario Proceeding clearly establishes that there is a substantial common nexus of facts and circumstances between such matters. Both lawsuits involve the same plaintiff and similar, if not identical, damages. In fact, the 2015 Ontario Proceeding expressly alleges that the 2015 Ontario Proceeding was filed solely in effort to ensure a recovery from SCI in the 2013 Ontario Proceeding.<sup>11</sup> Moreover, the 2013 Letter and the 2015 Ontario Proceeding are simply a continuation of the allegations originally asserted in the 2013 Ontario Proceeding. More specifically, these matters stem from allegations that the defendants engaged in a pattern of oppressive and unfair conduct designed to benefit SCI (and ultimately SCH and ESL) to the financial detriment of the Hometown stores. The 2013 Ontario Proceeding is repeatedly referenced in the 2015 Ontario Proceeding. As such, the 2013 Letter and the 2015 Ontario Proceeding may constitute Interrelated Claims with the 2013 Ontario Proceeding resulting in the Claim being deemed first made on July 5, 2013.

In addition, Section I of the Primary Policy only provides coverage to **Insured Persons** to the extent that **Loss** has not been paid by any other Insurance Program, indemnified, or advanced from any source. To the extent that any Former Director has been indemnified or is entitled to indemnification from any source, including but not limited to SCI, SCH or ESL, no coverage is available under the Excess Policy. As such, QBE must hereby reserve its right to assert this defense in the future.

QBE next directs your attention to Section III, (B) (2) of the Primary Policy, as amended by Endorsement 15, which provides as follows:

(B) The Insurer shall not be liable to make any payment for **Loss** in connection with any **Claim**:

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<sup>11</sup> In correspondence dated November 28, 2018 from Paul Stein of Gowling WLG (Canada) LLP, counsel for XL with respect to the primary policy issued to SCI for the 2016-17 policy period, to John Birch of Cassels Brock, as defense counsel for the Former Directors, Mr. Stein stated that the 2015 Ontario Proceeding “essentially duplicates” the 2013 Ontario Proceeding. It does not appear that any representative for the Former Directors objected to Mr. Stein’s characterization.

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- (2) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance, situation, transaction, event or **Wrongful Act** which, before the Inception Date of this Policy, was the subject of any notice given under any other management liability insurance, directors' and officers' liability insurance policy, or fiduciary liability insurance policy.

QBE has requested, but has yet to receive, confirmation as to whether notice of the 2013 Letter (or the November 26, 2013 letter referenced in the 2015 Ontario Proceeding) was provided under any other insurance. To the extent that notice of the 2013 Ontario Proceeding, 2013 Letter and/or 2015 Ontario Proceeding was provided to another insurer by SCH, SCI or the Former Directors, the above-referenced exclusion may operate to preclude coverage for this matter. As such, QBE reserves its rights with respect to the potential applicability of this exclusion.

QBE next directs your attention to Section III, (A) (2) of the Primary Policy, as amended by Endorsements 14 and 22, which sets forth the Primary Policy's conduct exclusions. Pursuant to (A)(2), except for Defense Costs, coverage is excluded for any intentional or fraudulent act or omission or personal profit or remuneration gained by an Insured Person. In this regard, the 2015 Ontario Proceeding alleges the Former Directors intentionally stripped SCI of its most valuable assets and siphoned money away from SCI for the benefit of SCH and ESL and to the detriment of SCI's creditors. Further, the TUV Claim alleges, *inter alia*, certain Former Directors may have obtained an improper benefit as a result of the payment of the Extraordinary Dividend. To the extent that a final, non-appealable adjudication is rendered in any matter for which any Former Director seeks coverage finding that an individual Former Director engaged in the conduct set forth above, coverage under the Policy will not be available for any amounts, except Defense Expenses.

Finally, in light of the allegations that improper payments, including the Extraordinary Dividend, were paid to certain Former Directors, directly or indirectly, SHC or ESL and the relevant claims seek the disgorgement of those payments by the Former Directors, such disgorgement may not constitute covered Loss under the Primary Policy pursuant to Section II (K) of the Primary Policy, as amended by Endorsement No. 28., which provides that Loss will not include matters that "are uninsurable under the law pursuant to which this Policy is construed."

### **III. CONCLUSIONS AND RESERVATION OF RIGHTS**

In closing, QBE wishes to again advise that coverage under the Excess Policy is subject to certain terms, conditions, and exclusions, the application of which cannot be ascertained until the conclusion of the underlying proceedings, further development of the matters reported to QBE, or until such time that QBE has had the opportunity to fully review each of the matters submitted to QBE, including the information previously requested. Neither this letter nor QBE's investigation is or should be construed as a waiver of any terms, conditions, exclusions or other provisions of the Excess Policy or any other policies of insurance issued by QBE or any other QBE North

Mr. Andrew Hahn  
Ms. Jesslyn Maurier  
Re: Claims Against Former Directors of Sears Canada, Inc.  
May 16, 2019  
Page 11 of 12

America member company. QBE expressly reserves all of its rights, remedies, and defenses under the Primary Policy, Excess Policy, at law, and in equity, including, but not limited to, the right to assert additional defenses to any claims for coverage and to modify its coverage position if subsequent information indicates that such action is warranted.

The Former Directors should be advised that QBE intends to seek relief from the automatic stay in the SHC bankruptcy proceeding currently pending in the United States District Court for the Southern District of New York for the purposes of filing a judicial proceeding in the United States District Court for the Northern District of Illinois in which QBE will request a judicial declaration that it has no obligation to provide coverage for the Former Directors in connection with any of the matters described above. Please note that Section IV. (P) of the Primary Policy provides:

In the event that a liquidation or reorganization proceeding is commenced by or against the **Company** pursuant to the United States Bankruptcy Code, as amended, or any similar state or local law, the **Insured Persons** and the **Company** hereby (1) waive and release any automatic stay or injunction which may apply in such proceeding in connection with this Policy or its proceeds under such Bankruptcy Code or law; and (2) agree not to oppose or object to any efforts by the Insurer or any **Insured Person** or the **Company** to obtain relief from any such stay or injunction.

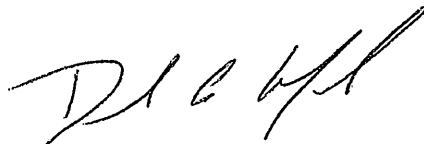
Upon review of the above, if any Former Director wishes to withdraw his or her claim for coverage under the Excess Policy, I ask that you please notify me immediately.

Again, QBE respectfully suggests that the Former Directors immediately notify any and all insurers providing coverage to SCH or SCI for the policy period during which the 2013 Letter was sent to the Former Directors.

Should you have any additional information that you feel would cause QBE to review its position, we ask that you advise us as soon as possible.

Please do not hesitate to contact me with any questions.

Very truly yours,



David A. Wilford



Mr. Andrew Hahn  
Ms. Jesslyn Maurier  
Re: Claims Against Former Directors of Sears Canada, Inc.  
May 16, 2019  
Page 12 of 12

cc: Johanna Fricano (via e-mail only)

David A. Luttinger, Jr. (via e-mail only)  
dluttinger@cov.com

Skarzynski | Black

Skarzynski Black LLC  
One Battery Park Plaza, 32nd Floor  
New York, New York 10004  
P 212.820.7700 | F 212.820.7740  
skarzynski.com

**Tammy Yuen**  
Direct Line: 212.820.7757  
tyuen@skarzynski.com

October 23, 2018

VIA EMAIL

Carolyn H. Rosenberg, Esq.  
ReedSmith LLP  
10 South Wacker Drive  
Chicago, IL 60606-7507  
[crosenberg@reedsmith.com](mailto:crosenberg@reedsmith.com)

Re: *Sears Canada, Inc.*  
Insured: Sears Holdings Corporation  
Insurer: XL Specialty Insurance Company  
XL Ref. No.: 0004070548  
SB File No.: 21995

---

Dear Ms. Rosenberg:

As you know, this firm is legal counsel to XL Specialty Insurance Company ("XL") regarding matters noticed in connection with the Sears Canada proceeding pursuant to the Companies' Creditors Arrangement Act (the "CCAA Proceedings") under policies issued by XL to Sears Holdings Corporation ("Sears Holdings").

I write further to my September 18, 2018 letter to you regarding the materials that your colleague Mark Hersh sent on October 1, 2018 in response to my September 18, 2018 letter. As discussed below, while XL requests confirmation of certain information regarding possible indemnification available to the former directors and officers of Sears Canada (collectively, the "Former Ds&Os"), this letter sets forth XL's coverage position for the Former Ds&Os for *1291079 Ontario Limited v. Sears Canada Inc., et al.*, pending in the Ontario Superior Court of Justice (the "129 Ontario Action") under Cornerstone A-Side Management Liability Policy No. ELU139030-15, providing coverage for the May 15, 2015 to May 15, 2016 Policy Period (the "2015 to 2016 A-Side Policy").

As set forth in my September 18, 2018 letter, the (i) 129 Ontario Action, along with other Interrelated Claims, constitute a single Claim first made in the 2015 to 2016

Carolyn H. Rosenberg, Esq.  
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Policy Period pursuant to Section II.(J) of the 2015 to 2016 A-Side Policy because 129 Ontario Action was commenced on or around October 21, 2015; and (ii) any coverage under the 2015 to 2016 Policy Period is excess of indemnification or advancement from any other source. (See 2015 to 2016 A-Side Policy, Section I. Insuring Agreement.).

My September 2018 letter requested that “[t]o the extent that Sears Canada or Sears Holding has denied any request for indemnification from the Former Ds&Os, please explain the basis for this denial and provide documents supporting the denial, including but not limited to the corporate documents setting forth the scope of the indemnification obligation, the request for indemnification and any response to the request.” This information was requested in order to confirm whether indemnification or advancement was available to the Former Ds&Os from any other source.

The materials provided by Mr. Hersh related to requests for indemnification to Sears Holdings from the following Formers Ds&Os: (i) Ronald D. Boire; (ii) William C. Crowley; (iii) William R. Harker; (iv) Deidra C. Merriwether; (v) S. Jeffrey Stollenwerck; (vi) E.J. Bird; (vii) Douglas Campbell; (viii) Timothy Fleming; (ix) Klaudio Leshnjani; (x) James McBurney; (xi) Calvin McDonald; (xii) Donald Ross; (xiii) Danita Stevenson (collectively, the “Boire Group”).

Pursuant to letters dated May 18, 2018, May 26, 2018, June 13, 2018 and July 6, 2018, Sears Holdings acknowledged that the following four Former Ds&Os were entitled to at least some indemnification from Sears Holdings: (i) Deidra Merriwether; (ii) William Crowley; (iii) William Harker; and (iv) S. Jeffrey Stollenwerck.

In addition, in a letter dated June 7, 2018, from John Birch to Walter Carlson, Birch disputed Sears Holdings’ initial conclusion that Former D&O, Ronald Boire was not entitled to indemnification from Sears Holdings. Please confirm whether Sears Holdings maintained its position with respect to indemnification for Ronald Boire or any of the other Former Ds&Os.

The materials provided also reference other correspondence that were not included. For instance, multiple letters between John Birch of Cassels Brock and Walter Carlson of Sidley Austin reference a June 1, 2018 letter from Natalie Levine of Cassels Brock to Walter Carlson, which has not been provided to us. Please forward a copy of this letter and any other communications regarding any request from any Former Ds&Os to Sears Holdings.

In the meantime, given that Sears Holdings initiated liquidation proceedings on October 15, 2018, pursuant to *In Re: Sears Holdings Corporation*, Case No. 18-BK-23538

Carolyn H. Rosenberg, Esq.  
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Page 3

(Bankr. S.D.N.Y.), XL recognizes that Sears Holdings<sup>1</sup> is currently unable to provide indemnification to the Former Ds&Os as of October 15, 2018. We, however, ask you to confirm whether any indemnification payments were made on behalf of Deidra Merriwether; William Crowley; William Harker; S. Jeffrey Stollenwerck; and/or any other Former D&O prior to October 15, 2018. If so, please detail the amounts and invoices paid on behalf of each individual.

Next, as you know, the available Limit of Liability under the 2015 to 2016 A-Side Policy has been reduced pursuant to XL's contribution to the settlement of the *In re Sears Holdings Corporation Stockholder and Derivative Litigation*, Consolidated C.A. No. 11081-VCL (DE Chancery). Accordingly, coverage for all Insureds is limited to the remaining Limits of Liability.

XL reiterates that the 129 Ontario Action and most, if not all, of "Former D&O Claims" described in the August 20, 2018 Motion, filed by certain Former Ds&Os in the CCAA Proceeding (the "Motion"), appear to assert Interrelated Wrongful Acts, which is defined by Section II.(J) of the 2015 to 2016 A-Side Policy to mean:

Wrongful Acts based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any of the same or related, or series of related, facts, circumstances, situations, transactions, or events.

Because the 129 Ontario Action and most, if not all, of Former D&O Claims include allegations that Sears Canada improperly paid dividends to its shareholders and such payments significantly compromised Sears Canada's ability to meet its financial obligations, these matters constitute a single Claim under the 2015 to 2016 A-Side Policy, pursuant to Section IV.(G) Interrelated Claims.

XL also reiterates its reservation of rights under Section IV.(D)(1) of the 2015 to 2016 A-Side Policy, as amended by Endorsement No. 35., which provides:

As a condition precedent to any right to payment under this Policy with respect to any Claim, the Insured Persons or the Company shall give written notice to the Insurer of any Claim as soon as practicable after it is first made and the Risk Manager or General Counsel of the Parent Company first becomes aware of such Claim.

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<sup>1</sup> XL has had separate discussions with Mr. Birch regarding available indemnification by Sears Canada.

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Page 4

XL acknowledges that Endorsement No. 31 of the 2015 to 2016 A-Side Policy, requires a showing of prejudice in order for XL to assert late notice as a defense to coverage.

Next, in light of the allegations that improper dividends were paid to Sears Holdings and to the extent that plaintiffs in the 129 Ontario Action and/or any other Interrelated Claim are seeking recovery of those dividend payments, XL reserves its rights pursuant to Section II(K) of the 2015 to 2016 A-Side Policy, as amended by Endorsement No. 28., which provides that Loss will not include matters that "are uninsurable under the law pursuant to which this Policy is construed."

Given that the Former D&O Claims identified in the Motion are still in the early stages and the details of the allegations are not yet known, XL is continuing to proceed under a full reservation of rights, including the right to assert any and all coverage defenses that may apply to limit or preclude coverage for those and all Interrelated Claims.

In the meantime, however, XL agrees to provide coverage for Defense Expenses for the Boire Group for the Former D&O Claims, subject to this reservation and allocation of coverage available under Policy No. ELU146443-16 issued by XL to Sears Canada, Inc. (the "Sears Canada Policy"). As you know, Paul Stein of Gowling WLG represents XL in connection with coverage the Sears Canada Policy; and coverage for the Boire Group is subject to the communications between Mr. Stein and myself, on behalf of XL, and counsel for the Boire Group, Mr. Birch and coverage counsel, Covington & Burling. We will keep you informed of those discussions, but will address further communications regarding coverage for the Boire Group directly to Covington & Burling, who are copied on this letter.

Finally, in light of the Sears Holdings liquidation proceedings, we remind you that Section IV.(P) 2015 to 2016 A-Side Policy provides:

In the event that a liquidation or reorganization proceeding is commenced by or against the Company pursuant to the United States Bankruptcy Code, as amended, or any similar state or local law, the Insured Persons and the Company hereby (1) waive and release any automatic stay or injunction which may apply in such proceeding in connection with this Policy or its proceeds under such Bankruptcy Code or law; and (2) agree not to oppose or object to any efforts by the Insurer or any Insured Person or the Company to obtain relief from any such stay or injunction.

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Page 5

XL will request, and will need to obtain, relief from the automatic stay in the Sears Holdings liquidation proceedings before processing payment under the 2015 to 2016 A-Side Policy.

As noted above, XL is continuing to maintain a full reservation of rights under the A-Side Policies referenced herein, law and equity, including with respect to any other defenses to coverage not discussed herein. Should you have any questions after review of this letter, please feel free to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Tammy Yuen', with a long horizontal flourish extending to the right.

Tammy Yuen

cc: All via email

Mark Hersh (MHersh@ReedSmith.com)

Rebecca Pidlak (rebecca.pidlak@xlcatlin.com)


Katherine Bottcher (Katherine.bottcher@aon.com)

John Birch (jbirch@casselsbrock.com)

David Luttinger (dluttinger@cov.com)

Kenneth McBrady (kmcbrady@skarzynski.com)

This is **Exhibit "F"** referred to in the  
Affidavit of Steven Bissell  
sworn before me, this 3<sup>rd</sup> day  
of **September, 2019**

  
\_\_\_\_\_  
A Commissioner for taking Affidavits  
Geoff Mens

CV-19-623573-000

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

DEBORAH ROSATI, R. RAJA KHANNA, WILLIAM HARKER, WILLIAM  
CROWLEY, DONALD CAMPBELL ROSS, EPHRAIM BIRD, JAMES  
MCBURNEY, and DOUGLAS CAMPBELL

Applicants

and



XL INSURANCE COMPANY LIMITED, XL SPECIALTY INSURANCE  
COMPANY and QBE INSURANCE CORPORATION

Respondents

APPLICATION UNDER RULE 14.05 (3)(d) OF THE  
ONTARIO RULES OF CIVIL PROCEDURE

**NOTICE OF APPLICATION**

**TO THE RESPONDENTS**

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicants. The claim made by the Applicants appears on the following page.

THIS APPLICATION will come on for a hearing on August 27, 2019 at 10:00 a.m. or as soon thereafter as the application may be heard, at 330 University Avenue, 8<sup>th</sup> Floor, Toronto ON M5G 1R7.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

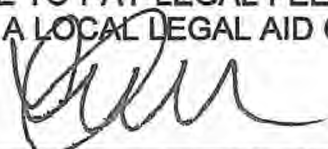
IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicants' lawyer or, where the Applicants do not have a lawyer, serve it on the Applicants, and file it, with proof of service,



in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date July 11, 2019

Issued by 

Local Registrar C. Irwin  
Registrar

Address of court office: Superior Court of Justice  
(Commercial List)  
330 University Avenue, 9th Floor  
Toronto ON M5G 1R7

**TO: XL INSURANCE COMPANY LIMITED**  
100 Yonge Street, Suite 1802  
Toronto, ON M5C 2W1

**AND TO: XL SPECIALTY INSURANCE COMPANY**  
100 King Street West, Suite 3020  
Toronto, ON M5X 1C9

Attention: Urs Uhlmann, Chief Agent for Canada

**AND TO: QBE INSURANCE CORPORATION**  
WALL STREET PLAZA  
88 PINE STREET, 18TH FLOOR  
NEW YORK, NEW YORK  
10005

**AND TO: QBE INSURANCE CORPORATION**  
333 Bay Street, Suite 520  
Toronto, ON M5H 2R2

**APPLICATION**

1. The Applicants, Deborah Rosati, R. Raja Khanna, William Harker, William Crowley, Donald Campbell Ross, Ephraim Bird, James McBurney, and Douglas Campbell, make Application for the following:

- (a) a declaration that the 2013 Sotos Letter (as defined below) does not fall within the definition of a Claim as defined in the policy of insurance issued by the Respondent XL Insurance Company Limited ("**XL**") to Sears Canada Inc. ("**Sears Canada**") for the policy period from May 1, 2013 to May 1, 2014 (Policy Number ELU129663-13) (the "**Sears Canada 2013 XL Policy**")
- (b) a declaration that the 2013 Sotos Letter (as defined below) does not fall within the definition of a Claim as defined in the policy of insurance issued by the Respondent XL Specialty Insurance Company ("**XL Specialty**") to Sears Holdings Corporation ("**SHC**") for the policy period from May 15, 2013 to May 15, 2014 (Policy Number ELU129612-13) (the "**2013 XL Policy**") or the policy of insurance issued by XL Specialty to SHC for the policy period from May 15, 2015 to May 15, 2016 (Policy Number ELU139030-15) (the "**2015 XL Policy**");
- (c) a declaration that the proceeds from the policy of insurance issued by the Respondent, QBE Insurance Corporation ("**QBE**"), to SHC for the policy period from May 15, 2015 to May 15, 2016 (Policy Number QPL0045025) (the "**QBE Policy**") apply to cover the Defense Expenses (as defined in the 2015 XL Policy) incurred by the Applicants in defending the Ontario Actions

(as defined below) and any liability that the Applicants may be found to have in the Ontario Actions;

- (d) in the alternative to (c), a declaration that the proceeds from the Sears Canada 2013 XL Policy and/or the 2013 XL Policy apply to cover the Defense Expenses (as defined in such policy or policies) incurred by the Applicants in defending the Ontario Actions (as defined below) and any liability that the Applicants may be found to have in the Ontario Actions;
- (e) the Applicants' costs of this proceeding on a substantial indemnity basis, plus all applicable taxes; and
- (f) such further and other relief as this Honourable Court may deem just.

2. The grounds for the Application are as follows:

- (a) The Applicants are each former directors of Sears Canada Inc. ("**Sears Canada**"). Three of the Applicants are residents of Ontario, two are residents of New York, and the remaining three are residents of New Jersey, South Carolina and New Mexico;
- (b) On June 22, 2017, Sears Canada filed for protection under the *Companies' Creditors Arrangement Act* (Canada) ("**CCAA**");
- (c) Prior to filing for protection under the CCAA, Sears Canada was a multi-format retailer focused on merchandising and sale of goods and services through a network of approximately 111 full-line department stores and 295

specialty stores, including Sears Home stores and Sears Hometown dealer stores, as well as its direct (catalogue/internet) channel;

- (d) At times relevant to the Ontario Actions, Sears Canada was a subsidiary of SHC which filed for protection under Chapter 11 of the *United States Bankruptcy Code* on or about October 15, 2018;
- (e) XL Specialty is a corporation with executive offices in Stamford, CT, which carries on business, *inter alia*, as a property insurer that issues policies and insures risks in Canada, the United States, and elsewhere;
- (f) XL Specialty is licensed to carry on business in Canada, has a Chief Agent in Canada, and has a fixed place of business located at 100 King Street West, Suite 3020, Toronto, Ontario;
- (g) XL is licensed to carry on business in Canada, issues policies in Canada (including in Ontario) to Canadian companies and individuals, and has a fixed place of business at 100 Yonge Street, Suite 1802, Toronto, Ontario;
- (h) QBE is a corporation incorporated under the laws of Pennsylvania and is headquartered in New York. QBE is part of the QBE Insurance Group which holds itself out as "one of the world's top insurers and reinsurers, providing cover in more than 150 countries." The QBE Group carries on business in Ontario through an office in Toronto at 333 Bay St.;
- (i) One or more members of the QBE Insurance Group also routinely insure risks in Canada, including directors' and officers' liability;

- (j) All of the Applicants are defendants in three proceedings currently pending before the Ontario Superior Court of Justice (Commercial List): (i) an action commenced on December 19, 2018 by Sears Canada by its Court appointed Litigation Trustee bearing Court File Number CV-18-00611214-00CL; (ii) an action commenced on December 19, 2018 by Morneau Shepell Ltd. in its capacity as administrator of the Sears Canada registered pension plan bearing Court File Number CV-18-00611217-00CL; and (iii) a class proceeding commenced on or about October 21, 2015 by 1291079 Ontario Limited bearing Court File Number CV-19-617792-00CL (formerly Court File No. 4114/15). In addition, the Applicants Harker and Crowley are defendants in a fourth action commenced on December 19, 2018 by FTI Consulting Canada Inc. in its capacity as Court-appointed monitor in the CCAA proceedings bearing Court File Number CV-18-00611219-00CL. The four actions described above are referred to collectively as the “**Ontario Actions**”;
- (k) Pursuant to an Order of Mr. Justice McEwen dated January 25, 2019, these four actions have been ordered to be tried together. The trials are currently scheduled to commence in May 2020;
- (l) Coverage under the Sears Canada 2013 XL Policy extends to cover claims made against the directors and officers of Sears Canada, including the Applicants as former directors of Sears Canada. A copy of the Sears Canada XL Policy was delivered to Sears Canada in Ontario for the benefit of the directors of Sears Canada;

- (m) Coverage under the 2013 XL Policy and the 2015 XL Policy extend to cover claims made against directors and officers of subsidiaries of SHC, including the Applicants as former directors of Sears Canada. A copy of the 2013 XL Policy and the 2015 XL Policy were delivered to Sears Canada in Ontario for the benefit of the directors of Sears Canada;
- (n) The QBE Policy is a next-layer excess policy that follows form to the 2015 XL Policy, which is the primary policy;
- (o) In the fall of 2018, the Applicants (through their counsel) gave notice of the Ontario Actions to XL, QBE and other insurers and thereafter provided numerous updates to them about the status of the Ontario Actions;
- (p) XL, as the primary insurer, has accepted, subject to certain reservation of rights that are not relevant to this Application, that the 2015 XL Policy (covering the 2015-2016 policy period) applies to cover the claims asserted against the Applicants in the Ontario Actions, and has reimbursed the Applicants for defence costs incurred to date in defending those actions. QBE has been aware since at least November 2018 that XL had accepted that coverage to the Applicants was available under the 2015-2016 policy period and had been reimbursing the Applicants for defence costs incurred in defending the Ontario Actions;
- (q) The 2015 XL Policy has a limit of US\$15 million. As of July 11, 2019, coverage under the 2015 XL Policy is almost exhausted, following which

coverage is to be provided under the QBE Policy, which is the first excess policy covering the 2015-2016 policy period;

- (r) XL provided periodic updates to QBE and other insurers regarding erosion of its policy limits. On May 7, 2019, QBE was advised that the first layer of coverage provided pursuant to the 2015 XL Policy was almost exhausted and that coverage under the next layer of insurance held by QBE would soon be triggered;
- (s) On May 16, 2019, QBE advised the Applicants that it was denying that the QBE Policy provided coverage for the defence costs incurred by the Applicants in defending the Ontario Actions. In denying coverage, QBE asserted that: (i) a letter dated December 4, 2013 from Sotos LLP (the "**2013 Sotos Letter**") constituted a "Claim" (as defined under the 2015 XL Policy); and (ii) the 2013 Sotos Letter and an action commenced against the Applicants (and certain other defendants) in October 2015 were "Interrelated Claims" (as defined in the 2015 XL Policy), such that it is insurance in the 2013-2014 policy period that provides coverage to the Applicants rather than insurance in the 2015-2016 policy period;
- (t) QBE did not issue any directors' and officers' insurance to SHC in the 2013-2014 policy period;
- (u) For the purposes of determining whether the 2013 Sotos Letter is a Claim and whether there are Interrelated Claims, the applicable definition of a

Claim is contained in the 2013 XL Policy and/or the Sears Canada 2013 XL Policy;

- (v) Further, the definition of Interrelated Claims and the relevant portion of the definition of Claim are identical to each other in the Sears Canada 2013 Policy, the 2013 XL Policy, and the 2015 XL Policy (collectively, the “**XL Policies**”);
- (w) The Applicants deny that the 2013 Sotos Letter constituted a Claim as defined in any of the XL Policies. Among other things, the 2013 Sotos Letter did not allege any actual wrongdoing by any of the Applicants, did not assert any legally cognizable claim of right to monetary or non-monetary relief as against the Applicants, and concerned a contingent future possibility based upon events that had not then occurred and might never have occurred;
- (x) The Applicants seek a declaration that the 2013 Sotos Letter did not constitute a Claim (as defined under any of the XL Policies), and that the proceeds of the QBE Policy apply to cover the Defence Expenses incurred and to be incurred by the Applicants in defending the Ontario Actions and any liability that the Applicants may be found to have in the Ontario Actions;
- (y) The Ontario Actions seek hundreds of millions of dollars in damages against the Applicants. Given the significant consequences, the complexity of the actions commenced against the Applicants, and the expedited procedural schedule that currently provides for trials to commence in less than one year, the Applicants require that their rights to have their defence costs



incurred in defending the Ontario Actions paid from the proceeds of any applicable insurance be determined as expeditiously as possible;

- (z) In the event that the Court determines that the 2013 Sotos Letter is a Claim, and that the proceeds of the QBE Policy are not required to respond to fund Defense Costs and liability in the Ontario Actions, the Applicants seek, in the alternative, a declaration against XL and XL Specialty that the proceeds of the Sears Canada 2013 XL Policy or the 2013 XL Policy are applicable to cover Defence Costs and liability in the Ontario Actions;
- (aa) The Applicants are entitled to serve the Notice of Application outside of Ontario without a court order, as the proceeding consists of claims relating to property in Ontario, the interpretation of a contract in respect of personal property in Ontario, a contract made in Ontario, and the Respondents are carrying on business in Ontario;
- (bb) To the extent necessary, leave to serve the Notice of Application outside of Ontario;
- (cc) Section 123 of the *Insurance Act* (Ontario);
- (dd) Rules 14.05 (3)(d), 17.02, 17.03, 17.05, 38 and 39 of the *Rules of Civil Procedure* (Ontario); and
- (ee) Such further and other grounds as the lawyers may advise.

3. The following documentary evidence will be used at the hearing of the application:

- (a) An Affidavit on behalf of the Applicants to be sworn;
- (b) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

July 11, 2019

**TYR LLP**  
180 John Street  
Toronto, ON M5T 1X5

**James Doris** (LSO #33236P)  
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**Sean Campbell** (LSO #49514J)  
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Lawyers for the Applicants

Deborah Rosati et. al.  
Applicants

-and- QBE Insurance Corporation et al  
Respondent

CV-19-623573-0001  
Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST  
PROCEEDING COMMENCED AT  
TORONTO**

**NOTICE OF APPLICATION**

**TYR LLP**  
180 John Street  
Toronto, ON M5T 1X5

**James Doris (LSO #33236P)**  
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**Sean Campbell (LSO #49514J)**  
Email scampbell@tyrllp.com  
Tel: 416.527.3934  
Fax: 416.987.2370

Lawyers for the Applicants

This is **Exhibit "G"** referred to in the  
Affidavit of Steven Bissell  
sworn before me, this 3<sup>rd</sup> day  
of **September, 2019**



\_\_\_\_\_  
A Commissioner for taking Affidavits

*Geoff Mens*

---

**From:** Hahn, Andrew W  
**Sent:** May 7, 2019 4:09 PM  
**To:** David Wilford  
**Cc:** Luttinger, David A Jr.; Duke, Benjamin; Pamela Prednis  
**Subject:** RE: Sears Holding Corporation/ Former Directors of Sears Canada - QBE Policy No. QPL0045025 - QBE Claim # 627951N - Our File 48-0004  
**Attachments:** 2019.01.02 - Letter from A. Hahn to D. Wilford.pdf  
**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dave,

We write further to our letter of January 2, which I attach here for convenience. Based on the Former Directors' defense expense projections in the above-referenced matter, we anticipate that the primary layer of insurance afforded by XL Policy No. ELU139030-15 (the "XL Policy") may be exhausted within the next few months or earlier. We are working with XL and underlying counsel to calculate the precise amount of remaining limits under the XL Policy and develop a better estimate as to when exhaustion will occur.

Upon exhaustion of the XL Policy limit, QBE Policy No. QPL0045025 (the "QBE Policy"), issued to Sears Holdings Corp. as named insured for the period 5/1/2015 to 5/1/2016, provides the first layer of excess coverage and will become responsible for covering the Former Directors' defense expenses and any indemnity payments up to the QBE Policy limit. At this point, we have not yet received QBE's written confirmation that it will provide follow-form coverage under the QBE Policy consistent with XL's acknowledgment of coverage under the primary XL Policy.

To ensure a smooth transition from XL coverage to QBE coverage, are you available for a call early next week to discuss current status and next steps? Please let us know if there are times on Monday, May 13, or Tuesday, May 14, that would be convenient for you.

Best,

Andrew

### Andrew Hahn

Covington & Burling LLP  
 The New York Times Building, 620 Eighth Avenue  
 New York, NY 10018-1405  
 T +1 212 841 1071 | ahahn@cov.com  
 www.cov.com

## COVINGTON

**From:** David Wilford <dwilford@wilfordconrad.com>  
**Sent:** Thursday, January 03, 2019 10:08 AM  
**To:** Hahn, Andrew W <ahahn@cov.com>  
**Cc:** Luttinger, David A Jr. <dluttinger@cov.com>; Duke, Benjamin <pbduke@cov.com>; Pamela Prednis <pprednis@wilfordconrad.com>

**Subject:** RE: Sears Holding Corporation/ Former Directors of Sears Canada - QBE Policy No. QPL0045025 - QBE Claim # 627951N - Our File 48-0004

Andrew – Many thanks. I will follow up should we have any questions.

Best regards,

Dave

David A. Wilford  
**WILFORD | CONRAD | LLP**  
18 East Dundee Road  
Building 6, Suite 150  
Barrington, Illinois 60010  
Direct Dial: (224) 848-4722  
Facsimile: (224) 425-5865  
[DWilford@wilfordconrad.com](mailto:DWilford@wilfordconrad.com)

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**From:** Hahn, Andrew W  
**Sent:** Wednesday, January 02, 2019 7:46 PM  
**To:** David Wilford  
**Cc:** Luttinger, David A Jr. ; Duke, Benjamin  
**Subject:** RE: Sears Holding Corporation/ Former Directors of Sears Canada - QBE Policy No. QPL0045025 - QBE Claim # 627951N - Our File 48-0004

Dave,

Please see the attached letter in response to your letter of December 4. I hope you are having a good new year.

Best,

Andrew

**Andrew Hahn**

Covington & Burling LLP  
The New York Times Building, 620 Eighth Avenue  
New York, NY 10018-1405  
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**COVINGTON**

**From:** David Wilford <[dwilford@wilfordconrad.com](mailto:dwilford@wilfordconrad.com)>  
**Sent:** Tuesday, December 04, 2018 5:09 PM  
**To:** Hahn, Andrew W <[ahahn@cov.com](mailto:ahahn@cov.com)>  
**Cc:** Luttinger, David A Jr. <[dluttinger@cov.com](mailto:dluttinger@cov.com)>  
**Subject:** Sears Holding Corporation/ Former Directors of Sears Canada - QBE Policy No. QPL0045025 - QBE Claim # 627951N - Our File 48-0004

Andrew – Attached please find correspondence issued on behalf of QBE Insurance Corporation in connection with this matter.

Best regards,

Dave

David A. Wilford  
**WILFORD | CONRAD | LLP**  
18 East Dundee Road  
Building 6, Suite 150  
Barrington, Illinois 60010  
Direct Dial: (224) 848-4722  
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This is **Exhibit "H"** referred to in the  
Affidavit of Steven Bissell  
sworn before me, this 3<sup>rd</sup> day  
of **September, 2019**



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A Commissioner for taking Affidavits

Geoff Mens



Superior Court of Justice  
Commercial List

FILE/DIRECTION/ORDER

Sears Canada Inc  
Plaintiff(s)

AND

ESL Investments Inc  
Defendant(s)

Case Management  Yes  No by Judge: McGowan

Counsel	Telephone No:	Facsimile No:

- Order  Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: \_\_\_\_\_
- Time Table approved (as follows):

An order shall go re: the conspiracy claim issue as per the Endorsement attached as Schedule A.

The Trial schedule is also approved as per Schedule B attached - in all actions.

12 July 19  
Date

McGowan  
Judge's Signature

Additional Pages \_\_\_\_\_

*M* Schedule A *M*  
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## ENDORSEMENT

1. The Litigation Trustee shall deliver an Amended Statement of Claim by July 19, 2019, which, if the Litigation Trustee continues to advance a conspiracy claim, shall include the following additional particulars in respect of the conspiracy claim:
  - (a) the agreement between or amongst the defendants to conspire, including particulars as to the parties to the agreement, the individuals involved, the terms of the agreement, the mode of the agreement and shall reasonably describe the time or time period and place of the agreement; and
  - (b) the specific overt acts alleged to have been done by each of the alleged conspirators in pursuit and furtherance of the conspiracy, including the individuals involved, the nature of the acts, and shall reasonably describe the time or time period and place of the acts.
2. The defendants, other than SHC, shall deliver the remaining Statements of Defence by July 29, 2019.
3. Any further motion to strike portions of the Litigation Trustee's Amended Statement of Claim or demand further particulars arising from the Litigation Trustee's Amended Statement of Claim shall be raised at a 9:30 before Justice McEwen who will decide whether to schedule to motion or otherwise address it.

*M Schedule B M*  
**165**

Court File No. CV-18-00611214-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**B E T W E E N:**

SEARS CANADA INC., by its Court-appointed Litigation Trustee, J.  
DOUGLAS CUNNINGHAM, Q.C.

Plaintiff

and

ESL INVESTMENTS INC., ESL PARTNERS, LP, SPE I PARTNERS, LP, SPE  
MASTER I, LP, ESL INSTITUTIONAL PARTNERS, LP,  
EDWARD S. LAMPERT, EPHRAIM J. BIRD, DOUGLAS CAMPBELL,  
WILLIAM CROWLEY, WILLIAM HARKER, R. RAJA KHANNA, JAMES  
MCBURNEY, DEBORAH ROSATI and DONALD ROSS

Defendants

---

Court File No. CV-18-00611217-00CL

**B E T W E E N:**

MORNEAU SHEPELL LTD. in its capacity as administrator of the  
Sears Canada Inc. Registered Pension Plan

Plaintiff

and

ESL INVESTMENTS INC., ESL PARTNERS, LP, SPE I PARTNERS, LP,  
SPE MASTER I, LP, ESL INSTITUTIONAL PARTNERS, LP,  
EDWARD S. LAMPERT, WILLIAM HARKER, WILLIAM CROWLEY, DONALD  
CAMPBELL ROSS, EPHRAIM J. BIRD, DEBORAH E. ROSATI,  
R. RAJA KHANNA, JAMES MCBURNEY and DOUGLAS CAMPBELL

Defendants

---

Court File No. CV-18-00611219-00CL

**B E T W E E N:**

FTI CONSULTING CANADA INC.,  
in its capacity as Court-appointed monitor in proceedings  
pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c. c-36

Plaintiff

and

ESL INVESTMENTS INC., ESL PARTNERS, LP, SPE I PARTNERS, LP, SPE MASTER I, LP, ESL  
INSTITUTIONAL PARTNERS, LP, EDWARD S. LAMPERT, WILLIAM R. HARKER  
and WILLIAM C. CROWLEY

Defendants

---

Court File No. CV-19-617792-00CL

**B E T W E E N:**

1291079 ONTARIO LIMITED

Plaintiff

and

SEARS CANADA INC., SEARS HOLDING CORPORATION, ESL INVESTMENTS  
INC., WILLIAM C. CROWLEY, WILLIAM R. HARKER, DONALD CAMPBELL  
ROSS, EPHRAIM J. BIRD, DEBORAH E. ROSATI, R. RAJA KHANNA, JAMES  
MCBURNEY and DOUGLAS CAMPBELL

Defendants

**TRIAL SCHEDULE**

<b>PROPOSED TIMETABLE</b>	
<b>Productions (except SHC)</b>	July 2, 2019
<b>Replies by Monitor and Morneau</b>	July 10, 2019
<b>Defences</b>	<p><del>Non-SHC Parties' Defences to 129 Action and Litigation Trustee Action: within one week of the release of decisions on the motions to strike in the Litigation Trustee Action if the motion is dismissed or one week after the plaintiff's amended statement of claim if the motion is allowed with leave to amend (per the Endorsement of McEwen J., dated May 27, 2019)</del></p> <p>SHC: September 16, 2019</p> <p style="text-align: right;">July 12,</p>
<b>All Remaining Replies<sup>1</sup></b>	September 26, 2019
<b>Productions (SHC)</b>	October 15, 2019
<b>Motions relating to the scope of production</b>	<p>Notices of motion and joint motion record: August 23, 2019</p> <p>Moving parties' factums: August 30, 2019</p> <p>Responding parties' factums: September 6, 2019</p> <p>Hearing of the motions: September 12, 2019</p> <p>If ordered, documents to be produced by: October 15, 2019</p>
<b>Examinations for discovery (to commence)<sup>2</sup></b>	November 22, 2019
<b>Examinations for discovery (completed by)</b>	December 16, 2019
<b>Answer all undertakings and provide positions on under advisements and refusals</b>	January 10, 2020
<b>Notices of motion for refusals and answers</b>	January 20, 2020

<sup>1</sup> Any party wishing to move for summary judgment will so move by this date. Such a motion, if brought, will not otherwise impact this schedule. For greater clarity, it is the plaintiffs' position that motions for summary judgment are not appropriate and, in any event, that the commercial list protocol for summary judgment is applicable.

<sup>2</sup> Parties to confer and agree upon timing, location, procedure, and appropriate representatives for examinations for discovery prior to September 15, 2019.

<b>PROPOSED TIMETABLE</b>	
<b>Moving parties' factums on motions for refusals and answers</b>	January 20, 2020
<b>Responding parties' factums on motions for refusals and answers</b>	January 27, 2020
<b>Hearing of motions for refusals and answers</b>	February 3, 2020
<b>Mediation phase one<sup>3</sup></b>	February 4-7 and 10-11, 2020
<b>Further answers</b>	February 14, 2020
<b>Plaintiffs' expert reports</b>	February 21, 2020
<b>Plaintiffs' affidavits (fact witnesses)<sup>4</sup></b>	February 28, 2020
<b>Defendants' responding expert reports</b>	March 23, 2020
<b>Defendants' affidavits (fact witnesses)</b>	March 30, 2020
<b>Mediation phase two<sup>5</sup></b>	April 6-7 and <del>14-16</del> <sup>9</sup> , 2020
<b>Reply expert reports (if any)</b>	April 22, 2020
<b>Reply affidavits</b>	April 29, 2020
<b>Joint trial</b>	<b>May 19, 2020 – July 10, 2020</b>
<b>Part 2 of class trial</b>	<b>To be set in accordance with the class action litigation plan.</b>

<sup>3</sup> Dates to be held by counsel. The length of mediation to be determined in conjunction with the chosen mediator.

<sup>4</sup> Dates for delivery of fact witness affidavits are without prejudice to any position which may be taken by any party on trial procedure, including whether to have some or all witnesses' examination in chief conducted by way of affidavit. The parties acknowledge having no agreement on the appropriate trial procedure which shall be further discussed and determined by December 20, 2020.

<sup>5</sup> Dates to be held by counsel. The length of mediation to be determined in conjunction with the chosen mediator.

SEARS CANADA INC., by its Court-appointed Litigation Trustee, J. DOUGLAS CUNNINGHAM, Q.C. Plaintiff	-and-	ESL INVESTMENTS INC. et al. Defendants	Court File No. CV-18-00611214-00CL
FTI CONSULTING CANADA INC., in its capacity as Court- appointed monitor in proceedings pursuant to the <i>Companies'</i> <i>Creditors Arrangement Act</i> , RSC 1985, c. c-36 Plaintiff	-and-	ESL INVESTMENTS INC. et al. Defendants	Court File No. CV-18-00611219-00CL
MORNEAU SHEPELL LTD. in its capacity as administrator of the Sears Canada Inc. Registered Pension Plan Plaintiff	-and-	SEARS CANADA INC. et al. Defendants	Court File No. CV-18-00611217-00CL
1291079 ONTARIO LIMITED Plaintiff	-and-	Defendants	Court File No. cv-19-617792-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST  
TRIAL SCHEDULE**

**POLLEY FAITH LLP**  
The Victory Building  
80 Richmond Street West, Suite 1300  
Toronto, ON M5H 2A4

**Harry Underwood (20806C)**  
hunderwood@polleyfaith.com  
**Andrew Faith (47795H)**  
afaith@polleyfaith.com

Tel: 416.365.1600  
Fax: 416.365.1601

Lawyers for the ESL Parties

This is **Exhibit "I"** referred to in the  
Affidavit of Steven Bissell  
sworn before me, this **3<sup>rd</sup>** day  
of **September, 2019**



\_\_\_\_\_  
A Commissioner for taking Affidavits

*Geoff Merv*

Court File No. CV-19-623573-00CL

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

BETWEEN:

DEBORAH ROSATI, R. RAJA KHANNA WILLIAM HARKER, WILLIAM  
CROWLEY, DONALD CAMPBELL ROSS, EPHRAIM BIRD, JAMES  
MCBURNEY, and DOUGLAS CAMPBELL

Applicants

and

XL INSURANCE COMPANY LIMITED, XL SPECIALTY INSURANCE  
COMPANY and QBE INSURANCE CORPORATION

Respondents

APPLICATION UNDER RULE 14.05 (3)(d) OF THE  
ONTARIO RULES OF CIVIL PROCEDURE

**AFFIDAVIT OF DONALD CAMPBELL ROSS  
SWORN JULY 15<sup>TH</sup>, 2019**

I, Donald Campbell Ross, of the City of Toronto, in the Province of Ontario, and the City of Bridgeport, in the State of Connecticut, MAKE OATH AND SAY:

1. I am one of the Applicants in this proceeding. As such, I have knowledge of the matters contained in this Affidavit, except where I have stated such knowledge to be based on information and belief from others, in which case I verily believe such information to be true.

2. I was a director of Sears Canada Inc. ("**Sears Canada**") from May 2012 to April 2014. From 1988 to August 2013, I was a partner at Osler, Hoskin & Harcourt LLP



practising primarily out of the firm's' Toronto office, where I focused on domestic and cross-border mergers and acquisitions and corporate finance, and advised senior management and boards of directors on corporate governance matters. Since September 2013, I have held a senior counsel position with the New York office of Covington & Burling LP ("**Covington**").

I have an undergraduate degree from the University of Toronto, a law degree from Osgoode Hall Law School, and a master's degree from the London School of Economics. I am also a member of Ontario and New York bars.

### **Overview**

3. This is an application by eight former directors of Sears Canada for the following:

- (a) a declaration that the 2013 Sotos Letter (as defined below) does not fall within the definition of a Claim as defined in the policy of insurance issued by the Respondent XL Insurance Company Limited ("**XL**") to Sears Canada for the policy period from May 1, 2013 to May 1, 2014 (Policy Number ELU129663-13) (the "**Sears Canada 2013 XL Policy**");
- (b) a declaration that the 2013 Sotos Letter (as defined below) does not fall within the definition of a Claim as defined in the policy of insurance issued by the Respondent XL Specialty Insurance Company ("**XL Specialty**") to Sears Holdings Corporation ("**SHC**") for the policy period from May 15, 2013 to May 15, 2014 (Policy Number ELU129612-13) (the "**2013 XL**");

**Policy**") or the policy of insurance issued by XL Specialty to SHC for the policy period from May 15, 2015 to May 15, 2016 (Policy Number ELU139030-15) (the "**2015 XL Policy**"); and

- (c) a declaration that the proceeds from the policy of insurance issued by the Respondent, QBE Insurance Corporation ("**QBE**"), to SHC for the policy period from May 15, 2015 to May 15, 2016 (Policy Number QPL0045025) (the "**QBE Policy**") apply to cover the Defense Expenses (as defined in the 2015 XL Policy) incurred by the Applicants in defending the Ontario Actions (as defined below) and any liability that the Applicants may be found to have in the Ontario Actions.

4. As described below, QBE has denied coverage under the QBE Policy on the ground that a letter dated December 3, 2013 from Sotos LLP (the "**2013 Sotos Letter**") to the Applicants (then in their capacity as directors of Sears Canada) constituted a "Claim" and "Interrelated Claim" as defined under the provisions of the 2015 XL Policy with the result that, according to QBE, coverage does not arise under the 2015-2016 policy period and the QBE Policy.

5. As set out below, the Applicants dispute that the 2013 Sotos Letter constituted a "Claim" as defined under any of the 2015 XL Policy, the 2013 XL Policy or the Sears Canada 2013 Policy (collectively, the "**XL Policies**"). If the 2013 Sotos Letter is found not to be a Claim, then it did not trigger the Interrelated Claims provision of the 2015 XL Policy and did not have the effect of ousting coverage under the 2015-2016

policies. The Applicants bring this Application seeking certain declaratory relief in respect of the 2013 Sotos Letter and the definition of a Claim under the applicable XL Policies.

6. The Applicants seek this declaratory relief on an expedited basis as the Ontario Actions are currently scheduled to go to trial in May 2020, and the first layer of insurance coverage below the layer provided under the QBE Policy is almost exhausted. The determination of the coverage issue on an expedited basis is, therefore, critically important to the Applicants' ability to defend themselves fully in the Ontario Actions.

### **The Parties**

7. The Applicants are each former directors of Sears Canada. I am an Ontario resident and have residences in Toronto, Ontario and Bridgeport, Connecticut. In respect of the other seven Applicants, two (Deborah Rosati and R. Raja Khanna) are full-time residents of Ontario, two are residents of New York, and the remaining three are residents of New Jersey, South Carolina, and New Mexico.

8. In December 2013—the date when certain dividends were paid to shareholders of Sears Canada which is one of the central complaints made in each of the Ontario Actions—four of the eight Applicants were residents of Ontario (Ms. Rosati and Messrs. Khanna, Bird, and Campbell). Further, I had resided full time in Toronto up to September 1, 2013, when I became a senior counsel with Covington & Burling LLP's New York office.

9. The Respondent, XL Specialty, is a corporation with executive offices in Stamford, CT, which carries on business, *inter alia*, as a property insurer that issues policies and insures risks in Canada, the United States, and elsewhere.

10. XL Specialty is licensed to carry on business in Canada, has a Chief Agent in Canada, and has a fixed place of business located at 100 King Street West, Suite 3020, Toronto, Ontario.

11. At relevant times, the Respondent XL was licensed to carry on business in Canada, issued policies in Canada (including in Ontario) to Canadian companies and individuals, and had a fixed place of business at 100 Yonge Street, Suite 1802, Toronto, Ontario.

12. The Respondent QBE is a corporation incorporated under the laws of Pennsylvania and is headquartered in New York. QBE is part of the QBE Insurance Group which holds itself out as “one of the world’s top insurers and reinsurers, providing cover in more than 150 countries.” The QBE Group carries on business in Ontario through an office in Toronto at 333 Bay St.. One or more members of the QBE Insurance Group also routinely insure risks in Canada, including directors’ and officers’ liability.

13. According to the QBE Canada website (<https://qbecanada.com/>), QBE opened an office in Toronto in 2010 and operates under the legal name QBE Services Inc. The QBE Group also has an office in Vancouver which opened in 2015. Attached as **Exhibit “A”** hereto are extracts from the website of QBE Canada which, among other things, describe the QBE Group and its global reach.

14. From my review of the QBE Canada website, there appear to be at least four persons working in the Toronto office that the website describes as the “executive management team”: namely Jamie Thompson (Director of Canada), Kimberly Fernandes (Business Development Manager), Darren Goldman (General Manager), and Scott Pidduck (Director of Underwriting Canada). The QBE Canada website also contains a downloadable “QBE Canada Appetite Sheet” (the “**Appetite Sheet**”), a copy of which is attached as **Exhibit “B”**. The Appetite Sheet appears to set out the types of insurance coverage that QBE offers in Canada and the market sectors that it serves. The Appetite Sheet states that QBE offers in Canada directors’ and officers’ (“**D&O**”) liability insurance as well as numerous other types of professional, financial casualty, auto, and property insurance.

#### **Sears Canada and Connection to SHC**

15. On June 22, 2017, Sears Canada filed for protection under the *Companies’ Creditors Arrangement Act* (the “**CCAA**”). Prior to filing for CCAA protection, Sears Canada was a multi-format retailer focused on merchandising and sale of goods and services through a network of 95 full-line department stores, 23 Sears Home stores, 10 outlet stores, 32 appliance stores and more than 700 direct purchase pick-up locations.

16. Prior to October 2014, SHC held approximately 51% of the issued and outstanding shares of Sears Canada. As such, Sears Canada was a subsidiary of SHC, albeit not a wholly-owned subsidiary.

17. On October 2, 2014, SHC announced the commencement of a rights offering (the “**Rights Offering**”) whereby it would divest itself of up to 40 million shares of

Sears Canada then owned by SHC. Under the offering, each common shareholder of SHC received one subscription right (a "**Right**") for each share of SHC stock held as of October 16, 2014. SHC shareholders could then purchase their *pro rata* portion of the shares of Sears Canada that SHC was selling, at a price of US\$9.50 per share. The Rights expired on November 7, 2014 if they had not been exercised by that time.

18. ESL Investments, Inc. ("**ESL**"), a number of investment affiliates, and Edward S. Lampert (collectively, the "**ESL Parties**"), who were all significant shareholders of SHC, exercised all of their Rights prior to November 1, 2014 and thereby acquired a significant proportion of the shares of Sears Canada that had been held by SHC. As a result of the Rights Offering, SHC was reduced to a minority ownership position in Sears Canada. For example, at the time that Sears Canada filed for protection under the CCAA in June 2017, SHC's ownership interest stood at approximately 11.7%.

19. On or about October 15, 2018, SHC filed for protection under Chapter 11 of the *United States Bankruptcy Code*.

### **The Ontario Actions**

20. All of the Applicants are defendants in three proceedings currently pending before the Ontario Superior Court of Justice (Commercial List), each of which relates to Sears Canada's approval and payment in November and December 2013, respectively, of a \$509 million dividend to shareholders: (i) an action commenced on December 19, 2018 on behalf of Sears Canada Inc. by its Court appointed Litigation Trustee bearing Court File Number CV-18-00611214-00CL (the "**LT Action**"); (ii) an action commenced on December 19, 2018 by Morneau Shepell Ltd. in its capacity as administrator of the

Sears Canada registered pension plan bearing Court File Number CV-18-00611217-00CL (the "**Morneau Action**"); and (iii) a class proceeding commenced on or about October 21, 2015 by 1291079 Ontario Limited bearing Court File Number CV-19-617792-00CL (formerly Court File No. 4114/15) (the "**129 Action**").

21. In addition, the Applicants Harker and Crowley are defendants in an action commenced on December 19, 2018 by FTI Consulting Canada Inc. in its capacity as Court-appointed monitor in the CCAA proceedings bearing Court File Number CV-18-00611219-00CL (the "**Monitor Action**"). The four actions described above are referred to collectively as the "**Ontario Actions**". Copies of the issued Statement of Claims for each of these actions are attached as **Exhibits "C", "D", and "E"** hereto.

22. Pursuant to an Order of Justice McEwen dated January 25, 2019, these four actions have been ordered to be tried together with the trials currently scheduled to commence in May 2020 and run for eight weeks. Examinations for discovery in the Ontario Actions are scheduled to take place start November 22, 2019 and be completed by December 16, 2019. Attached hereto and marked as **Exhibit "F"** is a copy of the litigation timetable ordered by Justice McEwen on July 12, 2019.

### **Insurance Coverage Background**

23. As a director of a public company such as Sears Canada, the existence of D&O insurance is critically important. Without adequate D&O insurance, I would not have agreed to serve or continue to serve as a director of a public company.

24. Attached hereto as **Exhibit "G"** is a copy of the Sears Canada 2013 XL Policy issued by the Respondent XL to Sears Canada for the policy period from May 1, 2013 to May 1, 2014. As noted in the policy, it was delivered to Sears Canada at its offices at 290 Yonge Street in Toronto and issued by XL from its offices at 100 Yonge Street in Toronto.

25. In addition to the insurance coverage provided pursuant to policies issued to Sears Canada, during the time that Sears Canada was a subsidiary of SHC and thereafter, its directors and officers also received the benefit of D&O insurance through policies that were issued to SHC as named insured ( the "**SHC Policies**") which provided D&O coverage for the directors of both SHC and its subsidiaries. As such, the Applicants were beneficiaries of the SHC Policies, and these policies, together with the Sears Canada 2013 XL Policy, provide coverage to the Applicants in respect of the Ontario Actions..

26. As a Board member of Sears Canada, I was not involved in the day to day administration of the company's D&O insurance. That function was typically performed by a member of the Company's in-house legal department. Members of the board of directors were, however, kept apprised generally of the existence and status of the Company's D&O insurance. I am advised by Franco Perugini, who was in house counsel at Sears Canada at relevant times including between 2013 and 2015, and believe, that, each policy year, copies of all SHC Policies were delivered to the legal department of Sears Canada in Toronto at or about the time that the SHC Policies were taken out.



### The Applicable D&O Policies

27. In addition to the Sears Canada 2013 XL Policy, as described above, the Applicants received the benefit of D&O policies issued to SHC. The Respondent XL Specialty issued the primary policies of insurance to SHC. Attached as **Exhibits “H” and “I”**, respectively, are copies of the 2013 XL Policy and the 2015 XL Policy.

28. The QBE Policy is a next-layer excess policy that follows form to the 2015 XL Policy. A copy of the QBE Policy is attached hereto as **Exhibit “J”**.

29. XL, as the primary insurer, has accepted, subject to certain reservations of rights that are not relevant to this Application, that the 2015 XL Policy in the 2015-2016 policy period applies to cover the claims asserted against the Applicants in the Ontario Actions, and has reimbursed the Applicants for defence costs incurred to date in defending those actions.

30. The 2015 XL Policy has a limit of US\$15 million, but prior to the time that XL confirmed that it would pay defence costs, the XL Policy had already been significantly eroded by other unrelated claims under that policy. As such, the 2015 Policy limits have been or will be exhausted imminently. Once coverage under the 2015 XL Policy is exhausted, coverage is to be provided by following excess layers of coverage for the 2015-2016 policy year.

31. I am advised by John N. Birch of Cassels Brock & Blackwell LLP (“**CBB**”) and believe that, as of the date of this affidavit, based on the invoices that have been

rendered but remain unpaid, the 2015 XL Policy either has been exhausted or likely will be exhausted after payment of the outstanding invoices.

### **Notice to XL, QBE and Other D&O Insurers**

32. XL, QBE and other insurers have had notice of the claims underlying the Ontario Actions for many months. However, to understand the chronology of events, I believe that it is appropriate to provide more detailed background.

33. Bennett Jones LLP acts as defence counsel to Ms. Rosati and Mr. Khanna, and CBB acts as defence counsel for the six other Applicants (the “**Six Directors**”). With respect to the steps taken by CBB described below, I am been informed by John N. Birch, and believe such information to be true.

34. Shortly after being retained as defence counsel on behalf of the Six Directors, CBB wanted to ensure that the D&O insurers were fully aware of all actual and threatened claims that had been asserted against the Six Directors, even if actual litigation had not commenced. At that time, only the 129 Action was in existence, but developments in the CCAA proceedings of Sears Canada and letters sent to Sears Canada and others by potential claimants led the Six Directors to believe that other litigation would likely be brought thereafter.

35. Accordingly, in March 2018, CBB gave notice to all D&O insurers of both Sears Canada and SHC in respect of the policy period that covered 2017-2018.

36. For approximately the next five months, the D&O insurers reviewed and considered the claims notices under the 2017-2018 policy period.

37. In the late summer of 2018, XL first took the position that coverage might be under the 2015-2016 policies of SHC, rather than the 2017-2018 policies. A copy of the letter from XL's external counsel to counsel for SHC dated August 24, 2018 setting out XL's position in respect of the policy period that may be applicable is attached hereto as **Exhibit "K"**.

38. As a result, on September 7, 2018, the other 2015-2016 insurers (including QBE) were notified that XL had taken the position that the action commenced against the Applicants by 129 Ontario in October 2015 was a claim first made in the May 15, 2015 to May 15, 2016 policy period. A copy of the notice letter provided to QBE, along with other 2015-2016 Insurers, is attached hereto as **Exhibit "L"**.

39. On October 23, 2018, counsel for XL formally advised that it was prepared to pay defence costs, but under the 2015 XL Policy (which covered 2015-2016), rather than the 2017-2018 policy. XL informed the Applicants that its position was that all the claims in respect of which notice had been given constituted a single claim that was related to the 129 Action that was commenced in 2015. Attached hereto as **Exhibit "M"** is a copy of the letter dated October 23, 2018 from counsel for XL (the "**XL Coverage Letter**").

40. On or about November 19, 2018, Covington, who are representing the Six Directors in SHC's Chapter 11 proceeding, informed QBE that XL had determined that the 2015 XL Policy responded to the claims made against the Applicants in the Ontario Actions and that XL had agreed to pay defence expenses (as defined under the 2015 XL

Policy). A copy of the November 19, 2018 email to QBE is attached hereto as **Exhibit “N”**.

41. By letter dated December 4, 2018, a copy of which is attached hereto as **Exhibit “O”**, QBE made a detailed and lengthy request for documents and information relating to the Applicants’ claim for coverage. Through Covington, the Six Directors responded to QBE’s requests. I am advised by Mr. Birch of CBB that additional detailed updates regarding the progress of the CCAA proceedings and other related litigation have been provided from time to time to QBE and other insurers in the 2015-2016 insurance tower.

42. Over the fall of 2018, a number of significant steps occurred in the CCAA proceedings of Sears Canada. In particular, on December 3, 2018, Justice Hainey heard a series of motions to permit litigation (what became the LT Action, Monitor Action, and Morneau Action) to be brought against the Applicants and other parties. As soon as the Applicants became aware of this motion, an update was provided to the 2015-2016 Insurers. Further updates were provided both prior to and after the motion was heard.

43. Justice Hainey permitted the proposed litigation to proceed, and the LT Action, Monitor Action, and Morneau Action were commenced around December 19, 2018. At that time, the Applicants again updated the 2015-2016 Insurers, including QBE. Since December 2018, the Ontario Actions have moved forward, and the court has heard multiple motions and convened numerous case conferences to discuss procedural matters. Documentary production occurred on or about June 30, 2019, a motion under Rule 21 of the *Rules of Civil Procedure* was heard on July 11, 2019, and examinations

for discovery of all parties have been scheduled for November and December 2019 pursuant to a court ordered timetable.

44. In respect of each of these court hearings and other steps, the Applicants (or, at a minimum, the Six Directors) have provided updates to QBE and the other 2015-2016 Insurers.

45. In early 2019, in light of payments already incurred in respect of unrelated claims under the 2015 XL Policy, it became apparent that the 2015 XL Policy would become exhausted well before the trial of the Ontario Actions was completed. As such, Covington followed up on behalf of the Six Directors and asked QBE to confirm its commitment to provide coverage under the QBE Policy, including continuous reimbursement of the Six Directors' defence costs, immediately upon exhaustion of the coverage available under the 2015 XL Policy. Attached as **Exhibit "Q"** hereto is a copy of an email dated May 7, 2019 from Covington to QBE's external counsel advising that it was anticipated that the primary layer of coverage provided under the 2015 XL Policy may soon be exhausted and that, upon exhaustion, QBE would become responsible for covering the Applicants' defence expenses and any indemnity payments up to the limits of the QBE Policy.

### **The QBE Coverage Position**

46. By letter dated May 16, 2019 (the "**QBE Coverage Letter**"), a copy of which is attached hereto as **Exhibit "R"**, QBE denied that there was coverage under the QBE Policy. Specifically, QBE asserted that:

- (a) the 2013 Sotos Letter, a copy of which is attached hereto as **Exhibit "S"**, was a "Claim" under the 2015 XL Policy because it constituted a "written demand for non-monetary relief"; and
- (b) 129 Action and the 2013 Sotos Letter were "Interrelated Claims".

47. As a result, the QBE Coverage Letter took the position that insurers in the 2013-2014 policy period - and not QBE - were responsible for responding to the Applicants' claims for coverage.

48. QBE is not an insurer that provided D&O coverage to SHC in the 2013-2014 policy period. As such, the coverage decision as expressed in the QBE Coverage Letter, if accepted by the Court, would result in QBE not being liable to pay defence costs or indemnify the Applicants for any liability that they may be found to have in the Ontario Actions.

49. As of September 10, 2018 or, at the latest, November 19, 2018, QBE and the other insurers were aware that primary insurer had acknowledged on August 24, 2018 that the 2015-2016 policy year applied and on October 23, 2018 had formally confirmed payment of defence costs for the Ontario Actions. Neither QBE nor any other insurer raised any issue about coverage then or at any time prior to May 16, 2019.

### The 2013 Sotos Letter

50. As described above, the gravamen of QBE's denial of coverage is the assertion that the 2013 Sotos Letter falls within the definition of a "Claim" under the 2015 XL Policy. The term "Claim" is defined in section II(C) of the 2015 XL Policy to mean:

- (a) a written demand for monetary or non-monetary relief;
- (b) any civil or criminal judicial proceeding in a court of law or equity, arbitration or other alternative dispute resolution; or
- (c) a formal civil, criminal, administrative, or regulatory proceeding or formal investigation.

51. For the purposes of determining whether the 2013 Sotos Letter is a Claim and whether there are Interrelated Claims, the applicable definition of a Claim is that contained in the 2013 XL Policy and/or the Sears Canada 2013 XL Policy, rather than that contained in the 2015 XL Policy. Further, in any event, the definition of Interrelated Claims and the relevant portion of the definition of Claim are identical to each other in the Sears Canada 2013 Policy, the 2013 XL Policy, and the 2015 XL Policy.

52. The 2013 Sotos Letter was sent by counsel to 1291079 Ontario Limited ("**129 Ontario**") in connection with a then-prospective class action that had been commenced in July 2013 on behalf of "Sears Hometown" store dealers in Canada (the "**Hometown Dealers Action**"). A copy of the Statement of Claim in the Hometown Dealers Action is attached hereto as **Exhibit "T"**.

53. Notably, the Hometown Dealers Action against Sears Canada did not name any of the Applicants as defendants. The Hometown Dealers Action also did not assert claims against individuals or make any allegations relating to the payment of a dividend by Sears Canada in December 2013, which is one of the central complaints in each of the Ontario Actions.

54. Although the 2013 Sotos Letter noted that 129 Ontario's counsel "have requested but have not received assurances from Sears Canada that...it has set aside a sufficient reserve to satisfy a judgment against [SCI]" if the Hometown Dealers Action succeeds on the merits, it did not expressly request the Applicants to provide such assurances themselves.

55. Further, the 2013 Sotos Letter stated as follows: "Should the declaration of the Extraordinary Dividend...result in Sears Canada being unable to satisfy in full an eventual judgment against Sears Canada...we may seek to hold each board member... jointly and severally liable with Sears Canada" under the *Canada Business Corporations Act*. The suggestion in the 2013 Sotos Letter that it may "seek to hold each board member...jointly and severally liable" was entirely contingent on at least two events that, as of the date of the letter, had not yet occurred.

56. First, as suggested by the 2013 Sotos Letter, no cause of action would lie against the former directors of Sears Canada under the *Canada Business Corporations Act* unless the dividend in fact depleted the assets of Sears Canada such that it could not meet its liabilities. The 2013 Sotos Letter simply asserted that there was "concern" among "informed observers" that this eventuality might come to pass.



57. Second, the 2013 Sotos Letter stated that the plaintiff may seek to hold the former directors liable in the event Sears Canada was “unable to satisfy in full an eventual judgment against” Sears Canada. Thus, the stated intention to seek recovery from the former directors of Sears Canada was contingent on: (i) future certification of the action as a class proceeding; (ii) later success on the merits in the Hometown Dealers Action; and (iii) the future inability of Sears Canada to satisfy whatever judgment the plaintiff might in the future obtain.

58. Any claim or potential claim against me or the other former directors of Sears Canada was contingent on several future events that may or may not happen. The Board and management of Sears Canada did not view the 2013 Sotos Letter as asserting any claim or potential claim against the directors or officers and furthermore no one at Sears Canada, including internal legal counsel, raised the need for the Board to provide any notifications, to its D&O insurers or otherwise as a result of the 2013 Sotos Letter.

#### **Notice to 2013 SHC and Sears Canada Insurers**

59. In this Application, the Applicants seek a determination that the 2013 Sotos Letter is not a Claim as defined under any of the relevant XL Policies and that, as a result, QBE is required to provide coverage under the QBE Policy, which covers the policy period from May 15, 2015 to May 15, 2016. However, the Applicants also wish to protect their position if the Court were ultimately to determine that 2013-2014 is the relevant policy period.

60. As such, on June 7, 2019, Covington, on behalf of the Six Directors, provided SHC’s insurers in the 2013-2014 policy period with notice that QBE had denied

coverage under the 2015-2016 policy period and that, should it be determined by a court that the noticed claims arise from Interrelated Wrongful Acts (as defined in the 2015 XL Policy) alleged in a Claim first made in the 2013-2014 policy period, the Directors would demand coverage under the 2013-2014 policies. In particular, by letter dated June 7, 2019, the Applicants advised XL Specialty that it would be obligated to provide coverage under the 2013 XL Policy, and that all payments made pursuant to the 2015 XL Policy must be applied to exhaustion of the limits of the 2013 XL Policy. Attached hereto as **Exhibit “U”** is a copy of the letter, without enclosures, sent to XL Specialty in respect of coverage under the 2013 XL Policy. Similar letters were sent to other insurers that provided coverage in the 2013-2014 policy period.

61. In addition, a similar notice was provided by letter dated July 10, 2019 to counsel to XL in respect of coverage under the Sears Canada 2013 XL Policy. A copy of a letter dated July 10, 2019 from counsel to the Applicants to counsel for XL is attached hereto as **Exhibit “V”**.

### **Prejudice to the Applicants**

62. As described above, I am a defendant in three of the Ontario Actions, which are currently scheduled to be tried together commencing in May 2020. These actions seek hundreds of millions of dollars in damages against me personally and the other defendants. I have engaged counsel and defended these actions based on an expectation, among other things, that defence costs incurred on my behalf would be covered by the relevant D&O insurance policies.

63. Given the significant consequences, the complexity of the actions commenced against me, and the expedited schedule that currently contemplates trials in less than one year, it is critically important to my ability to defend the actions commenced against me that the question of whether defence costs incurred on my behalf are covered by D&O insurance be determined as quickly as possible. Absent such an expedited determination, I face the uncertainty and prospect of defending the actions and preparing for trial without knowing whether or not these defence costs will be borne by me personally or covered by applicable D&O insurance.

64. The Applicants are significantly prejudiced by QBE's delay in advising the Applicants that it intended to deny coverage under the QBE Policy on the basis of the 2013 Sotos Letter. At all times since the spectre of litigation first emerged during the CCAA proceedings of Sears Canada, the Applicants have provided regular notice and updates to the relevant insurers that provided coverage in 2017-2018. The same is true for the 2015-2016 Insurers, including QBE, which have received regular updates since the fall of 2018.

65. The Applicants relied on the determination made by XL on October 23, 2018 that defence costs would be paid pursuant to the 2015 XL Policy, which falls in the 2015-2016 policy period. Based on this determination of coverage, the Applicants

- (a) sent regular updates to the 2015-2016 Insurers, but not to any of the 2013-2014 D&O insurers of SHC;

- (b) sought and obtained instructions from the 2015-2016 Insurers about all material steps in the Ontario Actions and the CCAA proceedings of Sears Canada since at least the fall of 2018;
- (c) sought and obtained approval from either XL or all of the 2015-2016 Insurers about retaining and paying expert witnesses; and
- (d) made procedural and substantive decisions in the litigation—including the timetable for the proceedings—premised upon the continued payment of defence costs, given that XL had agreed to pay such costs and no coverage denial or objection had been raised by QBE or any other 2015-2016 Insurer until the delivery of the QBE Coverage Letter on May 16, 2019.

66. The Ontario Actions are, in essence, “real time” litigation. The plaintiffs in those actions seek overall damages of \$509 million and wish to have the matters tried less than 18 months after the LT Action, Monitor Action, and Morneau Action were commenced. The Ontario Actions are complex and involve multiple parties and significant documentary and oral discovery. To properly defend against these claims, the Applicants’ defence counsel will need to incur significant time and fees over the summer and early fall of 2019 to review documents, meet with clients and other witnesses, engage and instruct experts, and prepare for and attend discoveries. Thereafter, counsel for the Applicants will need to prepare for trial. These activities will incur significant defence costs which, given their magnitude, can only realistically be funded by D&O insurance.


67. It is my understanding that QBE has indicated an intention to seek a declaratory judgment concerning its coverage obligations from the United States District

Court for the Northern District of Illinois. I am further advised by David Luttinger of Covington that it would take at least one year to litigate a coverage dispute before the Illinois Court. As the Ontario Actions are proceeding on a very accelerated case timetable with trials currently schedule to commence in May 2020, for the reasons described above, I and the other Applicants require that our rights to have our defence costs incurred in defending the Ontario Actions paid from the proceeds of any applicable insurance be determined as expeditiously as possible.

SWORN BEFORE ME at the City of  
 Toronto this 15 day of July, 2019.

  
 \_\_\_\_\_  
 Natalia Plucisz  
 Licensed Paralegal

)  
)  
)  
)  
)

  
 \_\_\_\_\_  
 Donald C. Ross

Commissioner for Taking Affidavits

Deborah Rosati et al.

-and-

XL INSURANCE COMPANY LIMITED et. al.

Applicants

Respondent

Court File No. CV-19-623573-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE**  
PROCEEDING COMMENCED AT  
TORONTO

**AFFIDAVIT OF DONALD CAMPBELL ROSS**

**TYR LLP**

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Toronto, ON M5T 1X5

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**Sean Campbell (LSO #49514J)**


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Fax : 416.987.2370

Lawyers for the Applicants

This is **Exhibit "J"** referred to in the  
Affidavit of Steven Bissell  
sworn before me, this 3<sup>rd</sup> day  
of **September, 2019**



\_\_\_\_\_  
A Commissioner for taking Affidavits

*Geoff New*



August 8, 2019

**BY E-MAIL**

wberman@casselsbrock.com  
tel: 416.860.2926  
fax: 416.640.3107

**Matthew Gottlieb and Andrew Winton**

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**Orestes Pasparakis and Evan Cobb**

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**David Sterns**

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Toronto, Ontario M5G 1Z8

**Lou Brzezinski**

Blaney McMurtry LLP  
2 Queen St. E., Suite 1500  
Toronto, Ontario M5C 3G5

Dear Counsel:

**Re: Various Litigation Involving the Former Directors of Sears Canada Inc.**

As you are all aware, coverage under the 2015-2016 directors' and officers' policy issued to Sears Holdings Corporation (the "D&O Policy") was denied by the first excess insurer, QBE Insurance Corporation. Our clients engaged Canadian coverage counsel, Jim Doris of Tyr LLP, and commenced an application before the Superior Court of Justice (Commercial List) returnable on August 27, 2019 seeking, among other things, declaratory relief for coverage.

The insurers have advised that they intend to bring a motion to challenge the jurisdiction of the Ontario court to decide the coverage issue. We do not believe that the insurers will agree to argue the jurisdiction motion at the same time as the application since they have expressed a concern about attornment. Accordingly, the application for declaratory relief currently scheduled for August 27, 2019 will likely need to be adjourned and a new date set for the jurisdictional motion.

We have recently been advised by the primary insurer, XL Speciality Insurance Company, that coverage under the primary layer of the D&O Policy has been completely exhausted and, accordingly, no further defence cost funding is available. In addition, significant outstanding legal costs incurred by the Former Directors remain unpaid with no further funding available under the D&O Policy. The Former Directors are attempting to reach an agreement with the insurers for interim funding of defence costs pending determination of the insurance coverage issues, but no agreement has been reached.





These developments impact the current litigation timetable and, accordingly, we will be sending a short update to Justice McEwen in the form attached. We also propose to schedule a case conference on August 27, 2019 with Justice McEwen to discuss the effect of the coverage issue on these actions and the current litigation timetable.

In the interim and in the circumstances, we also write to advise that we will not be in a position to meet the August 23, 2019 deadline for filing of any production motions.

Yours truly,

A handwritten signature in blue ink, appearing to read 'W Berman', with a horizontal line extending to the right.

Wendy Berman  
WB/iw  
Encl.

cc: Richard Swan and Jason Berall, *Bennett Jones LLP*  
Harry Underwood, Andrew Faith, and Jeffrey Haylock, *Polley Faith LLP*  
Peter J. Osborne and Matthew B. Lerner, *Lenczner Slahgt Royce Smith Griffin LLP*



August 8, 2019

**BY E-MAIL**

wberman@casselsbrock.com  
tel: 416.860.2926  
fax: 416.640.3107

**The Honourable Justice Thomas J. McEwen**

Superior Court of Justice  
Commercial List Office  
330 University Avenue, 7th Floor  
Toronto, ON M5G 1R7

Dear Mr. Justice McEwen:

**Re: FTI Consulting Canada Inc. v. ESL Investments Inc. et al.  
Court File No. CV-18-00611219-00CL**

**Morneau Shepell Ltd. v. ESL Investments Inc. et al.  
Court File No. CV-18-00611217-00CL**

**Sears Canada Inc. v. ESL Investments Inc. et al.  
Court File No. CV-18-00611214-00CL**

**1291079 Ontario Limited v. Sears Canada Inc. et al.  
Court File No. CV-19-617792-00CL**

We are counsel to William Harker, William Crowley, Douglas Campbell, E.J. Bird, James McBurney, and Donald Ross, defendants in the above-noted actions (the "Former Directors"). We are writing to provide a brief update and to request that a further case conference be scheduled on August 27, 2019.

As we previously informed you, coverage under the 2015-2016 directors' and officers' policy issued to Sears Holdings Corporation (the "D&O Policy") was denied by the first excess insurer, QBE Insurance Corporation. Our clients engaged Canadian coverage counsel, Jim Doris of Tyr LLP, and commenced an application before the Superior Court of Justice (Commercial List) returnable on August 27, 2019 seeking, among other things, declaratory relief for coverage.

We have recently been advised by the primary insurer, XL Speciality Insurance Company, that coverage under the primary layer of the D&O Policy has been completely exhausted and, accordingly, no further defence cost funding is available. In addition, significant outstanding legal costs incurred by the Former Directors remain unpaid with no further funding available under the D&O Policy. The Former Directors are attempting to reach an agreement with the insurers for interim funding of defence costs pending determination of the insurance coverage issues, but no agreement has been reached.



These developments impact the current litigation timetable and, accordingly, we are writing to request a case conference before you on August 27, 2019 or any alternate date convenient to all parties and the Court.

We estimate that such case conference will require approximately 30 minutes.

Yours truly,

Cassels Brock & Blackwell LLP

Wendy Berman  
WB/iw

cc. Matthew Gotlieb and Andrew Winton, *Lax O'Sullivan Lisus Gottlieb LLP*  
Orestes Pasparakis and Evan Cobb, *Norton Rose Fulbright Canada LLP*  
Michael Barrack and Kiran Patel, *Blake, Cassels & Graydon LLP*  
David Sterns, *Sotos LLP*  
Lou Brzezinski, *Blaney McMurtry LLP*  
Richard Swan and Jason Berall, *Bennett Jones LLP*  
Harry Underwood, Andrew Faith, and Jeffrey Haylock, *Polley Faith LLP*  
Peter J. Osborne and Matthew B. Lerner, *Lenczner Slahgt Royce Smith Griffin LLP*

This is **Exhibit "K"** referred to in the  
Affidavit of Steven Bissell  
sworn before me, this 3<sup>rd</sup> day  
of **September, 2019**



---

A Commissioner for taking Affidavits

*Geoff Mens*

Superior Court of Justice  
Commercial List

FILE/DIRECTION/ORDER

In The MATTER OF  
Plaintiff(s)

AND

SEARS CANADA INC  
Defendant(s)

Case Management  Yes  No by Judge: \_\_\_\_\_

Counsel	Telephone No:	Facsimile No:

- Order     Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: \_\_\_\_\_
- Time Table approved (as follows):

① The attached orders which are not approved shall issue on the terms of the attached.

② There shall be a

Date

Judge's Signature

Additional Pages 2

Superior Court of Justice  
Commercial List

## FILE/DIRECTION/ORDER

Judges Endorsment Continued

Sealing Order on  
The Terms of para 17  
of The Governance  
Protocol and Stay  
extension Order.

③ The balance of my  
endorsement are  
attached as Consent.

Haining J

December 3, 2018

On October 15, 2018, Sears Holdings Corporation (“SHC”) filed voluntary petitions for relief pursuant to Chapter 11 of the *Bankruptcy Code* in the U.S. Bankruptcy Court for the Southern District of New York.

Counsel for the Litigation Investigator, the Monitor and SHC disagree regarding the effect of the stay of proceedings in the U.S. on the proceedings before this Court.

Notwithstanding this disagreement, counsel for SHC, the Litigation Investigator and the Monitor have agreed that:

1. neither the Litigation Investigator nor the Monitor are proposing to take any fresh step in any proceeding against SHC at this time and SHC will be advised if this changes in the future;
2. none of the orders that Litigation Investigator and/or the Monitor are seeking today are being sought against SHC in any proceeding or proposed proceeding; and
3. none of the steps that the Litigation Investigator and/or the Monitor are now taking are intended to affect the stay that was agreed to between SHC and the plaintiffs in the 129 action.

Harvey J.

December 3, 2018

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

BETWEEN:

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 QUÉBEC 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.

**Before:**       **Hainey J.**

**Date:**         **December 3, 2018**

---

**ENDORSEMENT**

[1] Counsel for the Former Directors has advised that, in response to the five actions that will be pursued, their clients will almost certainly bring claims (including crossclaims and third party claims) against other parties involved with Sears Canada, some of which claims will be asserted against parties that are currently beneficiaries of the stay. In respect of any of such claims that are to be asserted against beneficiaries of the stay, the directors or any other defendant in the actions that wishes to assert such claims may later seek to lift the CCAA stay to permit such claims to be advanced.


[2] To address the Proposed Defendants' ability to recover costs in these proceedings, the Monitor confirms that it will set aside a reserve of \$12,000,000 from the funds in the Sears Canada



Estate. The reserve is intended to cover 1) the Monitor's and Litigation Trustee's fees (including fees and costs of legal counsel) and disbursements regarding their proposed claims, and 2) any and all cost awards in favour of the Proposed Defendants against the Monitor, Litigation Trustee, or the Estate, as the case may be. The Monitor acknowledges that the Proposed Defendants shall have a post-filing claim, on a dollar for dollar basis, against the Estate for any award of costs. Nothing in this Endorsement precludes the Proposed Defendants from applying to this court to seek an increase to the reserve .

[3] The ESL Parties agree to reserve their objection to the issuance of the claims on the basis of abuse of process arising from any failure to obtain a waiver of privilege from Sears Canada. The ESL Parties have reserved their rights to seek any remedy, including a motion to strike or a stay of the proposed claims, before the case management judge despite not opposing the issuance of the proposed claims at this stage.

[4] The Former Directors have raised concerns about a potential conflict of interest relating to FTI as a result of its role in these CCAA proceedings, the litigation against the Proposed Defendants, and in the Chapter 11 proceedings of Sears Holdings Corporation. The relief granted today is without prejudice to the ability of the Proposed Defendants to later raise conflict of interest issues relative to FTI and seek appropriate relief or for FTI to defend itself.

  
HAINEY J

FTI Consulting Canada Inc.,  
in its capacity as Court-appointed monitor  
Plaintiff

ESL Investments Inc. et al  
and  
Defendants

Court File No.: CV-18-00611219-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**AFFIDAVIT OF STEVEN BISSELL  
(sworn September 3, 2019)**

**204**

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Lawyers for FTI Consulting Canada Inc., in its  
capacity as Court-appointed monitor

**TAB 2**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

SEARS CANADA INC., by its Court-appointed Litigation Trustee, J. Douglas  
Cunningham, Q.C.

Plaintiff

and

ESL INVESTMENTS INC., ESL PARTNERS LP, SPE I PARTNERS LP, SPE  
MASTER I LP, ESL INSTITUTIONAL PARTNERS LP, EDWARD  
LAMPERT, EPHRAIM J. BIRD, DOUGLAS CAMPBELL, WILLIAM  
CROWLEY, WILLIAM HARKER, R. RAJA KHANNA, JAMES MCBURNEY,  
DEBORAH ROSATI and DONALD ROSS

Defendants

**AFFIDAVIT OF EUN JI YOON  
(sworn September 3, 2019)**

I, EUN JI YOON, of the City of Toronto, in the Province of Ontario, MAKE OATH  
AND SAY:


1. I am a law clerk with Lax O’Sullivan Lisus Gottlieb LLP, counsel to J. Douglas Cunningham, Q.C., the Court-appointed Litigation Trustee for Sears Canada Inc. (“SCI”). As such, I have personal knowledge of the matters to which I hereinafter depose, except where otherwise stated. Where I have relied upon other sources of information, I have stated the source of that information and believe such information to be true.
2. Attached as **Exhibit “A”** is a letter dated August 30, 2019, from Matthew Gottlieb, a partner at Lax O’Sullivan Lisus Gottlieb LLP, to John Birch, partner at Cassels Brock & Blackwell and to Richard Swan, a partner at Bennett Jones LLP, counsel for the Former Directors.
3. Attached as **Exhibit “B”** is information that purports to be about the Defendant William Crowley that has been downloaded from the internet and from DisclosureNet, an internet-based disclosure research platform.

4. Attached as **Exhibit "C"** is information that purports to be about the Defendant William Harker that has been downloaded from the internet and from DisclosureNet, an internet-based disclosure research platform.

5. Attached as **Exhibit "D"** is information that purports to be about the Defendant R. Raja Khanna that has been downloaded from the internet.

6. Attached as **Exhibit "E"** is information that purports to be about the Defendant Donald Ross that has been downloaded from the internet.

SWORN BEFORE ME at the City of  
Toronto, in the Province of Ontario, this  
3<sup>rd</sup> day of September, 2019.

  
A Commissioner for taking Affidavits  
(or as may be)

**Andrew Winton**

  
EUN JI YOON

This is Exhibit "A" referred to in the Affidavit of Eun Ji Yoon  
sworn September 3, 2019.



---

*Commissioner for Taking Affidavits (or as may be)*

**Andrew Winton**

**Matthew P. Gottlieb**

Direct 416 644 5353  
mgottlieb@lolg.ca

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Lax  
O'Sullivan  
Lisus  
Gottlieb

August 30, 2019

**BY EMAIL: [jbirch@casselsbrock.com](mailto:jbirch@casselsbrock.com)**

Mr. John N. Birch  
Cassels Brock & Blackwell LLP  
Barristers and Solicitors  
Scotia Plaza  
40 King Street West  
Suite 2100  
Toronto ON M5H 3C2

**BY EMAIL: [swanr@bennettjones.com](mailto:swanr@bennettjones.com)**

Mr. Richard B. Swan  
Bennett Jones LLP  
Barristers and Solicitors  
1 First Canadian Place  
Suite 3400  
P.O. Box 130  
Toronto ON M5X 1A4

Dear Counsel:

***Sears Canada Inc. v. ESL Investments Inc. et al.* – Examinations on Motion to Vary Timetable**

As you know, examinations of Ephraim J. Bird, Douglas Campbell, William Crowley, William Harker, R. Raja Khanna, James McBurney, Deborah Rosati and Donald Ross (the “**Former Directors**”) on the pending motion to vary the timetable for the abovenamed and three other related proceedings (the “**Actions**”) are scheduled to take place on September 9-11.

Given the late filing of the Motion Record and the resulting compressed timeline for this motion, the Plaintiffs want to ensure that the examinations are conducted as efficiently as possible. Accordingly, we request that you provide the following documents and/or information as soon as possible, and at any rate before the close of business on Thursday, September 5:

1. Personal net worth and income statements as of July 31, 2019, for each of the Former Directors;
2. The total legal costs incurred by each of your firms on behalf of the Former Directors for which coverage has been sought under insurance policies issued to Sears Canada Inc. (“**SCI**”) and/or Sears Holdings Corp. (“**SHC**”), broken down by month and including a list of those costs which remain unpaid. To be clear, we are not seeking dockets, only monthly totals;

3. The total legal costs paid by the Former Directors or your firms to coverage counsel, including Covington & Burling LLP ("**Covington**") and Tyr LLP, relating to the Former Directors' insurance coverage in respect of the Actions;
4. The notices from Cassels Brock & Blackwell LLP ("**CBB**") to SCI's and SHC's insurers dated March 2018, referred to in paragraph 17 of the affidavit of Donald Ross sworn August 26, 2019 (the "**Ross Affidavit**");
5. The email from Covington to QBE Insurance Corp. dated November 19, 2018, referred to in paragraph 23 of the Ross Affidavit;
6. The letter from Covington to counsel for Lloyd's dated June 17, 2019, referred to in paragraph 33 of the Ross Affidavit;
7. The notice from Covington to SHC's insurers dated June 21, 2019, referred to in paragraph 36 of the Ross Affidavit;
8. The email from XL Insurance Company Ltd. and/or XL Specialty Insurance Company ("**XL**") to CBB dated July 15, 2019, referred to in paragraph 46 of the Ross Affidavit; and
9. Any correspondence regarding the funding status of insurance policies issued to SCI or SHC under which coverage has been sought in connection with the Actions, including all correspondence from XL regarding the amounts available under the 2015 XL policy.

Failure to provide this information will needlessly complicate the examinations of the Former Directors. We reserve the right to bring any non-compliance to the attention of the Court and to ask the Court to draw an adverse inference regarding the Former Directors' capacity to fund their own defences.

Yours truly,



Matthew P. Gottlieb

cc: Andrew Winton, Philip Underwood, *Lax O'Sullivan Lisus Gottlieb LLP*  
Robert Frank, Evan Cobb, *Norton Rose Fulbright Canada LLP*  
Michael Barrack, Kiran Patel, Brittny Rabinovitch, *Blake, Cassels & Graydon LLP*  
David Sterns, *Sotos LLP*  
Lou Brzezinski, *Blaney McMurtry LLP*



This is Exhibit "B" referred to in the Affidavit of Eun Ji Yoon  
sworn September 3, 2019.



---


*Commissioner for Taking Affidavits (or as may be)*

**Andrew Winton**


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**William Crowley** · 3rd 

Co-Founder and CEO: Àshe Capital Management, LP  
 New York, New York · 500+ connections · [Contact info](#)


 Àshe Capital Management, LP


 Yale Law School


### Experience


 **Co-Founder and CEO**  
 Àshe Capital Management, LP  
 May 2013 – Present · 6 yrs 5 mos  
 Greater New York City Area

Àshe Capital Management, LP ("Àshe") is a concentrated value investment firm, investing in public securities, primarily equity securities, with a long-term investing horizon. Àshe launched in October 2013 and now has over \$1 billion in AUM invested in fewer than ten companies.


 **President and COO**  
 ESL Investments  
 Jan 1999 – May 2012 · 13 yrs 5 mos  
 Greenwich, CT


 **Executive Vice President, Chief Administrative Officer/CFO**  
 Sears Holdings Corporation  
 May 2005 – Jan 2011 · 5 yrs 9 mos  
 Hoffman Estates, IL

 **Managing Director**  
 Goldman Sachs  
 Sep 1985 – Dec 1998 · 13 yrs 4 mos

 **Financial Analyst**  
 Merrill Lynch  
 Sep 1981 – Jun 1982 · 10 mos  
 New York, NY

### Education

 **Yale Law School**  
 Doctor of Law (JD)  
 1982 – 1985

 **Oxford University**  
 Master's degree, PP&E  
 1979 – 1981

### Promoted



**ESIL article collection**  
 The article collection explores the theme 'Sovereignty: A Concept in Flux?'












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Senior Industrial Designer at Che North America
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Analyst at Àshe Capital Management
-  **Eddie Lampert**  
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-  **Daniel Salazar** · 3rd  
Employee at ESL Investments
-  **Dene Rogers** · 2nd  
CEO at Captor Capital Corporation
-  **Darren DeVore** · 3rd  
Broad Pine Investments
-  **Brad Roberts** · 3rd  
Owner, Archon Partners LLC
-  **Katie Riester** · 3rd  
Partner at Felicis Ventures
-  **Bill Knox**  
--
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### Skills & Endorsements

#### Investments · 47

Endorsed by William Lee and 3 others who are highly skilled at this

Endorsed by 3 of William's colleagues at ESL Investments

#### Equities · 41

Endorsed by Christopher Loudon and 1 other who is highly skilled at this


Endorsed by 2 of William's colleagues at ESL Investments


#### Hedge Funds · 28


Endorsed by 2 of William's colleagues at ESL Investments

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### Interests


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FORM D

Notice of Exempt  
Offering of SecuritiesUNITED STATES SECURITIES  
AND EXCHANGE COMMISSION  
Washington, D.C.

OMB APPROVAL

OMB Number: 3235-0076

Estimated Average burden  
hours per response: 4.0

## 1. Issuer's Identity

CIK (Filer ID Number)	Previous Name(s) <input checked="" type="checkbox"/> None	Entity Type
<input type="text" value="0001588883"/>		<input type="radio"/> Corporation <input checked="" type="radio"/> Limited Partnership <input type="radio"/> Limited Liability Company <input type="radio"/> General Partnership <input type="radio"/> Business Trust <input type="radio"/> Other
Name of Issuer		
<input type="text" value="Ashe Capital Partners, LP"/>		
Jurisdiction of Incorporation/Organization		
<input type="text" value="DELAWARE"/>		
Year of Incorporation/Organization		
<input type="radio"/> Over Five Years Ago <input checked="" type="radio"/> Within Last Five Years (Specify Year) <input type="text" value="2013"/> <input type="radio"/> Yet to Be Formed		

## 2. Principal Place of Business and Contact Information

Name of Issuer			
<input type="text" value="Ashe Capital Partners, LP"/>			
Street Address 1		Street Address 2	
<input type="text" value="620 EIGHTH AVENUE"/>		<input type="text" value="45TH FLOOR"/>	
City	State/Province/Country	ZIP/Postal Code	Phone No. of Issuer
<input type="text" value="NEW YORK"/>	<input type="text" value="NEW YORK"/>	<input type="text" value="10018"/>	<input type="text" value="(203) 554-7573"/>

## 3. Related Persons

Last Name	First Name	Middle Name
<input type="text" value="Ashe Capital Partners (GP), LLC"/>	<input type="text" value="N/A"/>	
Street Address 1	Street Address 2	
<input type="text" value="620 Eighth Avenue"/>	<input type="text" value="45th Floor"/>	
City	State/Province/Country	ZIP/Postal Code

New York	NEW YORK	10018
----------	----------	-------

Relationship:	<input type="checkbox"/> Executive Officer	<input type="checkbox"/> Director	<input checked="" type="checkbox"/> Promoter
---------------	--	-----------------------------------	--

Clarification of Response (if Necessary)

General Partner of the Issuer
-------------------------------

---

Last Name	First Name	Middle Name
Harker	William	R.

Street Address 1	Street Address 2
620 Eighth Avenue	45th Floor

City	State/Province/Country	ZIP/Postal Code
New York	NEW YORK	10018

Relationship:	<input checked="" type="checkbox"/> Executive Officer	<input type="checkbox"/> Director	<input type="checkbox"/> Promoter
---------------	---	-----------------------------------	-----------------------------------

Clarification of Response (if Necessary)

Executive Officer of the General Partner
--

---

Last Name	First Name	Middle Name
Crowley	William	C.

Street Address 1	Street Address 2
620 Eighth Avenue	45th Floor

City	State/Province/Country	ZIP/Postal Code
New York	NEW YORK	10018

Relationship:	<input checked="" type="checkbox"/> Executive Officer	<input type="checkbox"/> Director	<input type="checkbox"/> Promoter
---------------	---	-----------------------------------	-----------------------------------

Clarification of Response (if Necessary)

Executive Officer of the General Partner
--

---

Last Name	First Name	Middle Name
Blass	Stephen	M.

Street Address 1	Street Address 2
1515 Abbot Kinney Blvd	Suite 300

City	State/Province/Country	ZIP/Postal Code
Venice	CALIFORNIA	90291

Relationship:	<input checked="" type="checkbox"/> Executive Officer	<input type="checkbox"/> Director	<input type="checkbox"/> Promoter
---------------	---	-----------------------------------	-----------------------------------

Clarification of Response (if Necessary)

Executive Officer of the General Partner

## 4. Industry Group

- |  |  |   |
|--|--|---|
| <input type="radio"/> Agriculture  | <input type="radio"/> Health Care            | <input type="radio"/> Retailing                 |
| <input type="radio"/> Banking & Financial Services   | <input type="radio"/> Biotechnology          | <input type="radio"/> Restaurants               |
| <input type="radio"/> Commercial Banking   | <input type="radio"/> Health Insurance       | <input type="radio"/> Technology                |
| <input type="radio"/> Insurance  | <input type="radio"/> Hospitals & Physicians | <input type="radio"/> Computers                 |
| <input type="radio"/> Investing  | <input type="radio"/> Pharmaceuticals        | <input type="radio"/> Telecommunications        |
| <input type="radio"/> Investment Banking   | <input type="radio"/> Other Health Care      | <input type="radio"/> Other Technology          |
| <input checked="" type="radio"/> Pooled Investment Fund                                      |  |   |
| <input type="text" value="Hedge Fund"/>  |  |   |
| *Is the issuer registered as an investment company under the Investment Company Act of 1940? | <input type="radio"/> Manufacturing          | <input type="radio"/> Travel                    |
| <input type="radio"/> Yes <input checked="" type="radio"/> No                                | <input type="radio"/> Real Estate            | <input type="radio"/> Airlines & Airports       |
| <input type="radio"/> Other Banking & Financial Services                                     | <input type="radio"/> Commercial             | <input type="radio"/> Lodging & Conventions     |
| <input type="radio"/> Business Services  | <input type="radio"/> Construction           | <input type="radio"/> Tourism & Travel Services |
| <input type="radio"/> Energy   | <input type="radio"/> REITS & Finance        | <input type="radio"/> Other Travel              |
| <input type="radio"/> Coal Mining  | <input type="radio"/> Residential            | <input type="radio"/> Other                     |
| <input type="radio"/> Electric Utilities   | <input type="radio"/> Other Real Estate      |   |
| <input type="radio"/> Energy Conservation  |  |   |
| <input type="radio"/> Environmental Services   |  |   |
| <input type="radio"/> Oil & Gas  |  |   |
| <input type="radio"/> Other Energy   |  |   |

## 5. Issuer Size

- |  |   |
|--|---|
| <b>Revenue Range</b>                               | <b>Aggregate Net Asset Value Range</b>              |
| <input type="radio"/> No Revenues                  | <input type="radio"/> No Aggregate Net Asset Value  |
| <input type="radio"/> \$1 - \$1,000,000            | <input type="radio"/> \$1 - \$5,000,000             |
| <input type="radio"/> \$1,000,001 - \$5,000,000    | <input type="radio"/> \$5,000,001 - \$25,000,000    |
| <input type="radio"/> \$5,000,001 - \$25,000,000   | <input type="radio"/> \$25,000,001 - \$50,000,000   |
| <input type="radio"/> \$25,000,001 - \$100,000,000 | <input type="radio"/> \$50,000,001 - \$100,000,000  |
| <input type="radio"/> Over \$100,000,000           | <input checked="" type="radio"/> Over \$100,000,000 |
| <input type="radio"/> Decline to Disclose          | <input type="radio"/> Decline to Disclose           |
| <input type="radio"/> Not Applicable               | <input type="radio"/> Not Applicable                |

## 6. Federal Exemption(s) and Exclusion(s) Claimed (select all that apply)

- Rule 504(b)(1) (not (i), (ii) or (iii))
  Rule 505
- Rule 504 (b)(1)(i)
  Rule 506
- Rule 504 (b)(1)(ii)
  Securities Act Section 4(6)
- Rule 504 (b)(1)(iii)
  Investment Company Act Section 3(c)

<input type="checkbox"/> Section 3(c)(1)	<input type="checkbox"/> Section 3(c)(9)
<input type="checkbox"/> Section 3(c)(2)	<input type="checkbox"/> Section 3(c)(10)
<input type="checkbox"/> Section 3(c)(3)	<input type="checkbox"/> Section 3(c)(11)
<input type="checkbox"/> Section 3(c)(4)	<input type="checkbox"/> Section 3(c)(12)
<input type="checkbox"/> Section 3(c)(5)	<input type="checkbox"/> Section 3(c)(13)
<input type="checkbox"/> Section 3(c)(6)	<input type="checkbox"/> Section 3(c)(14)
<input checked="" type="checkbox"/> Section 3(c)(7)	

## 7. Type of Filing

- New Notice      Date of First Sale             First Sale Yet to Occur
- Amendment

## 8. Duration of Offering

Does the Issuer intend this offering to last more than one year?       Yes       No

## 9. Type(s) of Securities Offered (select all that apply)

- Pooled Investment Fund Interests
  Equity
- Tenant-in-Common Securities
  Debt
- Mineral Property Securities
  Option, Warrant or Other Right to Acquire Another Security
- Security to be Acquired Upon Exercise of Option, Warrant or Other Right to Acquire Security
  Other (describe)

## 10. Business Combination Transaction

Is this offering being made in connection with a business combination transaction, such as a merger, acquisition or exchange offer?  Yes  No

Clarification of Response (if Necessary)

## 11. Minimum Investment

Minimum investment accepted from any outside investor \$  USD

## 12. Sales Compensation

Recipient Recipient CRD Number  None

(Associated) Broker or Dealer  None (Associated) Broker or Dealer CRD Number  None

Street Address 1

Street Address 2

City State/Province/Country ZIP/Postal Code

State(s) of Solicitation  All States

## 13. Offering and Sales Amounts

Total Offering Amount \$  USD  Indefinite

Total Amount Sold \$  USD

Total Remaining to be Sold \$  USD  Indefinite

Clarification of Response (if Necessary)

## 14. Investors



Select if securities in the offering have been or may be sold to persons who do not qualify as accredited investors,

Number of such non-accredited investors who already have invested in the offering

Regardless of whether securities in the offering have been or may be sold to persons who do not qualify as accredited investors, enter the total number of investors who already have invested in the offering:

## 15. Sales Commissions & Finders' Fees Expenses

Provide separately the amounts of sales commissions and finders' fees expenses, if any. If the amount of an expenditure is not known, provide an estimate and check the box next to the amount.

Sales Commissions \$  USD  Estimate

Finders' Fees \$  USD  Estimate

Clarification of Response (if Necessary)

## 16. Use of Proceeds

Provide the amount of the gross proceeds of the offering that has been or is proposed to be used for payments to any of the persons required to be named as executive officers, directors or promoters in response to Item 3 above. If the amount is unknown, provide an estimate and check the box next to the amount.

\$  USD  Estimate

Clarification of Response (if Necessary)

As disclosed in Issuer's confidential offering materials, the Issuer's investment manager, an affiliate of the General Partner, will receive a management fee from the Issuer.

## Signature and Submission

**Please verify the information you have entered and review the Terms of Submission below before signing and clicking SUBMIT below to file this notice.**

### Terms of Submission

In submitting this notice, each Issuer named above is:

- Notifying the SEC and/or each State in which this notice is filed of the offering of securities described and undertaking to furnish them, upon written request, the information furnished to offerees.
- Irrevocably appointing each of the Secretary of the SEC and, the Securities Administrator or other legally designated officer of the State in which the Issuer maintains its principal place of business and any State in which this notice is filed, as its agents for service of process, and agreeing that these persons may accept service on its behalf, of any notice, process or pleading, and further agreeing that such service may be made by registered or certified mail, in any Federal or state action, administrative proceeding, or arbitration brought against it in any place subject to the

jurisdiction of the United States, if the action, proceeding or arbitration (a) arises out of any activity in connection with the offering of securities that is the subject of this notice, and (b) is founded, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these statutes, or (ii) the laws of the State in which the issuer maintains its principal place of business or any State in which this notice is filed.

- Certifying that the Issuer is not disqualified from relying on any Regulation D exemption it has identified in Item 6 above for one of the reasons stated in Rule 505(b)(2)(iii).

Each Issuer identified above has read this notice, knows the contents to be true, and has duly caused this notice to be signed on its behalf by the undersigned duly authorized person.

For signature, type in the signer's name or other letters or characters adopted or authorized as the signer's signature.

Issuer	Signature	Name of Signer	Title	Date
Ashe Capital Partners, LP	William R. Harker	William R. Harker	President of the General Partner	2013-10-15

## FORM D

Notice of Exempt  
Offering of SecuritiesUNITED STATES SECURITIES  
AND EXCHANGE COMMISSION  
Washington, D.C.

## OMB APPROVAL

OMB Number: 3235-0076

Estimated Average burden  
hours per response: 4.0

## 1. Issuer's Identity

CIK (Filer ID Number)

0001588883

Previous Name(s)  None

Entity Type

 Corporation Limited Partnership Limited Liability Company General Partnership Business Trust Other

Name of Issuer

Ashe Capital Partners, LP

Jurisdiction of  
Incorporation/Organization

DELAWARE

Year of Incorporation/Organization

 Over Five Years Ago Within Last Five Years  
(Specify Year)

2013

 Yet to Be Formed2. Principal Place of Business and Contact  
Information

Name of Issuer

Ashe Capital Partners, LP

Street Address 1

530 SYLVAN AVENUE

Street Address 2

FIRST FLOOR

City

ENGLEWOOD CLIFFS

State/Province/Country

NEW JERSEY

ZIP/Postal Code

07632

Phone No. of Issuer

201-464-0962

## 3. Related Persons

Last Name

Ashe Capital Partners (GP), LLC

First Name

N/A

Middle Name

Street Address 1

530 Sylvan Avenue

Street Address 2

First Floor

City

State/Province/Country

ZIP/Postal Code

Englewood Cliffs	NEW JERSEY	07632
------------------	------------	-------

Relationship:	<input type="checkbox"/> Executive Officer	<input type="checkbox"/> Director	<input checked="" type="checkbox"/> Promoter
---------------	--	-----------------------------------	--

Clarification of Response (if Necessary)

General Partner of the Issuer
-------------------------------

---

Last Name	First Name	Middle Name
Harker	William	R.

Street Address 1	Street Address 2
530 Sylvan Avenue	First Floor

City	State/Province/Country	ZIP/Postal Code
Englewood Cliffs	NEW JERSEY	07632

Relationship:	<input checked="" type="checkbox"/> Executive Officer	<input type="checkbox"/> Director	<input type="checkbox"/> Promoter
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Clarification of Response (if Necessary)

Executive Officer of the General Partner
--

---

Last Name	First Name	Middle Name
Crowley	William	C.

Street Address 1	Street Address 2
530 Sylvan Avenue	First Floor

City	State/Province/Country	ZIP/Postal Code
Englewood Cliffs	NEW JERSEY	07632

Relationship:	<input checked="" type="checkbox"/> Executive Officer	<input type="checkbox"/> Director	<input type="checkbox"/> Promoter
---------------	---	-----------------------------------	-----------------------------------

Clarification of Response (if Necessary)

Executive Officer of the General Partner
--

---

Last Name	First Name	Middle Name
Blass	Stephen	M.

Street Address 1	Street Address 2
1515 Abbot Kinney Blvd	Suite 300

City	State/Province/Country	ZIP/Postal Code
Venice	CALIFORNIA	90291

Relationship:	<input checked="" type="checkbox"/> Executive Officer	<input type="checkbox"/> Director	<input type="checkbox"/> Promoter
---------------	---	-----------------------------------	-----------------------------------

Clarification of Response (if Necessary)

Executive Officer of the General Partner

## 4. Industry Group

- |  |  |   |
|--|--|---|
| <input type="radio"/> Agriculture  | <input type="radio"/> Health Care            | <input type="radio"/> Retailing                 |
| <input type="radio"/> Banking & Financial Services   | <input type="radio"/> Biotechnology          | <input type="radio"/> Restaurants               |
| <input type="radio"/> Commercial Banking   | <input type="radio"/> Health Insurance       | <input type="radio"/> Technology                |
| <input type="radio"/> Insurance  | <input type="radio"/> Hospitals & Physicians | <input type="radio"/> Computers                 |
| <input type="radio"/> Investing  | <input type="radio"/> Pharmaceuticals        | <input type="radio"/> Telecommunications        |
| <input type="radio"/> Investment Banking   | <input type="radio"/> Other Health Care      | <input type="radio"/> Other Technology          |
| <input checked="" type="radio"/> Pooled Investment Fund                                      |  |   |
| <input type="text" value="Hedge Fund"/>  |  |   |
| *Is the issuer registered as an investment company under the Investment Company Act of 1940? | <input type="radio"/> Manufacturing          | <input type="radio"/> Travel                    |
| <input type="radio"/> Yes <input checked="" type="radio"/> No                                | <input type="radio"/> Real Estate            | <input type="radio"/> Airlines & Airports       |
| <input type="radio"/> Other Banking & Financial Services                                     | <input type="radio"/> Commercial             | <input type="radio"/> Lodging & Conventions     |
| <input type="radio"/> Business Services  | <input type="radio"/> Construction           | <input type="radio"/> Tourism & Travel Services |
| <input type="radio"/> Energy   | <input type="radio"/> REITS & Finance        | <input type="radio"/> Other Travel              |
| <input type="radio"/> Coal Mining  | <input type="radio"/> Residential            | <input type="radio"/> Other                     |
| <input type="radio"/> Electric Utilities   | <input type="radio"/> Other Real Estate      |   |
| <input type="radio"/> Energy Conservation  |  |   |
| <input type="radio"/> Environmental Services   |  |   |
| <input type="radio"/> Oil & Gas  |  |   |
| <input type="radio"/> Other Energy   |  |   |

## 5. Issuer Size

- |  |   |
|--|---|
| <b>Revenue Range</b>                               | <b>Aggregate Net Asset Value Range</b>              |
| <input type="radio"/> No Revenues                  | <input type="radio"/> No Aggregate Net Asset Value  |
| <input type="radio"/> \$1 - \$1,000,000            | <input type="radio"/> \$1 - \$5,000,000             |
| <input type="radio"/> \$1,000,001 - \$5,000,000    | <input type="radio"/> \$5,000,001 - \$25,000,000    |
| <input type="radio"/> \$5,000,001 - \$25,000,000   | <input type="radio"/> \$25,000,001 - \$50,000,000   |
| <input type="radio"/> \$25,000,001 - \$100,000,000 | <input type="radio"/> \$50,000,001 - \$100,000,000  |
| <input type="radio"/> Over \$100,000,000           | <input checked="" type="radio"/> Over \$100,000,000 |
| <input type="radio"/> Decline to Disclose          | <input type="radio"/> Decline to Disclose           |
| <input type="radio"/> Not Applicable               | <input type="radio"/> Not Applicable                |

## 6. Federal Exemption(s) and Exclusion(s) Claimed (select all that apply)

<input type="checkbox"/>	Rule 504(b)(1) (not (i), (ii) or (iii))	<input type="checkbox"/>	Rule 505
<input type="checkbox"/>	Rule 504 (b)(1)(i)	<input checked="" type="checkbox"/>	Rule 506(b)
<input type="checkbox"/>	Rule 504 (b)(1)(ii)	<input type="checkbox"/>	Rule 506(c)
<input type="checkbox"/>	Rule 504 (b)(1)(iii)	<input type="checkbox"/>	Securities Act Section 4(a)(5)
		<input checked="" type="checkbox"/>	Investment Company Act Section 3(c)
		<input type="checkbox"/>	Section 3(c)(1)
		<input type="checkbox"/>	Section 3(c)(2)
		<input type="checkbox"/>	Section 3(c)(3)
		<input type="checkbox"/>	Section 3(c)(4)
		<input type="checkbox"/>	Section 3(c)(5)
		<input type="checkbox"/>	Section 3(c)(6)
		<input checked="" type="checkbox"/>	Section 3(c)(7)
		<input type="checkbox"/>	Section 3(c)(9)
		<input type="checkbox"/>	Section 3(c)(10)
		<input type="checkbox"/>	Section 3(c)(11)
		<input type="checkbox"/>	Section 3(c)(12)
		<input type="checkbox"/>	Section 3(c)(13)
		<input type="checkbox"/>	Section 3(c)(14)

## 7. Type of Filing

- New Notice    Date of First Sale      First Sale Yet to Occur  
 Amendment

## 8. Duration of Offering

Does the Issuer intend this offering to last more than one year?     Yes     No

## 9. Type(s) of Securities Offered (select all that apply)

- Pooled Investment Fund Interests     Equity  
 Tenant-in-Common Securities     Debt  
 Mineral Property Securities     Option, Warrant or Other Right to Acquire Another Security  
 Security to be Acquired Upon Exercise of Option, Warrant or Other Right to Acquire Security     Other (describe)

## 10. Business Combination Transaction

Is this offering being made in connection with a business combination transaction, such as a merger, acquisition or exchange offer?  Yes  No

Clarification of Response (if Necessary)

## 11. Minimum Investment

Minimum investment accepted from any outside investor \$  USD

## 12. Sales Compensation

Recipient Recipient CRD Number  None

(Associated) Broker or Dealer  None (Associated) Broker or Dealer CRD Number  None

Street Address 1 Street Address 2

City State/Province/Country ZIP/Postal Code

State(s) of Solicitation  All States

## 13. Offering and Sales Amounts

Total Offering Amount \$  USD  Indefinite

Total Amount Sold \$  USD

Total Remaining to be Sold \$  USD  Indefinite

Clarification of Response (if Necessary)

## 14. Investors

Select if securities in the offering have been or may be sold to persons who do not qualify as accredited investors,

Number of such non-accredited investors who already have invested in the offering

Regardless of whether securities in the offering have been or may be sold to persons who do not qualify as accredited investors, enter the total number of investors who already have invested in the offering:

## 15. Sales Commissions & Finders' Fees Expenses

Provide separately the amounts of sales commissions and finders' fees expenses, if any. If the amount of an expenditure is not known, provide an estimate and check the box next to the amount.

Sales Commissions \$  USD  Estimate

Finders' Fees \$  USD  Estimate

Clarification of Response (if Necessary)

## 16. Use of Proceeds

Provide the amount of the gross proceeds of the offering that has been or is proposed to be used for payments to any of the persons required to be named as executive officers, directors or promoters in response to Item 3 above. If the amount is unknown, provide an estimate and check the box next to the amount.

\$  USD  Estimate

Clarification of Response (if Necessary)

As disclosed in Issuer's confidential offering materials, the Issuer's investment manager, an affiliate of the General Partner, will receive a management fee from the Issuer.

## Signature and Submission

**Please verify the information you have entered and review the Terms of Submission below before signing and clicking SUBMIT below to file this notice.**

### Terms of Submission

In submitting this notice, each Issuer named above is:

- Notifying the SEC and/or each State in which this notice is filed of the offering of securities described and undertaking to furnish them, upon written request, the information furnished to offerees.
- Irrevocably appointing each of the Secretary of the SEC and, the Securities Administrator or other legally designated officer of the State in which the Issuer maintains its principal place of business and any State in which this notice is filed, as its agents for service of process, and agreeing that these persons may accept service on its behalf, of any notice, process or pleading, and further agreeing that such service may be made by registered or certified mail, in any Federal or state action, administrative proceeding, or arbitration brought against it in any place subject to the



jurisdiction of the United States, if the action, proceeding or arbitration (a) arises out of any activity in connection with the offering of securities that is the subject of this notice, and (b) is founded, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these statutes, or (ii) the laws of the State in which the issuer maintains its principal place of business or any State in which this notice is filed.

- Certifying that, if the issuer is claiming a Regulation D exemption for the offering, the issuer is not disqualified from relying on Regulation D for one of the reasons stated in Rule 505(b)(2)(iii) or Rule 506(d).

Each Issuer identified above has read this notice, knows the contents to be true, and has duly caused this notice to be signed on its behalf by the undersigned duly authorized person.

For signature, type in the signer's name or other letters or characters adopted or authorized as the signer's signature.

Issuer	Signature	Name of Signer	Title	Date
Ashe Capital Partners, LP	William R. Harker	William R. Harker	President of the General Partner	2014-10-08

## FORM D

Notice of Exempt  
Offering of SecuritiesUNITED STATES SECURITIES  
AND EXCHANGE COMMISSION  
Washington, D.C.

## OMB APPROVAL

OMB Number: 3235-0076

Estimated Average burden  
hours per response: 4.0

## 1. Issuer's Identity

CIK (Filer ID Number)

0001588883

Previous Name(s)  None

Entity Type

 Corporation Limited Partnership Limited Liability Company General Partnership Business Trust Other

Name of Issuer

Ashe Capital Partners, LP

Jurisdiction of  
Incorporation/Organization

DELAWARE

Year of Incorporation/Organization

 Over Five Years Ago Within Last Five Years  
(Specify Year)

2013

 Yet to Be Formed2. Principal Place of Business and Contact  
Information

Name of Issuer

Ashe Capital Partners, LP

Street Address 1

530 SYLVAN AVENUE

Street Address 2

Suite 101

City

ENGLEWOOD CLIFFS

State/Province/Country

NEW JERSEY

ZIP/Postal Code

07632

Phone No. of Issuer

201-464-0962

## 3. Related Persons

Last Name

Ashe Capital Partners (GP), LLC

First Name

N/A

Middle Name

Street Address 1

530 Sylvan Avenue

Street Address 2

Suite 101

City

State/Province/Country

ZIP/Postal Code

Englewood Cliffs	NEW JERSEY	07632
------------------	------------	-------

Relationship:	<input type="checkbox"/> Executive Officer	<input type="checkbox"/> Director	<input checked="" type="checkbox"/> Promoter
---------------	--	-----------------------------------	--

Clarification of Response (if Necessary)

General Partner of the Issuer
-------------------------------

Last Name	First Name	Middle Name
Harker	William	R.

Street Address 1	Street Address 2
530 Sylvan Avenue	Suite 101

City	State/Province/Country	ZIP/Postal Code
Englewood Cliffs	NEW JERSEY	07632

Relationship:	<input checked="" type="checkbox"/> Executive Officer	<input type="checkbox"/> Director	<input type="checkbox"/> Promoter
---------------	---	-----------------------------------	-----------------------------------

Clarification of Response (if Necessary)

Executive Officer of the General Partner
--

Last Name	First Name	Middle Name
Crowley	William	C.

Street Address 1	Street Address 2
530 Sylvan Avenue	Suite 101

City	State/Province/Country	ZIP/Postal Code
Englewood Cliffs	NEW JERSEY	07632

Relationship:	<input checked="" type="checkbox"/> Executive Officer	<input type="checkbox"/> Director	<input type="checkbox"/> Promoter
---------------	---	-----------------------------------	-----------------------------------

Clarification of Response (if Necessary)

Executive Officer of the General Partner
--

Last Name	First Name	Middle Name
Blass	Stephen	M.

Street Address 1	Street Address 2
1515 Abbot Kinney Blvd	Suite 300

City	State/Province/Country	ZIP/Postal Code
Venice	CALIFORNIA	90291

Relationship:	<input checked="" type="checkbox"/> Executive Officer	<input type="checkbox"/> Director	<input type="checkbox"/> Promoter
---------------	---	-----------------------------------	-----------------------------------

Clarification of Response (if Necessary)

Executive Officer of the General Partner

## 4. Industry Group

- |  |  |   |
|--|--|---|
| <input type="radio"/> Agriculture  | <input type="radio"/> Health Care            | <input type="radio"/> Retailing                 |
| <input type="radio"/> Banking & Financial Services   | <input type="radio"/> Biotechnology          | <input type="radio"/> Restaurants               |
| <input type="radio"/> Commercial Banking   | <input type="radio"/> Health Insurance       | <input type="radio"/> Technology                |
| <input type="radio"/> Insurance  | <input type="radio"/> Hospitals & Physicians | <input type="radio"/> Computers                 |
| <input type="radio"/> Investing  | <input type="radio"/> Pharmaceuticals        | <input type="radio"/> Telecommunications        |
| <input type="radio"/> Investment Banking   | <input type="radio"/> Other Health Care      | <input type="radio"/> Other Technology          |
| <input checked="" type="radio"/> Pooled Investment Fund                                      |  |   |
| <input type="text" value="Hedge Fund"/>  |  |   |
| *Is the issuer registered as an investment company under the Investment Company Act of 1940? | <input type="radio"/> Manufacturing          | <input type="radio"/> Travel                    |
| <input type="radio"/> Yes <input checked="" type="radio"/> No                                | <input type="radio"/> Real Estate            | <input type="radio"/> Airlines & Airports       |
| <input type="radio"/> Other Banking & Financial Services                                     | <input type="radio"/> Commercial             | <input type="radio"/> Lodging & Conventions     |
| <input type="radio"/> Business Services  | <input type="radio"/> Construction           | <input type="radio"/> Tourism & Travel Services |
| <input type="radio"/> Energy   | <input type="radio"/> REITS & Finance        | <input type="radio"/> Other Travel              |
| <input type="radio"/> Coal Mining  | <input type="radio"/> Residential            | <input type="radio"/> Other                     |
| <input type="radio"/> Electric Utilities   | <input type="radio"/> Other Real Estate      |   |
| <input type="radio"/> Energy Conservation  |  |   |
| <input type="radio"/> Environmental Services   |  |   |
| <input type="radio"/> Oil & Gas  |  |   |
| <input type="radio"/> Other Energy   |  |   |

## 5. Issuer Size

- |  |   |
|--|---|
| <b>Revenue Range</b>                               | <b>Aggregate Net Asset Value Range</b>              |
| <input type="radio"/> No Revenues                  | <input type="radio"/> No Aggregate Net Asset Value  |
| <input type="radio"/> \$1 - \$1,000,000            | <input type="radio"/> \$1 - \$5,000,000             |
| <input type="radio"/> \$1,000,001 - \$5,000,000    | <input type="radio"/> \$5,000,001 - \$25,000,000    |
| <input type="radio"/> \$5,000,001 - \$25,000,000   | <input type="radio"/> \$25,000,001 - \$50,000,000   |
| <input type="radio"/> \$25,000,001 - \$100,000,000 | <input type="radio"/> \$50,000,001 - \$100,000,000  |
| <input type="radio"/> Over \$100,000,000           | <input checked="" type="radio"/> Over \$100,000,000 |
| <input type="radio"/> Decline to Disclose          | <input type="radio"/> Decline to Disclose           |
| <input type="radio"/> Not Applicable               | <input type="radio"/> Not Applicable                |

### 6. Federal Exemption(s) and Exclusion(s) Claimed (select all that apply)

<input type="checkbox"/>	Rule 504(b)(1) (not (i), (ii) or (iii))	<input type="checkbox"/>	Rule 505
<input type="checkbox"/>	Rule 504 (b)(1)(i)	<input checked="" type="checkbox"/>	Rule 506(b)
<input type="checkbox"/>	Rule 504 (b)(1)(ii)	<input type="checkbox"/>	Rule 506(c)
<input type="checkbox"/>	Rule 504 (b)(1)(iii)	<input type="checkbox"/>	Securities Act Section 4(a)(5)
		<input checked="" type="checkbox"/>	Investment Company Act Section 3(c)
		<input type="checkbox"/>	Section 3(c)(1)
		<input type="checkbox"/>	Section 3(c)(2)
		<input type="checkbox"/>	Section 3(c)(3)
		<input type="checkbox"/>	Section 3(c)(4)
		<input type="checkbox"/>	Section 3(c)(5)
		<input type="checkbox"/>	Section 3(c)(6)
		<input checked="" type="checkbox"/>	Section 3(c)(7)
		<input type="checkbox"/>	Section 3(c)(9)
		<input type="checkbox"/>	Section 3(c)(10)
		<input type="checkbox"/>	Section 3(c)(11)
		<input type="checkbox"/>	Section 3(c)(12)
		<input type="checkbox"/>	Section 3(c)(13)
		<input type="checkbox"/>	Section 3(c)(14)

### 7. Type of Filing

New Notice    Date of First Sale      First Sale Yet to Occur  
 Amendment

### 8. Duration of Offering

Does the Issuer intend this offering to last more than one year?     Yes     No

### 9. Type(s) of Securities Offered (select all that apply)

Pooled Investment Fund Interests     Equity  
 Tenant-in-Common Securities     Debt  
 Mineral Property Securities     Option, Warrant or Other Right to Acquire Another Security  
 Security to be Acquired Upon Exercise of Option, Warrant or Other Right to Acquire Security     Other (describe)

## 10. Business Combination Transaction

Is this offering being made in connection with a business combination transaction, such as a merger, acquisition or exchange offer?  Yes  No

Clarification of Response (if Necessary)

## 11. Minimum Investment

Minimum investment accepted from any outside investor \$  USD

## 12. Sales Compensation

Recipient Recipient CRD Number  None

(Associated) Broker or Dealer  None (Associated) Broker or Dealer CRD Number  None

Street Address 1 Street Address 2

City State/Province/Country ZIP/Postal Code

State(s) of Solicitation  All States

## 13. Offering and Sales Amounts

Total Offering Amount \$  USD  Indefinite

Total Amount Sold \$  USD

Total Remaining to be Sold \$  USD  Indefinite

Clarification of Response (if Necessary)

## 14. Investors

Select if securities in the offering have been or may be sold to persons who do not qualify as accredited investors,

Number of such non-accredited investors who already have invested in the offering

Regardless of whether securities in the offering have been or may be sold to persons who do not qualify as accredited investors, enter the total number of investors who already have invested in the offering:

## 15. Sales Commissions & Finders' Fees Expenses

Provide separately the amounts of sales commissions and finders' fees expenses, if any. If the amount of an expenditure is not known, provide an estimate and check the box next to the amount.

Sales Commissions \$  USD  Estimate

Finders' Fees \$  USD  Estimate

Clarification of Response (if Necessary)

## 16. Use of Proceeds

Provide the amount of the gross proceeds of the offering that has been or is proposed to be used for payments to any of the persons required to be named as executive officers, directors or promoters in response to Item 3 above. If the amount is unknown, provide an estimate and check the box next to the amount.

\$  USD  Estimate

Clarification of Response (if Necessary)

As disclosed in Issuer's confidential offering materials, the Issuer's investment manager, an affiliate of the General Partner, will receive a management fee from the Issuer.

## Signature and Submission

**Please verify the information you have entered and review the Terms of Submission below before signing and clicking SUBMIT below to file this notice.**

### Terms of Submission

In submitting this notice, each Issuer named above is:

- Notifying the SEC and/or each State in which this notice is filed of the offering of securities described and undertaking to furnish them, upon written request, the information furnished to offerees.
- Irrevocably appointing each of the Secretary of the SEC and, the Securities Administrator or other legally designated officer of the State in which the Issuer maintains its principal place of business and any State in which this notice is filed, as its agents for service of process, and agreeing that these persons may accept service on its behalf, of any notice, process or pleading, and further agreeing that such service may be made by registered or certified mail, in any Federal or state action, administrative proceeding, or arbitration brought against it in any place subject to the

jurisdiction of the United States, if the action, proceeding or arbitration (a) arises out of any activity in connection with the offering of securities that is the subject of this notice, and (b) is founded, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these statutes, or (ii) the laws of the State in which the issuer maintains its principal place of business or any State in which this notice is filed.

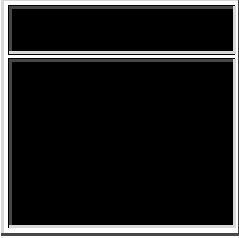
- Certifying that, if the issuer is claiming a Regulation D exemption for the offering, the issuer is not disqualified from relying on Regulation D for one of the reasons stated in Rule 505(b)(2)(iii) or Rule 506(d).

Each Issuer identified above has read this notice, knows the contents to be true, and has duly caused this notice to be signed on its behalf by the undersigned duly authorized person.

For signature, type in the signer's name or other letters or characters adopted or authorized as the signer's signature.

Issuer	Signature	Name of Signer	Title	Date
Ashe Capital Partners, LP	William R. Harker	William R. Harker	President of the General Partner	2015-10-06





UNITED STATES SECURITIES  
AND EXCHANGE COMMISSION  
Washington, D.C.

OMB Number: 3235-0076
Estimated Average burden hours per response: 4.0

## 1. Issuer's Identity

CIK (Filer ID Number)	Previous Name(s)	<input checked="" type="checkbox"/> None	Entity Type
<input type="text" value="0001588883"/>			<input type="radio"/> Corporation <input checked="" type="radio"/> Limited Partnership <input type="radio"/> Limited Liability Company <input type="radio"/> General Partnership <input type="radio"/> Business Trust <input type="radio"/> Other
Name of Issuer			
<input type="text" value="Ashe Capital Partners, LP"/>			
Jurisdiction of Incorporation/Organization			
<input type="text" value="DELAWARE"/>			
Year of Incorporation/Organization			
<input type="radio"/> Over Five Years Ago <input checked="" type="radio"/> Within Last Five Years (Specify Year) <input type="text" value="2013"/> <input type="radio"/> Yet to Be Formed			

## 2. Principal Place of Business and Contact Information

Name of Issuer			
<input type="text" value="Ashe Capital Partners, LP"/>			
Street Address 1		Street Address 2	
<input type="text" value="530 SYLVAN AVENUE"/>		<input type="text" value="Suite 101"/>	
City	State/Province /Country	ZIP/Postal Code	Phone No. of Issuer
<input type="text" value="ENGLEWOOD CLIFFS"/>	<input type="text" value="NEW JERSEY"/>	<input type="text" value="07632"/>	<input type="text" value="201-464-0962"/>

## 3. Related Persons

Last Name                      First Name                      Middle Name

Ashe Capital Partners  
(GP), LLC

N/A

Street Address 1

530 Sylvan Avenue

Street Address 2

Suite 101

City

Englewood Cliffs

State/Province/Country

NEW JERSEY

ZIP/Postal Code

07632

Relationship:	<input type="checkbox"/> Executive Officer	<input type="checkbox"/> Director	<input checked="" type="checkbox"/> Promoter
---------------	--	-----------------------------------	--

Clarification of Response (if Necessary)

General Partner of the Issuer

Last Name                      First Name                      Middle Name

Harker

William

R.

Street Address 1

530 Sylvan Avenue

Street Address 2

Suite 101

City

Englewood Cliffs

State/Province/Country

NEW JERSEY

ZIP/Postal Code

07632

Relationship:	<input checked="" type="checkbox"/> Executive Officer	<input type="checkbox"/> Director	<input type="checkbox"/> Promoter
---------------	---	-----------------------------------	-----------------------------------

Clarification of Response (if Necessary)

Executive Officer of the General Partner

Last Name                      First Name                      Middle Name

Crowley

William

C.

Street Address 1

Street Address 2

530 Sylvan Avenue

Suite 101

City

State/Province/Country

ZIP/Postal Code

Englewood Cliffs

NEW JERSEY

07632

Relationship:

 Executive  
Officer Director Promoter

Clarification of Response (if Necessary)

Executive Officer of the General Partner

Last Name

First Name

Middle Name

Blass

Stephen

M.

Street Address 1

Street Address 2

1515 Abbot Kinney Blvd

Suite 300

City

State/Province/Country

ZIP/Postal Code

Venice

CALIFORNIA

90291

Relationship:

 Executive  
Officer Director Promoter

Clarification of Response (if Necessary)

Executive Officer of the General Partner

#### 4. Industry Group

- |   |  |  |
|---|--|--|
| <input type="radio"/> Agriculture                       | <input type="radio"/> Health Care            | <input type="radio"/> Retailing          |
| <input type="radio"/> Banking & Financial Services      | <input type="radio"/> Biotechnology          | <input type="radio"/> Restaurants        |
| <input type="radio"/> Commercial Banking                | <input type="radio"/> Health Insurance       | <input type="radio"/> Technology         |
| <input type="radio"/> Insurance                         | <input type="radio"/> Hospitals & Physicians | <input type="radio"/> Computers          |
| <input type="radio"/> Investing                         | <input type="radio"/> Pharmaceuticals        | <input type="radio"/> Telecommunications |
| <input type="radio"/> Investment Banking                | <input type="radio"/> Other Health Care      | <input type="radio"/> Other Technology   |
| <input checked="" type="radio"/> Pooled Investment Fund |  |  |

Hedge Fund

\*Is the issuer registered as an investment company under the Investment Company Act of 1940?

- Yes  No

Other Banking & Financial Services

Business Services

Energy

- Coal Mining
- Electric Utilities
- Energy Conservation
- Environmental Services
- Oil & Gas
- Other Energy

- Manufacturing
- Real Estate
  - Commercial
  - Construction
  - REITS & Finance
  - Residential
  - Other Real Estate

Travel

- Airlines & Airports
- Lodging & Conventions
- Tourism & Travel Services
- Other Travel
- Other

5. Issuer Size

Revenue Range

- No Revenues
- \$1 - \$1,000,000
- \$1,000,001 - \$5,000,000
- \$5,000,001 - \$25,000,000
- \$25,000,001 - \$100,000,000
- Over \$100,000,000
- Decline to Disclose
- Not Applicable

Aggregate Net Asset Value Range

- No Aggregate Net Asset Value
- \$1 - \$5,000,000
- \$5,000,001 - \$25,000,000
- \$25,000,001 - \$50,000,000
- \$50,000,001 - \$100,000,000
- Over \$100,000,000
- Decline to Disclose
- Not Applicable

6. Federal Exemption(s) and Exclusion(s) Claimed (select all that apply)

<input type="checkbox"/>	Rule 504(b)(1) (not (i), (ii) or (iii))	<input type="checkbox"/>	Rule 505		
<input type="checkbox"/>	Rule 504 (b)(1)(i)	<input checked="" type="checkbox"/>	Rule 506(b)		
<input type="checkbox"/>	Rule 504 (b)(1)(ii)	<input type="checkbox"/>	Rule 506(c)		
<input type="checkbox"/>	Rule 504 (b)(1)(iii)	<input type="checkbox"/>	Securities Act Section 4(a)(5)		

		<input checked="" type="checkbox"/> Investment Company Act Section 3(c)														
		<table border="1"> <tr> <td><input type="checkbox"/> Section 3(c)(1)</td> <td><input type="checkbox"/> Section 3(c)(9)</td> </tr> <tr> <td><input type="checkbox"/> Section 3(c)(2)</td> <td><input type="checkbox"/> Section 3(c)(10)</td> </tr> <tr> <td><input type="checkbox"/> Section 3(c)(3)</td> <td><input type="checkbox"/> Section 3(c)(11)</td> </tr> <tr> <td><input type="checkbox"/> Section 3(c)(4)</td> <td><input type="checkbox"/> Section 3(c)(12)</td> </tr> <tr> <td><input type="checkbox"/> Section 3(c)(5)</td> <td><input type="checkbox"/> Section 3(c)(13)</td> </tr> <tr> <td><input type="checkbox"/> Section 3(c)(6)</td> <td><input type="checkbox"/> Section 3(c)(14)</td> </tr> <tr> <td><input checked="" type="checkbox"/> Section 3(c)(7)</td> <td></td> </tr> </table>	<input type="checkbox"/> Section 3(c)(1)	<input type="checkbox"/> Section 3(c)(9)	<input type="checkbox"/> Section 3(c)(2)	<input type="checkbox"/> Section 3(c)(10)	<input type="checkbox"/> Section 3(c)(3)	<input type="checkbox"/> Section 3(c)(11)	<input type="checkbox"/> Section 3(c)(4)	<input type="checkbox"/> Section 3(c)(12)	<input type="checkbox"/> Section 3(c)(5)	<input type="checkbox"/> Section 3(c)(13)	<input type="checkbox"/> Section 3(c)(6)	<input type="checkbox"/> Section 3(c)(14)	<input checked="" type="checkbox"/> Section 3(c)(7)	
<input type="checkbox"/> Section 3(c)(1)	<input type="checkbox"/> Section 3(c)(9)															
<input type="checkbox"/> Section 3(c)(2)	<input type="checkbox"/> Section 3(c)(10)															
<input type="checkbox"/> Section 3(c)(3)	<input type="checkbox"/> Section 3(c)(11)															
<input type="checkbox"/> Section 3(c)(4)	<input type="checkbox"/> Section 3(c)(12)															
<input type="checkbox"/> Section 3(c)(5)	<input type="checkbox"/> Section 3(c)(13)															
<input type="checkbox"/> Section 3(c)(6)	<input type="checkbox"/> Section 3(c)(14)															
<input checked="" type="checkbox"/> Section 3(c)(7)																

### 7. Type of Filing

- New Notice Date of First Sale   First Sale Yet to Occur  
 Amendment

### 8. Duration of Offering

Does the Issuer intend this offering to last more than one year?  Yes  No

### 9. Type(s) of Securities Offered (select all that apply)

- Pooled Investment Fund Interests  Equity  
 Tenant-in-Common Securities  Debt  
 Mineral Property Securities  Option, Warrant or Other Right to Acquire Another Security  
 Security to be Acquired Upon Exercise of Option, Warrant or Other Right to Acquire Security  Other (describe)

## 10. Business Combination Transaction

Is this offering being made in connection with a business combination transaction, such as a merger, acquisition or exchange offer?  Yes  No

Clarification of Response (if Necessary)

## 11. Minimum Investment

Minimum investment accepted from any outside investor \$  USD

## 12. Sales Compensation

Recipient Recipient CRD Number  None

(Associated) Broker or Dealer  None (Associated) Broker or Dealer CRD Number  None

Street Address 1

Street Address 2

City State/Province/Country ZIP/Postal Code

State(s) of Solicitation  All States

## 13. Offering and Sales Amounts

Total Offering Amount \$  USD  Indefinite

Total Amount Sold \$  USD

Total Remaining to be Sold \$  USD  Indefinite

Clarification of Response (if Necessary)

#### 14. Investors

- Select if securities in the offering have been or may be sold to persons who do not qualify as accredited investors,
- Number of such non-accredited investors who already have invested in the offering

Regardless of whether securities in the offering have been or may be sold to persons who do not qualify as accredited investors, enter the total number of investors who already have invested in the offering:

#### 15. Sales Commissions & Finders' Fees Expenses

Provide separately the amounts of sales commissions and finders' fees expenses, if any. If the amount of an expenditure is not known, provide an estimate and check the box next to the amount.

Sales Commissions \$  USD  Estimate

Finders' Fees \$  USD  Estimate

Clarification of Response (if Necessary)

#### 16. Use of Proceeds

Provide the amount of the gross proceeds of the offering that has been or is proposed to be used for payments to any of the persons required to be named as executive officers, directors or promoters in response to Item 3 above. If the amount is unknown, provide an estimate and check the box next to the amount.

\$  USD  Estimate

Clarification of Response (if Necessary)

As disclosed in Issuer's confidential offering materials, the Issuer's investment manager, an affiliate of the General Partner, will receive a management fee from the Issuer.

## Signature and Submission

**Please verify the information you have entered and review the Terms of Submission below before signing and clicking SUBMIT below to file this notice.**

### Terms of Submission

In submitting this notice, each Issuer named above is:

- Notifying the SEC and/or each State in which this notice is filed of the offering of securities described and undertaking to furnish them, upon written request, the information furnished to offerees.
- Irrevocably appointing each of the Secretary of the SEC and, the Securities Administrator or other legally designated officer of the State in which the Issuer maintains its principal place of business and any State in which this notice is filed, as its agents for service of process, and agreeing that these persons may accept service on its behalf, of any notice, process or pleading, and further agreeing that such service may be made by registered or certified mail, in any Federal or state action, administrative proceeding, or arbitration brought against it in any place subject to the jurisdiction of the United States, if the action, proceeding or arbitration (a) arises out of any activity in connection with the offering of securities that is the subject of this notice, and (b) is founded, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these statutes, or (ii) the laws of the State in which the issuer maintains its principal place of business or any State in which this notice is filed.
- Certifying that, if the issuer is claiming a Regulation D exemption for the offering, the issuer is not disqualified from relying on Regulation D for one of the reasons stated in Rule 505(b)(2)(iii) or Rule 506(d).

Each Issuer identified above has read this notice, knows the contents to be true, and has duly caused this notice to be signed on its behalf by the undersigned



duly authorized person.

For signature, type in the signer's name or other letters or characters adopted or authorized as the signer's signature.

Issuer	Signature	Name of Signer	Title	Date
Ashe Capital Partners, LP	William R. Harker	William R. Harker	President of the General Partner	2016-10-06

UNITED STATES SECURITIES  
AND EXCHANGE COMMISSION  
Washington, D.C.

OMB Number: 3235-0076

Estimated Average burden hours per response: 4.0

## 1. Issuer's Identity

CIK (Filer ID Number)

0001588883

Previous Name(s) None Entity Type

Name of Issuer

Ashe Capital Partners, LP

Jurisdiction of Incorporation/Organization

DELAWARE

Year of Incorporation/Organization

Over Five Years Ago

Within Last Five Years (Specify Year) 2013

Yet to Be Formed

Corporation

Limited Partnership

Limited Liability Company

General Partnership

Business Trust

Other

## 2. Principal Place of Business and Contact Information

Name of Issuer

Ashe Capital Partners, LP

Street Address 1 Street Address 2

530 SYLVAN AVENUE FIRST FLOOR

City State/Province/Country ZIP/Postal Code Phone No. of Issuer

ENGLEWOOD CLIFFS NEW JERSEY

07632

201-464-0962

## 3. Related Persons

Last Name First Name Middle Name

Ashe Capital Partners (GP), LLC N/A

Street Address 1 Street Address 2

530 Sylvan Avenue Suite 101

City State/Province/Country ZIP/Postal Code

Englewood Cliffs NEW JERSEY

07632

Relationship: Executive Officer Director Promoter

Clarification of Response (if Necessary)

General Partner of the Issuer

Last Name First Name Middle Name

Harker William R.

Street Address 1 Street Address 2

530 Sylvan Avenue Suite 101

City State/Province/Country ZIP/Postal Code

Englewood Cliffs NEW JERSEY

07632

Relationship: Executive Officer Director Promoter

Clarification of Response (if Necessary)

Executive Officer of the General Partner

Last Name First Name Middle Name

Crowley William C.

Street Address 1 Street Address 2

530 Sylvan Avenue Suite 101

City State/Province/Country ZIP/Postal Code

Englewood Cliffs NEW JERSEY

07632

Relationship:  Executive Officer  Director  Promoter

Clarification of Response (if Necessary)

Executive Officer of the General Partner

Last Name First Name Middle Name

Blass  Stephen  M.

Street Address 1 Street Address 2

1515 Abbot Kinney Blvd  Suite 300

City State/Province/Country ZIP/Postal Code

Venice  CALIFORNIA  90291

Relationship:  Executive Officer  Director  Promoter

Clarification of Response (if Necessary)

Executive Officer of the General Partner

4. Industry Group

- Agriculture
- Banking & Financial Services
  - Commercial Banking
  - Insurance
  - Investing
  - Investment Banking
  - Pooled Investment Fund
  - Hedge Fund

\*Is the issuer registered as an investment company under the Investment Company Act of 1940?  
 Yes No

Other Banking & Financial Services

Business Services

- Energy
  - Coal Mining
  - Electric Utilities
  - Energy Conservation
  - Environmental Services
  - Oil & Gas
  - Other Energy

- Health Care
  - Biotechnology
  - Health Insurance
  - Hospitals & Physicians
  - Pharmaceuticals
  - Other Health Care

- Retailing
  - Restaurants
  - Technology
  - Computers
  - Telecommunications
  - Other Technology
- Travel
  - Airlines & Airports
  - Lodging & Conventions
  - Tourism & Travel Services
  - Other Travel

- Manufacturing
- Real Estate
  - Commercial
  - Construction
  - REITS & Finance
  - Residential
  - Other Real Estate

5. Issuer Size

Revenue Range	Aggregate Net Asset Value Range
No Revenues	No Aggregate Net Asset Value
\$1 - \$1,000,000	\$1 - \$5,000,000
\$1,000,001 - \$5,000,000	\$5,000,001 - \$25,000,000
\$5,000,001 - \$25,000,000	\$25,000,001 - \$50,000,000
\$25,000,001 - \$100,000,000	\$50,000,001 - \$100,000,000
Over \$100,000,000	Over \$100,000,000
Decline to Disclose	Decline to Disclose
Not Applicable	Not Applicable

6. Federal Exemption(s) and Exclusion(s) Claimed (select all that apply)

- Rule 504(b)(1) (not (i), (ii) or (iii))
- Rule 504 (b)(1)(i)
- Rule 504 (b)(1)(ii)
- Rule 504 (b)(1)(iii)
- Rule 506(b)
- Rule 506(c)
- Securities Act Section 4(a)(5)
- Investment Company Act Section 3(c)

<input type="checkbox"/> Section 3(c)(1)	<input type="checkbox"/> Section 3(c)(9)
<input type="checkbox"/> Section 3(c)(2)	<input type="checkbox"/> Section 3(c)(10)
<input type="checkbox"/> Section 3(c)(3)	<input type="checkbox"/> Section 3(c)(11)
<input type="checkbox"/> Section 3(c)(4)	<input type="checkbox"/> Section 3(c)(12)
<input type="checkbox"/> Section 3(c)(5)	<input type="checkbox"/> Section 3(c)(13)
<input type="checkbox"/> Section 3(c)(6)	<input type="checkbox"/> Section 3(c)(14)
<input type="checkbox"/> Section 3(c)(7)	

**7. Type of Filing**

New NoticeDate of First Sale **2013-10-01** First Sale Yet to Occur  
Amendment

**8. Duration of Offering**

Does the Issuer intend this offering to last more than one year? Yes No

**9. Type(s) of Securities Offered (select all that apply)**

Pooled Investment Fund Interests  
Tenant-in-Common Securities  
Mineral Property Securities

Equity  
Debt  
Option, Warrant or Other Right to Acquire Another Security  
Other (describe)

Security to be Acquired Upon Exercise of Option, Warrant or Other Right to Acquire Security

**10. Business Combination Transaction**

Is this offering being made in connection with a business combination transaction, such as a merger, acquisition or exchange offer? Yes No  
Clarification of Response (if Necessary)

**11. Minimum Investment**

Minimum investment accepted from any outside investor\$ **0** USD

**12. Sales Compensation**

Recipient Recipient CRD Number None

(Associated) Broker or Dealer None (Associated) Broker or Dealer CRD Number None

Street Address 1 Street Address 2

City State/Province/Country ZIP/Postal Code

State(s) of Solicitation All States

**13. Offering and Sales Amounts**

Total Offering Amount \$ **100000000** USD Indefinite

Total Amount Sold \$ **764900063** USD

Total Remaining to be Sold \$ **235099937** USD Indefinite

Clarification of Response (if Necessary)

**14. Investors**

Select if securities in the offering have been or may be sold to persons who do not qualify as accredited investors, Number of such non-accredited investors who already have invested in the offering

Regardless of whether securities in the offering have been or may be sold to persons who do not qualify as accredited investors, enter the total number of investors who already have invested in the offering:

## 15. Sales Commissions & Finders' Fees Expenses

Provide separately the amounts of sales commissions and finders' fees expenses, if any. If the amount of an expenditure is not known, provide an estimate and check the box next to the amount.

Sales Commissions \$  USD Estimate

Finders' Fees \$  USD Estimate

Clarification of Response (if Necessary)

## 16. Use of Proceeds

Provide the amount of the gross proceeds of the offering that has been or is proposed to be used for payments to any of the persons required to be named as executive officers, directors or promoters in response to Item 3 above. If the amount is unknown, provide an estimate and check the box next to the amount.

\$  USD Estimate

Clarification of Response (if Necessary)

**As disclosed in Issuer's confidential offering materials, the Issuer's investment manager, an affiliate of the General Partner, will receive a management fee from the Issuer.**

## Signature and Submission

Please verify the information you have entered and review the Terms of Submission below before signing and clicking SUBMIT below to file this notice.

### Terms of Submission

In submitting this notice, each Issuer named above is:

Notifying the SEC and/or each State in which this notice is filed of the offering of securities described and undertaking to furnish them, upon written request, the information furnished to offerees.

Irrevocably appointing each of the Secretary of the SEC and, the Securities Administrator or other legally designated officer of the State in which the Issuer maintains its principal place of business and any State in which this notice is filed, as its agents for service of process, and agreeing that these persons may accept service on its behalf, of any notice, process or pleading, and further agreeing that such service may be made by registered or certified mail, in any Federal or state action, administrative proceeding, or arbitration brought against it in any place subject to the jurisdiction of the United States, if the action, proceeding or arbitration (a) arises out of any activity in connection with the offering of securities that is the subject of this notice, and (b) is founded, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these statutes, or (ii) the laws of the State in which the issuer maintains its principal place of business or any State in which this notice is filed.

Certifying that, if the issuer is claiming a Regulation D exemption for the offering, the issuer is not disqualified from relying on Rule 504 or Rule 506 for one of the reasons stated in Rule 504(b)(3) or Rule 506(d).

Each Issuer identified above has read this notice, knows the contents to be true, and has duly caused this notice to be signed on its behalf by the undersigned duly authorized person.

For signature, type in the signer's name or other letters or characters adopted or authorized as the signer's signature.

Issuer	Signature	Name of Signer	Title	Date
Ashe Capital Partners, LP	William R. Harker	William R. Harker	President of the General Partner	2017-10-05

FORM D

Notice of Exempt  
Offering of Securities

**UNITED STATES SECURITIES  
AND EXCHANGE COMMISSION  
Washington, D.C.**

OMB APPROVAL

OMB Number: 3235-0076

Estimated Average burden  
hours per response: 4.0**1. Issuer's Identity**

CIK (Filer ID Number)	Previous Name (s)	<input checked="" type="checkbox"/> None	Entity Type
<input type="text" value="0001588883"/>			<input type="radio"/> Corporation <input checked="" type="radio"/> Limited Partnership <input type="radio"/> Limited Liability Company <input type="radio"/> General Partnership <input type="radio"/> Business Trust <input type="radio"/> Other
Name of Issuer			
<input type="text" value="Ashe Capital Partners, LP"/>			
Jurisdiction of Incorporation/Organization			
<input type="text" value="DELAWARE"/>			
Year of Incorporation/Organization			
<input checked="" type="radio"/> Over Five Years Ago			
<input type="radio"/> Within Last Five Years (Specify Year)	<input type="text"/>		
<input type="radio"/> Yet to Be Formed			

**2. Principal Place of Business and Contact Information**

Name of Issuer			
<input type="text" value="Ashe Capital Partners, LP"/>			
Street Address 1	Street Address 2		
<input type="text" value="530 SYLVAN AVENUE"/>	<input type="text" value="SUITE 101"/>		
City	State/Province/Country	ZIP/Postal Code	Phone No. of Issuer
<input type="text" value="ENGLEWOOD CLIFFS"/>	<input type="text" value="NEW JERSEY"/>	<input type="text" value="07632"/>	<input type="text" value="201-464-0962"/>

**3. Related Persons**

Last Name	First Name	Middle Name
<input type="text" value="ASHE CAPITAL PARTNERS&lt;br/&gt;(GP), LLC"/>	<input type="text" value="N/A"/>	
Street Address 1	Street Address 2	
<input type="text" value="530 SYLVAN AVENUE"/>	<input type="text" value="SUITE 101"/>	
City	State/Province/Country	ZIP/Postal Code
<input type="text" value="ENGLEWOOD CLIFFS"/>	<input type="text" value="NEW JERSEY"/>	<input type="text" value="07632"/>

<b>Relationship:</b>	<input type="checkbox"/> Executive Officer	<input type="checkbox"/> Director	<input checked="" type="checkbox"/> Promoter
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Clarification of Response (if Necessary)

**General Partner of the Issuer**

Last Name	First Name	Middle Name
<b>HARKER</b>	<b>WILLIAM</b>	<b>R.</b>

Street Address 1	Street Address 2
<b>530 SYLVAN AVENUE</b>	<b>SUITE 101</b>

City	State/Province/Country	ZIP/Postal Code
<b>ENGLEWOOD CLIFFS</b>	<b>NEW JERSEY</b>	<b>07632</b>

<b>Relationship:</b>	<input checked="" type="checkbox"/> Executive Officer	<input type="checkbox"/> Director	<input type="checkbox"/> Promoter
----------------------	---	-----------------------------------	-----------------------------------

Clarification of Response (if Necessary)

**Executive Officer of the General Partner**

Last Name	First Name	Middle Name
<b>CROWLEY</b>	<b>WILLIAM</b>	<b>C.</b>

Street Address 1	Street Address 2
<b>530 SYLVAN AVENUE</b>	<b>SUITE 101</b>

City	State/Province/Country	ZIP/Postal Code
<b>ENGLEWOOD CLIFFS</b>	<b>NEW JERSEY</b>	<b>07632</b>

<b>Relationship:</b>	<input checked="" type="checkbox"/> Executive Officer	<input type="checkbox"/> Director	<input type="checkbox"/> Promoter
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Clarification of Response (if Necessary)

**Executive Officer of the General Partner**

Last Name	First Name	Middle Name
<b>BLASS</b>	<b>STEPHEN</b>	<b>M.</b>

Street Address 1	Street Address 2
<b>116 SANTA BARBARA STREET</b>	<b>SUITE C</b>

City	State/Province/Country	ZIP/Postal Code
<b>SANTA BARBARA</b>	<b>CALIFORNIA</b>	<b>93101</b>

<b>Relationship:</b>	<input checked="" type="checkbox"/> Executive Officer	<input type="checkbox"/> Director	<input type="checkbox"/> Promoter
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Clarification of Response (if Necessary)

**Executive Officer of the General Partner**

#### 4. Industry Group

- |   |  |  |
|---|--|--|
| <input type="radio"/> <b>Agriculture</b><br><input type="radio"/> <b>Banking &amp; Financial Services</b><br><input type="radio"/> Commercial Banking<br><input type="radio"/> Insurance<br><input type="radio"/> Investing<br><input type="radio"/> Investment Banking<br><input checked="" type="radio"/> <b>Pooled Investment Fund</b><br><input type="text" value="Hedge Fund"/> <input type="button" value="v"/><br>*Is the issuer registered as an investment company under the Investment Company Act of 1940?<br><input type="radio"/> Yes <input checked="" type="radio"/> No<br><input type="radio"/> <b>Other Banking &amp; Financial Services</b> | <input type="radio"/> <b>Health Care</b><br><input type="radio"/> Biotechnology<br><input type="radio"/> Health Insurance<br><input type="radio"/> Hospitals & Physicians<br><input type="radio"/> Pharmaceuticals<br><input type="radio"/> Other Health Care<br><input type="radio"/> <b>Manufacturing</b><br><input type="radio"/> <b>Real Estate</b><br><input type="radio"/> Commercial<br><input type="radio"/> Construction<br><input type="radio"/> REITS & Finance<br><input type="radio"/> Residential<br><input type="radio"/> Other Real Estate | <input type="radio"/> <b>Retailing</b><br><input type="radio"/> <b>Restaurants</b><br><input type="radio"/> <b>Technology</b><br><input type="radio"/> Computers<br><input type="radio"/> Telecommunications<br><input type="radio"/> Other Technology<br><input type="radio"/> <b>Travel</b><br><input type="radio"/> Airlines & Airports<br><input type="radio"/> Lodging & Conventions<br><input type="radio"/> Tourism & Travel Services<br><input type="radio"/> Other Travel<br><input type="radio"/> <b>Other</b> |
| <input type="radio"/> <b>Business Services</b><br><input type="radio"/> <b>Energy</b><br><input type="radio"/> Coal Mining<br><input type="radio"/> Electric Utilities<br><input type="radio"/> Energy Conservation<br><input type="radio"/> Environmental Services<br><input type="radio"/> Oil & Gas<br><input type="radio"/> Other Energy  |  |  |

#### 5. Issuer Size

##### Revenue Range

- No Revenues
- \$1 - \$1,000,000
- \$1,000,001 - \$5,000,000
- \$5,000,001 - \$25,000,000
- \$25,000,001 - \$100,000,000
- Over \$100,000,000
- Decline to Disclose

##### Aggregate Net Asset Value Range

- No Aggregate Net Asset Value
- \$1 - \$5,000,000
- \$5,000,001 - \$25,000,000
- \$25,000,001 - \$50,000,000
- \$50,000,001 - \$100,000,000
- Over \$100,000,000
- Decline to Disclose



Not Applicable

Not Applicable

**6. Federal Exemption(s) and Exclusion(s) Claimed (select all that apply)**

<input type="checkbox"/>	Rule 504(b)(1) (not (i), (ii) or (iii))	<input type="checkbox"/>	Rule 505
<input type="checkbox"/>	Rule 504 (b)(1)(i)	<input checked="" type="checkbox"/>	Rule 506(b)
<input type="checkbox"/>	Rule 504 (b)(1)(ii)	<input type="checkbox"/>	Rule 506(c)
<input type="checkbox"/>	Rule 504 (b)(1)(iii)	<input type="checkbox"/>	Securities Act Section 4(a)(5)
		<input checked="" type="checkbox"/>	Investment Company Act Section 3(c)
		<input type="checkbox"/>	Section 3(c)(1)
		<input type="checkbox"/>	Section 3(c)(2)
		<input type="checkbox"/>	Section 3(c)(3)
		<input type="checkbox"/>	Section 3(c)(4)
		<input type="checkbox"/>	Section 3(c)(5)
		<input type="checkbox"/>	Section 3(c)(6)
		<input checked="" type="checkbox"/>	Section 3(c)(7)
		<input type="checkbox"/>	Section 3(c)(9)
		<input type="checkbox"/>	Section 3(c)(10)
		<input type="checkbox"/>	Section 3(c)(11)
		<input type="checkbox"/>	Section 3(c)(12)
		<input type="checkbox"/>	Section 3(c)(13)
		<input type="checkbox"/>	Section 3(c)(14)

**7. Type of Filing**

New Notice    Date of First Sale      First Sale Yet to Occur

Amendment

**8. Duration of Offering**

Does the Issuer intend this offering to last more than one year?     Yes     No

**9. Type(s) of Securities Offered (select all that apply)**

Pooled Investment Fund Interests     Equity

Tenant-in-Common Securities     Debt

Mineral Property Securities     Option, Warrant or Other Right to Acquire Another Security

Security to be Acquired Upon Exercise of Option, Warrant or Other Right to Acquire Security     Other (describe)

## 10. Business Combination Transaction

Is this offering being made in connection with a business combination transaction, such as a merger, acquisition or exchange offer?  Yes  No

Clarification of Response (if Necessary)

## 11. Minimum Investment

Minimum investment accepted from any outside investor \$  USD

## 12. Sales Compensation

Recipient Recipient CRD Number  None

(Associated) Broker or Dealer  None (Associated) Broker or Dealer CRD Number  None

Street Address 1

Street Address 2

City

State/Province/Country

ZIP/Postal Code

State(s) of Solicitation  All States

## 13. Offering and Sales Amounts

Total Offering Amount \$  USD  Indefinite

Total Amount Sold \$  USD

Total Remaining to be Sold \$  USD  Indefinite

Clarification of Response (if Necessary)

## 14. Investors

Select if securities in the offering have been or may be sold to persons who do not qualify as accredited investors, Number of such non-accredited investors who already have invested in the offering

Regardless of whether securities in the offering have been or may be sold to persons who do not qualify as accredited investors, enter the total number of investors who already have invested in the offering:

90

## 15. Sales Commissions & Finders' Fees Expenses

Provide separately the amounts of sales commissions and finders' fees expenses, if any. If the amount of an expenditure is not known, provide an estimate and check the box next to the amount.

Sales Commissions \$  USD  Estimate

Finders' Fees \$  USD  Estimate

Clarification of Response (if Necessary)

## 16. Use of Proceeds

Provide the amount of the gross proceeds of the offering that has been or is proposed to be used for payments to any of the persons required to be named as executive officers, directors or promoters in response to Item 3 above. If the amount is unknown, provide an estimate and check the box next to the amount.

\$  USD  Estimate

Clarification of Response (if Necessary)

**As disclosed in Issuer's confidential offering materials, the Issuer's investment manager, an affiliate of the General Partner, will receive a management fee from the Issuer.**

## Signature and Submission

Please verify the information you have entered and review the Terms of Submission below before signing and clicking **SUBMIT** below to file this notice.

### Terms of Submission

In submitting this notice, each Issuer named above is:

- Notifying the SEC and/or each State in which this notice is filed of the offering of securities described and undertaking to furnish them, upon written request, the information furnished to offerees.
- Irrevocably appointing each of the Secretary of the SEC and, the Securities Administrator or other legally designated officer of the State in which the Issuer maintains its principal place of business and any State in which this notice is filed, as its agents for service of process, and agreeing that these persons may accept service on its behalf, of any notice, process or pleading, and further agreeing that such service may be made by registered or certified mail, in any Federal or state action, administrative proceeding, or arbitration brought against it in any place subject

to the jurisdiction of the United States, if the action, proceeding or arbitration (a) arises out of any activity in connection with the offering of securities that is the subject of this notice, and (b) is founded, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these statutes, or (ii) the laws of the State in which the issuer maintains its principal place of business or any State in which this notice is filed.

- Certifying that, if the issuer is claiming a Regulation D exemption for the offering, the issuer is not disqualified from relying on Regulation D for one of the reasons stated in Rule 505(b)(2)(iii) or Rule 506(d).

Each Issuer identified above has read this notice, knows the contents to be true, and has duly caused this notice to be signed on its behalf by the undersigned duly authorized person.

For signature, type in the signer's name or other letters or characters adopted or authorized as the signer's signature.

Issuer	Signature	Name of Signer	Title	Date
Ashe Capital Partners, LP	William R. Harker	William R. Harker	President of the General Partner	2018-10-05

FORM 13F FILER INFORMATION

0001632715 Filer CIK      XXXXXXXX Filer CCC      \_\_\_\_\_ File Number      06-30-2019 Period

Is this a LIVE or TEST Filing?       LIVE  TEST  
Would you like a return copy?       YES  
Is this an electronic copy of an official filing submitted in paper format?       YES

**Submission Contact Information**

Name \_\_\_\_\_  
Phone \_\_\_\_\_  
Email Address \_\_\_\_\_

**Notification Information**

Notify via Filing website only?       YES

Notification will automatically be sent to the Login CIK, Submission Contact, and Primary Issuers. Specify additional addresses below.

**Notification Email Addresses:**

\_\_\_\_\_  
\_\_\_\_\_

**255**  
**UNITED STATES**  
**SECURITIES AND EXCHANGE**  
**COMMISSION**  
**Washington, D.C. 20549**

OMB APPROVAL	
OMB Number:	3235-0006
Expires:	July 31, 2015
Estimated Average burden hours per response.....	23.8

**FORM 13F**

**FORM 13F COVER PAGE**

Report for the Calendar Year or Quarter Ended: 06-30-2019

Check here if Amendment: Amendment Number: \_\_\_\_\_

This Amendment (Check only one.):

- is a restatement.  
 adds new holdings entries.

**Institutional Investment Manager Filing this Report:**

Name: Ashe Capital Management, LP

Address: 530 Sylvan Ave.

Suite 101

Englewood Cliffs NJ 07632

Form 13F File Number: 028-16636

The institutional investment manager filing this report and the person by whom it is signed hereby represent that the person signing the report is authorized to submit it, that all information contained herein is true, correct and complete, and that it is understood that all required items, statements, schedules, lists, and tables, are considered integral parts of this form.

**Person Signing this Report on Behalf of Reporting Manager:**

Name: William R. Harker

Title: Co-Founder & President

Phone: 201-464-0962

**Signature, Place, and Date of Signing:**

/s/ William R. Harker Englewood Cliffs, NEW JERSEY 08-14-2019  
[Signature] [City, State] [Date]

Do you wish to provide information pursuant to Special Instruction 5?  Yes  No

**Additional Information**

**Report Type (Check only one.):**

- 13F HOLDINGS REPORT. (Check here if all holdings of this reporting manager are reported in this report.)  
 13F NOTICE. (Check here if no holdings reported are in this report, and all holdings are reported by other reporting manager(s).)

13F COMBINATION REPORT. (Check here if a portion of the holdings for this reporting manager are reported in this report and a portion are reported by other reporting manager(s).)

**FORM 13F SUMMARY PAGE**

**Report Summary:**

Number of Other Included Managers:	0	
Form 13F Information table Entry Total:	11	
Form 13F Information table Value Total:	1271463	(thousands)

Confidential information has been omitted from the public Form 13F report and filed separately with the Commission.

**List of Other Included Managers:**

Provide a numbered list of the name(s) and Form 13F number(s) of all institutional investment managers with respect to which this report is filed, other than the manager filing this report.

NONE



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> [Cookie Settings](#)

✓ [Accept Cookies](#)

# ValueAct Capital and Cooperation Agreement with Ashe Capital



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NEWS PROVIDED BY

**Allison Transmission Holdings Inc.** →

Feb 06, 2017, 15:06 ET

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INDIANAPOLIS, Feb. 6, 2017 /PRNewswire/ -- **Allison Transmission Holdings Inc. (NYSE: ALSN)** today announced that it has entered into a Stock Repurchase Agreement with ValueAct Capital Master Fund, L.P. ("ValueAct Capital") and has entered into a Cooperation Agreement with Ashe Capital Management LP ("Ashe Capital"). The Company also announced that William R. Harker of Ashe Capital will be nominated for election to the Company's board of directors at the Company's 2017 annual meeting of stockholders, taking the place of Gregory P. Spivy of ValueAct Capital, who has indicated that he will not stand for reelection.

"The Stock Repurchase Agreement with ValueAct Capital accelerates the share repurchase program authorized last fall by Allison Transmission's board of directors and reflects our growing confidence in what we believe is improved momentum in several of our end markets," said Lawrence E. Dewey, chairman and CEO of the Company. "We would like to thank Mr. Spivy and ValueAct Capital for the productive and positive relationship enjoyed by both parties. Allison Transmission and Ashe Capital have engaged in a series of thoughtful discussions about our business. We value our stockholders' input and look forward to working closely with Mr. Harker and Ashe Capital, maintaining meaningful stockholder representation on our board."

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Under the terms of the Stock Repurchase Agreement with ValueAct Capital, the Company has agreed to repurchase 10,525,204 shares of the Company's common stock, which is all of ValueAct Capital's holdings in the Company, at a purchase price of \$34.50 per share, representing aggregate consideration of approximately \$363 million. The transaction is expected to close on or about February 8, 2017, subject to customary closing conditions. In connection with the Company's repurchase of ValueAct Capital's stock, Mr. Spivy has notified the Company's board of directors that he will not stand for re-election at the 2017 annual meeting of stockholders.

Allison Transmission intends to fund the repurchase with cash on hand and borrowing under its revolving credit facility. The repurchase is being effected under the \$1 billion common stock repurchase program authorized by the board of directors in November 2016 after completing a review of the Company's business plan including product development and capital spending forecasts supporting growth initiatives and other shareholder value enhancing programs. The Company remains committed to maintaining a prudent capital structure commensurate with its business plan and underlying end markets, and expects to complete the aforementioned common stock repurchase program by December 2019.

The Cooperation Agreement provides for the nomination of Mr. Harker for election to the Company's board of directors and includes customary "standstill" provisions, by which Ashe Capital has agreed that it will not submit any nominations for election to the board of directors or stockholder proposals and will vote in favor of the election of the Company's board nominees and certain other proposals.

The Stock Repurchase Agreement and Cooperation Agreement are included as exhibits to the Current Report on Form 8-K filed by the Company today with the Securities and Exchange Commission.

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... based in the Netherlands, the company is headquartered in Indianapolis, Indiana, USA and employs approximately 2,700 people worldwide. With a market presence in more than 80 countries, Allison has regional headquarters in the Netherlands, China and Brazil with manufacturing facilities in the U.S., Hungary and India. Allison also has approximately 1,400 independent distributor and dealer locations worldwide. For more information, visit [allisontransmission.com](http://allisontransmission.com).

### Forward-Looking Statements

This press release contains forward-looking statements. All statements other than statements of historical fact contained in this press release are forward-looking statements, including all statements regarding future financial results. In some cases, you can identify forward-looking statements by terminology such as "may," "will," "should," "expect," "plans," "project," "anticipate," "believe," "estimate," "predict," "intend," "forecast," "could," "potential," "continue" or the negative of these terms or other similar terms or phrases. Forward-looking statements are not guarantees of future performance and involve known and unknown risks. Factors which may cause the actual results to differ materially from those anticipated at the time the forward-looking statements are made include, but are not limited to: risks related to our substantial indebtedness; uncertainty in the global regulatory and business environments in which we operate; our participation in markets that are competitive; the highly cyclical industries in which certain of our end users operate; the failure of markets outside North America to increase adoption of fully-automatic transmissions; the concentration of our net sales in our top five customers and the loss of any one of these; future reductions or changes in government subsidies for hybrid vehicles and other external factors impacting demand; U.S. defense spending; general economic and industry conditions; the discovery of defects in our products, resulting in delays in new model launches, recall campaigns and/or increased warranty costs and reduction in future sales or damage to our brand and reputation; our ability to prepare for, respond to and successfully achieve our objectives relating to technological and market developments, competitive threats and changing customer needs; risks associated with our international operations; labor strikes, work stoppages or similar labor disputes, which could significantly disrupt our operations or those of our principal customers; and other risks and uncertainties associated with our business described in our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K. Although we believe the

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SOURCE Allison Transmission Holdings Inc.

Related Links

<http://www.allisontransmission.com>

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 13D

INFORMATION TO BE INCLUDED IN STATEMENTS FILED PURSUANT TO RULE 13d-1(a) AND AMENDMENTS THERETO FILED PURSUANT TO RULE 13d-2(a)

Under the Securities Exchange Act of 1934 (Amendment No. 7)

Allison Transmission Holdings, Inc.

(Name of Issuer)

Common Stock, par value \$0.01 per share

(Title of Class of Securities)

01973R101

(CUSIP Number)

Jeffrey R. Katz, Esq.
Ropes & Gray LLP
800 Boylston Street
Boston, Massachusetts 02199
(617) 951-7072

(Name, Address and Telephone Number of Person Authorized to Receive Notices and Communications)

May 9, 2019

(Date of Event which Requires Filing of this Schedule)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of Rule 13d-1(e), 13d-1(f) or 13d-1(g), check the following box. [ ]

NOTE: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See Rule 13d-7 for other parties to whom copies are to be sent.

\* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

CUSIP No. 01973R101

<b>1</b>	NAME OF REPORTING PERSON	
	Ashe Capital Management, LP	
<b>2</b>	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP	(a) <input type="checkbox"/> (b) <input checked="" type="checkbox"/>
<b>3</b>	SEC USE ONLY	
<b>4</b>	SOURCE OF FUNDS	
	Not Applicable	
<b>5</b>	CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDING IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e)	<input type="checkbox"/>
<b>6</b>	CITIZENSHIP OR PLACE OF ORGANIZATION	
	Delaware	
	<b>7</b>	SOLE VOTING POWER
		4,977,042
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	<b>8</b>	SHARED VOTING POWER
		0
	<b>9</b>	SOLE DISPOSITIVE POWER
		4,977,042
	<b>10</b>	SHARED DISPOSITIVE POWER
		0
<b>11</b>	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH PERSON	
	4,977,042 Shares	
<b>12</b>	CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES	<input type="checkbox"/>
<b>13</b>	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11) (see Item 5)	
	4.1% <sup>(1)</sup>	
<b>14</b>	TYPE OF REPORTING PERSON	
	IA	

(1) Based on 120,303,552 shares of the Issuer's common stock outstanding as of May 9, 2019, consisting of 125,280,595 shares of the Issuer's common stock outstanding as of April 15, 2019, as reported in the Issuer's Quarterly Report on Form 10-Q for the period ended March 31, 2019 filed with the Securities and Exchange Commission on April 23, 2019 and giving effect to the transactions contemplated by the Stock Repurchase Agreement.

CUSIP No. 01973R101

<b>1</b>	NAME OF REPORTING PERSON	
	William C. Crowley	
<b>2</b>	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP	(a) <input type="checkbox"/> (b) <input checked="" type="checkbox"/>
<b>3</b>	SEC USE ONLY	
<b>4</b>	SOURCE OF FUNDS	
	Not Applicable	
<b>5</b>	CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDING IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e)	<input type="checkbox"/>
<b>6</b>	CITIZENSHIP OR PLACE OF ORGANIZATION	
	United States	
	<b>7</b>	SOLE VOTING POWER
		4,020 <sup>(2)</sup>
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	<b>8</b>	SHARED VOTING POWER
		0
	<b>9</b>	SOLE DISPOSITIVE POWER
		4,020 <sup>(2)</sup>
	<b>10</b>	SHARED DISPOSITIVE POWER
		0
<b>11</b>	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH PERSON	
	4,020 Shares <sup>(2)</sup>	
<b>12</b>	CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES	<input type="checkbox"/>
<b>13</b>	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11) (see Item 5)	
	Less than 0.1% <sup>(3)</sup>	
<b>14</b>	TYPE OF REPORTING PERSON	
	IN	

(2) Shares held in the William C. Crowley Roth IRA.

(3) Based on 120,303,552 shares of the Issuer's common stock outstanding as of May 9, 2019, consisting of 125,280,595 shares of the Issuer's common stock outstanding as of April 15, 2019, as reported in the Issuer's Quarterly Report on Form 10-Q for the period ended March 31, 2019 filed with the Securities and Exchange Commission on April 23, 2019 and giving effect to the transactions contemplated by the Stock Repurchase Agreement.

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CUSIP No. 01973R101

**Amendment No. 7 to Schedule 13D (Final Amendment)**

This Amendment No. 7 (“Amendment No. 7”) amends and supplements the statement on Schedule 13D filed with the Securities and Exchange Commission (the “SEC”) on November 6, 2015 (the “Original Schedule 13D”), Amendment No. 1 to the Original Schedule 13D filed with the SEC on February 11, 2016 (“Amendment No. 1”), Amendment No. 2 to the Original Schedule 13D filed with the SEC on February 12, 2016 (“Amendment No. 2”), Amendment No. 3 to the Original Schedule 13D filed with the SEC on March 17, 2016 (“Amendment No. 3”), Amendment No. 4 to the Original Schedule 13D filed with the SEC on February 7, 2017 (“Amendment No. 4”), Amendment No. 5 to the Original Schedule 13D filed with the SEC on May 19, 2017 (“Amendment No. 5”), Amendment No. 6 to the Original Schedule 13D filed with the SEC on May 8, 2019 (“Amendment No. 6”, and together with the Original Schedule 13D, Amendment No. 1, Amendment No. 2, Amendment No. 3, Amendment No. 4, Amendment No. 5, Amendment No. 6 and this Amendment No. 7, the “Schedule 13D”) with respect to the shares of common stock, par value \$0.01 per share (the “Shares”), of Allison Transmission Holdings, Inc., a Delaware corporation (the “Issuer”). Capitalized terms used herein and not otherwise defined in this Amendment No. 6 have the meanings set forth in the Schedule 13D.

**Item 4. Purpose of Transaction**

Item 4 of the Schedule 13D is hereby supplemented with the following information:

As disclosed in Amendment No. 6, on May 9, 2019, following the closing of the sale under the Stock Repurchase Agreement described in Item 5(c) below, Mr. Harker resigned from the board of directors with immediate effect.

**Item 5. Interest in Securities of the Issuer**

Paragraph (a) of Item 5 of the Schedule 13D is hereby amended and restated as follows:

(a) The information requested by this paragraph is incorporated herein by reference to the cover pages to this Amendment No. 7.

In addition, Mr. Harker received 10,318 Shares, representing less than 0.1% of the Issuer's common stock outstanding, from the Issuer on May 9, 2019 as a result of the vesting of deferred stock awards and associated dividend equivalents upon his resignation from the board of directors.

Paragraph (c) of Item 5 of the Schedule 13D is hereby amended and restated as follows:

(c) As contemplated by the Stock Repurchase Agreement disclosed in Amendment No. 6, on May 9, 2019, Ashe sold 4,977,043 Shares in a private sale to the Issuer at a price per Share of \$46.70, or an aggregate price of \$232,427,908.

Paragraph (e) of Item 5 of the Schedule 13D is hereby amended and restated as follows:

(e) The Reporting Persons ceased to be the beneficial owners of more than five percent of the Shares on May 9, 2019.

CUSIP No. 01973R101



After reasonable inquiry and to the best of their knowledge and belief, the undersigned certify that the information set forth in this statement is true, complete and correct.

Dated: May 10, 2019

ASHE CAPITAL MANAGEMENT, LP

By: /s/ William R. Harker  
Name: William R. Harker  
Title: Co-founder and President

/s/ William C. Crowley  
WILLIAM C. CROWLEY

EX-99.1 2 newsrelease.htm PRESS RELEASE

EXHIBIT 99.1

## **AutoZone Announces Two New Directors; Membership Expands to 11**

MEMPHIS, Tenn., Aug. 18, 2008 (PRIME NEWSWIRE) -- AutoZone, Inc. (NYSE:AZO) today announced the election of Robert R. Grusky and William C. Crowley to the AutoZone Board of Directors. In accordance with the recently announced agreement with its largest shareholder, ESL Investments, Inc., the Company agreed to add three new directors to the Board, two of whom were to be identified by ESL. Pursuant to the terms of this agreement, Messrs. Grusky and Crowley were identified by ESL. The Company expects to name the third new board member by the annual stockholders' meeting to be held in December.

In 2000, Mr. Grusky founded Hope Capital Management, LLC, an investment firm for which he serves as Managing Member. He also co-founded New Mountain Capital, LLC, a private equity firm, in 2000 and was a Principal, Managing Director and Member of New Mountain Capital from 2000 to 2005. He remains a Senior Advisor with the company. From 1998 to 2000, Mr. Grusky served as President of RSL Investments Corporation, the primary investment vehicle for the Hon. Ronald S. Lauder. Prior to 1998, Mr. Grusky also served in a variety of capacities at Goldman, Sachs & Co. in its Mergers & Acquisitions Department and Principal Investment Area. Mr. Grusky is a director of AutoNation, Inc. and Strayer Education, Inc.

Since March 2005, Mr. Crowley has served as a director of Sears Holdings Corporation, a broadline retailer. Additionally, he has served as Executive Vice President of Sears Holdings Corporation since March 2005 and as Chief Administrative Office of Sears Holdings Corporation since September 2005. Mr. Crowley has served as a director of Sears Canada Inc. since March 2005 and as the Chairman of the Board of Sears Canada Inc. since December 2006. Since January 1999, Mr. Crowley has been President and Chief Operating Officer of ESL Investments, Inc., a private investment firm. Prior to joining ESL Investments, Mr. Crowley was a Managing Director at Goldman, Sachs & Co. Mr. Crowley also serves as a director of AutoNation, Inc.

In making the announcement, Bill Rhodes, Chairman, President and CEO said, "I am excited to welcome these two new directors. We are fortunate to have such outstanding individuals join our Board. Both Bob and Bill possess a vast knowledge of retailing and finance, and, additionally, their strategic planning experience will serve AutoZone and our stockholders well."

### About AutoZone:

As of May 20, 2008, AutoZone sells auto and light truck parts, chemicals and accessories through 4,032 AutoZone stores in 48 states, the District of Columbia and Puerto Rico in the U.S. and 130 stores in Mexico.

AutoZone is the leading retailer and a leading distributor of automotive replacement parts and accessories in the United States. Each store carries an extensive product line for cars, sport utility vehicles, vans and light trucks, including new and remanufactured automotive hard parts, maintenance items, accessories, and non-automotive products. Many stores also have a commercial sales program that provides commercial credit and prompt delivery of parts and other products to local, regional and national repair garages, dealers, and service stations. AutoZone also sells the ALLDATA brand diagnostic and repair software. On the web, AutoZone sells diagnostic and repair information, and auto and light truck parts through [www.autozone.com](http://www.autozone.com). AutoZone does not derive revenue from automotive repair or installation.

CONTACT: AutoZone, Inc.  
Media:  
Ray Pohlman  
901 495-7962  
[ray.pohlman@autozone.com](mailto:ray.pohlman@autozone.com)  
Financial:  
Brian Campbell

9/1/2019

AutoZone Announces Two New Directors; Membership Expands to 11

**268**

901 495-7005

brian.campbell@autozone.com

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**FORM 10-K**

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**Annual Report pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934**

For the fiscal year ended August 26, 2017,

or

**Transition report pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934**

For the transition period from \_\_\_\_\_ to \_\_\_\_\_.

Commission file number 1-10714



**AUTOZONE, INC.**

(Exact name of registrant as specified in its charter)

Nevada  
(State or other jurisdiction of  
incorporation or organization)

62-1482048  
(I.R.S. Employer  
Identification No.)

123 South Front Street, Memphis, Tennessee  
(Address of principal executive offices)

38103  
(Zip Code)

(901) 495-6500

(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class  
Common Stock  
(\$0.01 par value)

Name of each exchange  
on which registered  
New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act:

None

Indicate by check mark if the Registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the Registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the Registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the Registrant was required to submit and post such files). Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405 of this chapter) is not contained herein, and will not be contained, to the best of Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer  Accelerated filer   
 Non-accelerated filer  (Do not check if a smaller reporting company) Smaller reporting company   
 Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the Registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes  No

The aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was last sold, or the average bid and asked price of such common equity, as of the last business day of the registrant's most recently completed second fiscal quarter was \$20,972,678,680.

The number of shares of Common Stock outstanding as of October 23, 2017, was 27,492,520.

### Documents Incorporated By Reference

Portions of the definitive Proxy Statement to be filed within 120 days of August 26, 2017, pursuant to Regulation 14A under the Securities Exchange Act of 1934 for the Annual Meeting of Stockholders to be held December 20, 2017, are incorporated by reference into Part III.

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Certain statements contained in this annual report are forward-looking statements. Forward-looking statements typically use words such as “believe,” “anticipate,” “should,” “intend,” “plan,” “will,” “expect,” “estimate,” “project,” “positioned,” “strategy” and similar expressions. These are based on assumptions and assessments made by our management in light of experience and perception of historical trends, current conditions, expected future developments and other factors that we believe to be appropriate. These forward-looking statements are subject to a number of risks and uncertainties, including without limitation: product demand; energy prices; weather; competition; credit market conditions; access to available and feasible financing; the impact of recessionary conditions; consumer debt levels; changes in laws or regulations; war and the prospect of war, including terrorist activity; inflation; the ability to hire and retain qualified employees; construction delays; the compromising of confidentiality, availability or integrity of information, including cyber attacks; and raw material costs of suppliers. Certain of these risks are discussed in more detail in the “Risk Factors” section contained in Item 1A under Part 1 of this Annual Report on Form 10-K for the year ended August 26, 2017, and these Risk Factors should be read carefully. Forward-looking statements are not guarantees of future performance and actual results; developments and business decisions may differ from those contemplated by such forward-looking statements, and events described above and in the “Risk Factors” could materially and adversely affect our business. Forward-looking statements speak only as of the date made. Except as required by applicable law, we undertake no obligation to update publicly any forward-looking statements, whether as a result of new information, future events or otherwise. Actual results may materially differ from anticipated results.

[Table of Contents](#)**PART I****Item 1. Business****Introduction**

AutoZone, Inc. (“AutoZone,” the “Company,” “we,” “our” or “us”) is the nation’s leading retailer, and a leading distributor, of automotive replacement parts and accessories in the United States. We began operations in 1979 and at August 26, 2017, operated 5,465 AutoZone stores in the United States, including Puerto Rico; 524 stores in Mexico; 14 stores in Brazil; and 26 Interamerican Motor Corporation (“IMC”) branches. Each AutoZone store carries an extensive product line for cars, sport utility vehicles, vans and light trucks, including new and remanufactured automotive hard parts, maintenance items, accessories and non-automotive products. At August 26, 2017, in 4,592 of our domestic AutoZone stores, we also had a commercial sales program that provides commercial credit and prompt delivery of parts and other products to local, regional and national repair garages, dealers, service stations and public sector accounts. We also have commercial programs in AutoZone stores in Mexico and Brazil. IMC branches carry an extensive line of original equipment quality import replacement parts. We also sell the ALLDATA brand automotive diagnostic and repair software through [www.alldata.com](http://www.alldata.com) and [www.alldatadiy.com](http://www.alldatadiy.com). Additionally, we sell automotive hard parts, maintenance items, accessories and non-automotive products through [www.autozone.com](http://www.autozone.com), and accessories, performance and replacement parts through [www.autoanything.com](http://www.autoanything.com), and our commercial customers can make purchases through [www.autozonepro.com](http://www.autozonepro.com) and [www.imcparts.net](http://www.imcparts.net). We do not derive revenue from automotive repair or installation services.

At August 26, 2017, our AutoZone stores and IMC branches were in the following locations:

	<b>Location Count</b>
Alabama	110
Alaska	8
Arizona	136
Arkansas	64
California	585
Colorado	87
Connecticut	47
Delaware	16
Florida	318
Georgia	200
Hawaii	4
Idaho	28
Illinois	238
Indiana	155
Iowa	29
Kansas	50
Kentucky	95
Louisiana	123
Maine	13
Maryland	75
Massachusetts	81
Michigan	188
Minnesota	54
Mississippi	94
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Oregon	43
Pennsylvania	177
Puerto Rico	43
Rhode Island	17
South Carolina	88
South Dakota	7
Tennessee	165
Texas	597
Utah	58
Vermont	2
Virginia	123
Washington	88
Washington, DC	5
West Virginia	44
Wisconsin	67
Wyoming	9
Total Domestic AutoZone stores	<u>5,465</u>
Mexico	524
Brazil	<u>14</u>
Total AutoZone stores	<u>6,003</u>
IMC branches	<u>26</u>
Total locations	<u><u>6,029</u></u>

**Marketing and Merchandising Strategy**

We are dedicated to providing customers with superior service and trustworthy advice as well as quality automotive parts and products at a great value in conveniently located, well-designed stores. Key elements of this strategy are:

*Customer Service*

Customer service is the most important element in our marketing and merchandising strategy, which is based upon consumer marketing research. We emphasize that our AutoZoners (employees) should always put customers first by providing prompt, courteous service and trustworthy advice. Our electronic parts catalog assists in the selection of parts as well as identifying any associated warranties that are offered by us or our vendors. We sell automotive hard parts, maintenance items, accessories and non-automotive parts through [www.autozone.com](http://www.autozone.com) for pick-up in store or to be shipped directly to a customer's home or business. Additionally, we offer smartphone apps that provide customers with store locations, driving directions, operating hours, ability to purchase products and product availability.

Our stores generally open at 7:30 or 8 a.m. and close between 8 and 10 p.m. Monday through Saturday and typically open at 9 a.m. and close between 6 and 9 p.m. on Sunday. However, some stores are open 24 hours, and some have extended hours of 6 or 7 a.m. until midnight seven days a week.

We also provide specialty tools through our Loan-A-Tool program. Customers can borrow a specialty tool, such as a steering wheel puller, for which a do-it-yourself ("DIY") customer or a repair shop would have little or no use other than for a single job. AutoZoners also provide other free services, including check engine light readings where allowed by law, battery charging, the collection of used oil for recycling, and the testing of starters, alternators and batteries.

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### *Merchandising*

The following tables show some of the types of products that we sell by major category of items:

<u>Failure</u>	<u>Maintenance</u>	<u>Discretionary</u>
A/C Compressors	Antifreeze & Windshield Washer Fluid	Air Fresheners
Batteries & Accessories	Brake Drums, Rotors, Shoes & Pads	Cell Phone Accessories
Bearings	Chemicals, including Brake & Power	Drinks & Snacks
Belts & Hoses	Steering Fluid, Oil & Fuel Additives	Floor Mats & Seat Covers
Calipers	Oil & Transmission Fluid	Interior & Exterior Accessories
Carburetors	Oil, Air, Fuel & Transmission Filters	Mirrors
Chassis	Oxygen Sensors	Performance Products
Clutches	Paint & Accessories	Protectants & Cleaners
CV Axles	Refrigerant & Accessories	Sealants & Adhesives
Engines	Shock Absorbers & Struts	Steering Wheel Covers
Fuel Pumps	Spark Plugs & Wires	Stereos & Radios
Fuses	Windshield Wipers	Tools
Ignition		Wash & Wax
Lighting		
Mufflers		
Radiators		
Tire Repair		
Thermostats		
Starters & Alternators		
Water Pumps		

We believe that the satisfaction of our customers is often impacted by our ability to provide specific automotive products as requested. Each store carries the same basic products, but we tailor our hard parts inventory to the makes and models of the vehicles in each store's trade area, and our sales floor products are tailored to the local store's demographics. Our hub stores (including mega hubs, which carry an even broader assortment) carry a larger assortment of products that are delivered to local satellite stores. We are constantly updating the products we offer to ensure that our inventory matches the products our customers need or desire.

### *Pricing*

We want to be the value leader in our industry, by consistently providing quality merchandise at the right price, backed by a satisfactory warranty and outstanding customer service. For many of our products, we offer multiple value choices in a good/better/best assortment, with appropriate price and quality differences from the "good" products to the "better" and "best" products. A key differentiating component versus our competitors is our exclusive line of in-house brands, which includes the Valucraft, AutoZone, SureBilt, ProElite, Duralast, Duralast Max, Duralast Gold, Duralast Platinum, Duralast ProPower and Duralast GT brands. We believe that our overall value compares favorably to that of our competitors.

### *Brand Marketing: Advertising and Promotions*

We believe that targeted advertising and promotions play important roles in succeeding in today's environment. We are constantly working to understand our customers' wants and needs so that we can build long-lasting, loyal relationships. We utilize promotions, advertising and loyalty programs primarily to highlight our great value and the availability of high quality parts. Broadcast and internet media are our primary advertising methods of driving retail traffic to our stores, while we leverage a dedicated sales force and our ProVantage loyalty program to drive commercial sales. In the stores, we utilize in-store signage, in-store circulars, and creative product placement and promotions to help educate customers about products that they need.

### *Store Design and Visual Merchandising*

We design and build stores for high visual impact. The typical AutoZone store utilizes colorful exterior and interior signage, exposed beams and ductwork and brightly lit interiors. Maintenance products, accessories and non-automotive items are attractively displayed for easy browsing by customers. In-store signage and special displays promote products on floor displays, end caps and shelves.

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### **Commercial**

Our commercial sales program operates in a highly fragmented market, and we are one of the leading distributors of automotive parts and other products to local, regional and national repair garages, dealers, service stations and public sector accounts in the United States, Puerto Rico and Mexico. As a part of the domestic store program, we offer credit and delivery to our customers, as well as online ordering through [www.autozonepro.com](http://www.autozonepro.com) and [www.imcparts.net](http://www.imcparts.net). Through our hub stores, we offer a greater range of parts and products desired by professional technicians. We have dedicated sales teams focused on independent repair shops as well as national, regional and public sector commercial accounts.

### **Store Operations**

#### *Store Formats*

Substantially all AutoZone stores are based on standard store formats, resulting in generally consistent appearance, merchandising and product mix. Approximately 85% to 90% of each store's square footage is selling space. In our satellite stores, approximately 40% to 45% of our space is dedicated to hard parts inventory, while our hub stores and mega hubs have 75% to 85% of their space utilized for hard parts. The hard parts inventory area is generally fronted by counters or pods that run the depth or length of the store, dividing the hard parts area from the remainder of the store. The remaining selling space contains displays of maintenance, accessories and non-automotive items.

We believe that our stores are "destination stores," generating their own traffic rather than relying on traffic created by adjacent stores. Therefore, we situate most stores on major thoroughfares with easy access and good parking.

#### *Store Personnel and Training*

We provide on-the-job training as well as formal training programs, including an annual national sales meeting, store meetings on specific sales and product topics, standardized training manuals and computer based modules and a specialist program that provides training to AutoZoners in several areas of technical expertise from the Company, our vendors and independent certification agencies. All domestic AutoZoners are encouraged to complete tests resulting in certifications by the National Institute for Automotive Service Excellence ("ASE"), which is broadly recognized for training certification in the automotive industry. Training is supplemented with frequent store visits by management.

Store managers, sales representatives, commercial sales managers, and managers at various levels across the organization receive financial incentives through performance-based bonuses. In addition, our growth has provided opportunities for the promotion of qualified AutoZoners. We believe these opportunities are important to attract, motivate and retain high quality AutoZoners.

All store and branch support functions are centralized in our store support centers located in Memphis, Tennessee; Monterrey, Mexico; Chihuahua, Mexico and Sao Paulo, Brazil, and our branch support center located in Canoga Park, California. We believe that this centralization enhances consistent execution of our merchandising and marketing strategies at the store level, while reducing expenses and cost of sales.

#### *Store Automation*

All of our AutoZone stores have Z-net, our proprietary electronic catalog that enables our AutoZoners to efficiently look up the parts that our customers need and to provide complete job solutions, advice and information for customer vehicles. Z-net provides parts information based on the year, make, model and engine type of a vehicle and also tracks inventory availability at the store, at other nearby stores and through special order. The Z-net display screens are placed on the hard parts counter or pods, where both the AutoZoner and customer can view the screen.

Our AutoZone stores utilize our computerized proprietary Store Management System, which includes bar code scanning and point-of-sale data collection terminals. The Store Management System provides administrative assistance and improved personnel scheduling at the store level, as well as enhanced merchandising information and improved inventory control. We believe the Store Management System also enhances customer service through faster processing of transactions and simplified warranty and product return procedures.

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### Store Development

The following table reflects our location development during the past five fiscal years:

	Fiscal Year				
	2017	2016	2015	2014	2013
Locations:					
Beginning	5,814	5,609	5,391	5,201	5,006
Acquired <sup>(1)</sup>	—	—	17	—	—
New	215	205	202	190	197
Closed	—	—	1	—	2
Net new	215	205	201	190	195
Relocated	5	6	5	8	11
Ending	6,029	5,814	5,609	5,391	5,201

(1) 17 IMC branches acquired on September 27, 2014.

We believe that expansion opportunities exist in markets that we do not currently serve, as well as in markets where we can achieve a larger presence. We undertake substantial research prior to entering new markets. The most important criteria for opening a new AutoZone store or IMC branch are the projected future profitability and the ability to achieve our required investment hurdle rate. Key factors in selecting new site and market locations for AutoZone stores and IMC branches include population, demographics, vehicle profile, customer buying trends, commercial businesses, number and strength of competitors' stores and the cost of real estate. In reviewing the vehicle profile, we also consider the number of vehicles that are seven years old and older, or "our kind of vehicles"; these vehicles are generally no longer under the original manufacturers' warranties and require more maintenance and repair than newer vehicles. We seek to open new AutoZone stores in high visibility sites in high traffic locations within or contiguous to existing market areas and attempt to cluster development in markets in a relatively short period of time. When selecting future sites and market locations for our IMC branches, we look for locations close to major highways to support IMC's delivery schedule and also consider the population of AutoZone stores in the market. In addition to continuing to lease or develop our own locations, we evaluate and may make strategic acquisitions.

### Purchasing and Supply Chain

Merchandise is selected and purchased for all AutoZone stores through our store support centers located in Memphis, Tennessee; Monterrey, Mexico and Sao Paulo, Brazil. Additionally, we have an office in Shanghai, China to support our sourcing efforts in Asia. Merchandise is selected and purchased for all IMC branches through our branch support center located in Canoga Park, California. In fiscal 2017, one class of similar products accounted for approximately 11 percent of our total sales, and one vendor supplied approximately 11 percent of our purchases. No other class of similar products accounted for 10 percent or more of our total sales, and no other individual vendor provided more than 10 percent of our total purchases. We believe that alternative sources of supply exist, at similar costs, for most types of product sold. Most of our merchandise flows through our distribution centers to our stores by our fleet of tractors and trailers or by third-party trucking firms.

We ended fiscal 2017 with 186 domestic hub stores, which have a larger assortment of products as well as regular replenishment items that can be delivered to a store in its network within 24 hours. Hub stores are generally replenished from distribution centers multiple times per week. Hub stores have increased our ability to distribute products on a timely basis to many of our stores and to expand our product assortment.

During fiscal 2014 and 2015, we tested two new concepts of our domestic supply chain strategy, increased delivery frequency to our stores utilizing our distribution centers and significantly expanded parts assortments in select stores we call mega hubs. Our tests were concluded during fiscal 2015, and both initiatives were expanded to additional locations in fiscal 2016 and 2017.

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Increased delivery frequency focuses on improving our in-stock position of our core store-stocked product by providing deliveries to certain stores multiple times per week. We are continuing to test our new frequency of delivery for certain volume stores to ensure the model is producing sufficient benefit to justify the costs. We had roughly 2,300 stores receiving more deliveries multiple times per week at the end of the third quarter of fiscal 2017. As the results have not been conclusive to date, we are continuing to test different scenarios to determine the optimal approach.

A mega hub store carries inventory of 80,000 to 100,000 unique SKUs, approximately twice what a hub store carries. Mega hubs provide coverage to both surrounding stores and other hub stores multiple times a day or on an overnight basis. Currently, we have over 4,000 stores with access to mega hub inventory. A majority of these 4,000 stores receive their service on an overnight basis today, but as we expand our mega hubs, more of them will receive this service same day and many will receive it multiple times per day. We ended fiscal 2017 with 16 mega hubs, an increase of five since fiscal 2016.

## **Competition**

The sale of automotive parts, accessories and maintenance items is highly competitive in many areas, including name recognition, product availability, customer service, store location and price. AutoZone competes in the aftermarket auto parts industry, which includes both the retail DIY and commercial do-it-for-me (“DIFM”) auto parts and products markets.

Competitors include national, regional and local auto parts chains, independently owned parts stores, online parts stores, wholesale distributors, jobbers, repair shops, car washes and auto dealers, in addition to discount and mass merchandise stores, department stores, hardware stores, supermarkets, drugstores, convenience stores, home stores, and other online retailers that sell aftermarket vehicle parts and supplies, chemicals, accessories, tools and maintenance parts. AutoZone competes on the basis of customer service, including the trustworthy advice of our AutoZoners; merchandise quality, selection and availability; price; product warranty; store layouts, location and convenience; and the strength of our AutoZone brand name, trademarks and service marks.

## **Trademarks and Patents**

We have registered several service marks and trademarks in the United States Patent and Trademark office as well as in certain other countries, including our service marks, “AutoZone” and “Get in the Zone,” and trademarks, “AutoZone,” “Duralast,” “Duralast Gold,” “Duralast Platinum,” “Duralast ProPower,” “Duralast ProPower Plus,” “Duralast ProPower Ultra,” “Duralast ProPower AGM,” “Valucraft,” “ProElite,” “SureBilt,” “ALLDATA,” “AutoAnything,” “IMC,” “Loan-A-Tool” and “Z-net.” We believe that these service marks and trademarks are important components of our marketing and merchandising strategies.

## **Employees**

As of August 26, 2017, we employed over 87,000 persons, approximately 61 percent of whom were employed full-time. About 90 percent of our AutoZoners were employed in stores or in direct field supervision, approximately 6 percent in distribution centers and approximately 4 percent in store support and other functions. Included in the above numbers are approximately 8,200 persons employed in our Mexico and Brazil operations.

We have never experienced any material labor disruption and believe that relations with our AutoZoners are good.

## **AutoZone Websites**

AutoZone’s primary website is at <http://www.autozone.com>. We make available, free of charge, at our investor relations website, <http://www.autozoneinc.com>, our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, proxy statements, registration statements and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities and Exchange Act of 1934, as amended, as soon as reasonably feasible after we electronically file such material with, or furnish it to, the Securities and Exchange Commission. Our website and the information contained therein or linked thereto are not intended to be incorporated into this Annual Report or Form 10-K.

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### **Executive Officers of the Registrant**

The following list describes our executive officers. The title of each executive officer includes the words “Customer Satisfaction” which reflects our commitment to customer service. Officers are elected by and serve at the discretion of the Board of Directors.

*William C. Rhodes, III, 52—Chairman, President and Chief Executive Officer, Customer Satisfaction*

William C. Rhodes, III, was named Chairman of AutoZone during fiscal 2007 and has been President, Chief Executive Officer and a director since March 2005. Prior to his appointment as President and Chief Executive Officer, Mr. Rhodes was Executive Vice President – Store Operations and Commercial. Previously, he held several key management positions with the Company. Prior to 1994, Mr. Rhodes was a manager with Ernst & Young LLP. Mr. Rhodes is a member of the Board of Directors for Dollar General Corporation.

*William T. Giles, 58—Chief Financial Officer and Executive Vice President – Finance and Information Technology, Customer Satisfaction*

William T. Giles was named Chief Financial Officer during May 2006. He has also held other responsibilities at various times including Executive Vice President of Finance, Information Technology, ALLDATA and Store Development. From 1991 to May 2006, he held several positions with Linens N’ Things, Inc., most recently as the Executive Vice President and Chief Financial Officer. Prior to 1991, he was with Melville, Inc. and PricewaterhouseCoopers. Mr. Giles is a member of the Board of Directors for Brinker International.

*Mark A. Finestone, 56—Executive Vice President – Merchandising, Supply Chain and Marketing, Customer Satisfaction*

Mark A. Finestone was named Executive Vice President – Merchandising, Supply Chain and Marketing during October 2015. Previously, he was Senior Vice President – Merchandising and Store Development since 2014, Senior Vice President – Merchandising from 2008 to 2014, and Vice President – Merchandising from 2002 to 2008. Prior to joining AutoZone in 2002, Mr. Finestone worked for May Department Stores for 19 years where he held a variety of leadership roles which included Divisional Vice President, Merchandising.

*William W. Graves, 57—Executive Vice President – Mexico, Brazil, IMC and Store Development, Customer Satisfaction*

William W. Graves was named Executive Vice President – Mexico, Brazil, IMC and Store Development during October 2015. Previously, he was Senior Vice President – Supply Chain and International since 2012. Prior thereto, he was Senior Vice President – Supply Chain from 2006 to 2012 and Vice President – Supply Chain from 2000 to 2006. From 1992 to 2000, Mr. Graves served in various capacities within the Company.

*Thomas B. Newbern, 55—Executive Vice President – Store Operations, Commercial, Loss Prevention and ALLDATA, Customer Satisfaction*

Thomas B. Newbern was named Executive Vice President – Store Operations, Commercial, Loss Prevention and ALLDATA during February 2017. Prior to that, he was Executive Vice President – Store Operations, Commercial and Loss Prevention since October 2015. Previously, he held the titles Senior Vice President – Store Operations and Loss Prevention from 2014 to 2015, Senior Vice President – Store Operations and Store Development from 2012 to 2014, Senior Vice President – Store Operations from 2007 to 2012 and Vice President – Store Operations from 1998 to 2007. Prior thereto, he served in various capacities within the Company.

*Philip B. Daniele, 48—Senior Vice President – Commercial, Customer Satisfaction*

Philip B. Daniele was elected Senior Vice President – Commercial during November 2015. Prior to that, he was Vice President – Commercial since 2013 and Vice President – Merchandising from 2008 to 2013. Previously, he was Vice President – Store Operations from 2005 to 2008. From 1993 until 2008, Mr. Daniele served in various capacities within the Company.

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### *Ronald B. Griffin, 63—Senior Vice President and Chief Information Officer, Customer Satisfaction*

Ronald B. Griffin was elected Senior Vice President and Chief Information Officer during June 2012. Prior to that, he was Senior Vice President, Global Information Technology at Hewlett-Packard Company. During his tenure at Hewlett-Packard Company, he also served as the Chief Information Officer for the Enterprise Business Division. Prior to that, Mr. Griffin was Executive Vice President and Chief Information Officer for Fleming Companies, Inc. He also spent over 12 years with The Home Depot, Inc., with the last eight years in the role of Chief Information Officer. Mr. Griffin also served at Deloitte & Touche LLP and Delta Air Lines, Inc.

### *James C. Griffith, 52—Senior Vice President – Store Operations, Customer Satisfaction*

James C. Griffith was named Senior Vice President – Store Operations in November 2015. Prior to that, he was Vice President – Store Development since October 2010 and Vice President – Store Operations since 2007. Prior thereto, he held several management positions within the Company.

### *William R. Hackney, 52—Senior Vice President – Merchandising, Customer Satisfaction*

William R. Hackney was named Senior Vice President, Merchandising in October 2015. His career with AutoZone began in 1983, and he has held several key management roles within the Company, including Vice President – Store Operations Support and Vice President – Merchandising.

### *Rodney C. Halsell, 49—Senior Vice President – Supply Chain, Customer Satisfaction*

Rodney C. Halsell was named Senior Vice President – Supply Chain during October 2015. Prior to that, he was Vice President – Distribution since 2005. From 1985 to 2005, he held several management positions and served in various capacities within the Company.

### *Charlie Pleas, III, 52—Senior Vice President and Controller, Customer Satisfaction*

Charlie Pleas, III, was elected Senior Vice President and Controller during 2007. Prior to that, he was Vice President and Controller since 2003. Previously, he was Vice President – Accounting since 2000, and Director of General Accounting since 1996. Prior to joining AutoZone, Mr. Pleas was a Division Controller with Fleming Companies, Inc. where he served in various capacities since 1988. Mr. Pleas is a member of the Board of Directors for Kirkland's Inc.

### *Albert Saltiel, 53—Senior Vice President – Marketing and E-Commerce, Customer Satisfaction*

Albert Saltiel was named Senior Vice President – Marketing and E-Commerce during October 2014. Previously, he was elected Senior Vice President – Marketing since 2013. Prior to that, he was Chief Marketing Officer and a key member of the leadership team at Navistar International Corporation. Mr. Saltiel has also been with Sony Electronics as General Manager, Marketing, and Ford Motor Company where he held multiple marketing roles.

### *Richard C. Smith, 53—Senior Vice President – Human Resources, Customer Satisfaction*

Richard C. Smith was elected Senior Vice President – Human Resources in December 2015. He has been an AutoZoner since 1985, previously holding the position of Vice President of Stores since 1997. Prior thereto, he served in various capacities within the Company.

### *Kristen C. Wright, 41—Senior Vice President – General Counsel & Secretary, Customer Satisfaction*

Kristen C. Wright was named Senior Vice President – General Counsel & Secretary effective January 2014. She previously held the title of Vice President – Assistant General Counsel & Assistant Secretary since January 2012. Before joining AutoZone, she was a partner with the law firm of Bass, Berry & Sims PLC.

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### **Item 1A. Risk Factors**

Our business is subject to a variety of risks. Set forth below are certain of the important risks that we face, the occurrence of which could have a material adverse effect on our business. These risks are not the only ones we face. Our business could also be affected by additional factors that are presently unknown to us or that we currently believe to be immaterial to our business.

#### **If demand for our products slows, then our business may be materially adversely affected.**

Demand for the products we sell may be affected by a number of factors we cannot control, including:

- the number of older vehicles in service. Vehicles seven years old or older are generally no longer under the original vehicle manufacturers' warranties and tend to need more maintenance and repair than newer vehicles.
- rising energy prices. Increases in energy prices may cause our customers to defer purchases of certain of our products as they use a higher percentage of their income to pay for gasoline and other energy costs and may drive their vehicles less, resulting in less wear and tear and lower demand for repairs and maintenance.
- the economy. In periods of declining economic conditions, consumers may defer vehicle maintenance or repair and discretionary spending. Additionally, such conditions may affect our customers' ability to obtain credit. During periods of expansionary economic conditions, more of our DIY customers may pay others to repair and maintain their vehicles instead of working on their own vehicles, or they may purchase new vehicles.
- the weather. Mild weather conditions may lower the failure rates of automotive parts, while wet conditions may cause our customers to defer maintenance and repair on their vehicles. Extremely hot or cold conditions may enhance demand for our products due to increased failure rates of our customers' automotive parts.
- technological advances. Advances in automotive technology and parts design can result in cars needing maintenance less frequently and parts lasting longer.

For the long term, demand for our products may be affected by:

- the number of miles vehicles are driven annually. Higher vehicle mileage increases the need for maintenance and repair. Mileage levels may be affected by gas prices and other factors.
- the quality of the vehicles manufactured by the original vehicle manufacturers and the length of the warranties or maintenance offered on new vehicles.
- restrictions on access to telematics and diagnostic tools and repair information imposed by the original vehicle manufacturers or by governmental regulation, which may cause vehicle owners to rely on dealers to perform maintenance and repairs.

All of these factors could result in immediate and longer term declines in the demand for our products, which could adversely affect our sales, cash flows and overall financial condition.

#### **If we are unable to compete successfully against other businesses that sell the products that we sell, we could lose customers and our sales and profits may decline.**

The sale of automotive parts, accessories and maintenance items is highly competitive, and sales volumes are dependent on many factors, including name recognition, product availability, customer service, store location and price. Competitors are opening locations near our existing locations. AutoZone competes as a provider in both the DIY and DIFM auto parts and accessories markets.



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Our competitors include national, regional and local auto parts chains, independently owned parts stores, online automotive parts stores or marketplaces, wholesale distributors, jobbers, repair shops, car washes and auto dealers, in addition to discount and mass merchandise stores, hardware stores, supermarkets, drugstores, convenience stores, home stores, and other retailers that sell aftermarket vehicle parts and supplies, chemicals, accessories, tools and maintenance parts. Although we believe we compete effectively on the basis of customer service, including the knowledge and expertise of our AutoZoners; merchandise quality, selection and availability; product warranty; store layout, location and convenience; price; and the strength of our AutoZone brand name, trademarks and service marks, some of our competitors may gain competitive advantages, such as greater financial and marketing resources allowing them to sell automotive products at lower prices, larger stores with more merchandise, longer operating histories, more frequent customer visits and more effective advertising. Online and multi-channel retailers often focus on delivery services, offering customers faster, guaranteed delivery times and low-price or free shipping. Some online businesses have lower operating costs than we do and may not be required to collect and remit sales taxes in all U.S. states, which may negatively impact our ability to be price-competitive on a tax-included basis. In addition, because our business strategy is based on offering superior levels of customer service to complement the products we offer, our cost structure is higher than some of our competitors, which also puts pressure on our margins.

Consumers are embracing shopping online and through mobile commerce applications. With the increasing use of digital tools and social media, and our competitors' increased focus on optimizing customers' online experience, our customers are quickly able to compare prices, product assortment, and feedback from other customers before purchasing our products either online, in the physical stores, or through a combination of both offerings. We believe that we compete effectively on the basis of merchandise availability as a result of investments in inventory available for immediate sale, the development of a robust hub and mega hub distribution network providing efficient access to obtain products required on-demand, options to order products online or by telephone and pick them up in stores and options for special orders directly from our vendors. We also offer hassle-free returns to our customers. In addition, we believe that customers value the personal interaction with a salesperson that is qualified to offer trustworthy advice and provide other free services such as parts testing.

We also utilize promotions, advertising and our loyalty programs to drive customer traffic and compete more effectively, and we must regularly assess and adjust our efforts to address changes in the competitive marketplace. If we are unable to continue to manage readily-available inventory demand and competitive delivery options as well as develop successful competitive strategies, including the maintenance of effective promotions, advertising and loyalty card programs, or if our competitors develop more effective strategies, we could lose customers and our sales and profits may decline.

### **We may not be able to sustain our historic rate of sales growth.**

We have increased our location count in the past five fiscal years, growing from 5,006 locations at August 25, 2012, to 6,029 locations at August 26, 2017, an average location increase per year of 4%. Additionally, we have increased annual revenues in the past five fiscal years from \$8.604 billion in fiscal 2012 to \$10.889 billion in fiscal 2017, an average increase per year of 5%. Annual revenue growth is driven by the opening of new locations, the development of new commercial programs and increases in same store sales. We open new locations only after evaluating customer buying trends and market demand/needs, all of which could be adversely affected by persistent unemployment, wage cuts, small business failures and microeconomic conditions unique to the automotive industry. Same store sales are impacted both by customer demand levels and by the prices we are able to charge for our products, which can also be negatively impacted by the economic pressures mentioned above. We cannot provide any assurance that we will continue to open locations at historical rates or continue to achieve increases in same store sales.

### **Consolidation among our competitors may negatively impact our business.**

Historically some of our competitors have merged. Consolidation among our competitors could enhance their market share and financial position, provide them with the ability to achieve better purchasing terms and provide more competitive prices to customers for whom we compete, and allow them to utilize merger synergies and cost savings to increase advertising and marketing budgets to more effectively compete for customers. Consolidation by our competitors could also increase their access to local market parts assortment.

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These consolidated competitors could take sales volume away from us in certain markets, could achieve greater market penetration, could cause us to change our pricing with a negative impact on our margins or could cause us to spend more money to maintain customers or seek new customers, all of which could negatively impact our business.

### **If we cannot profitably increase our market share in the commercial auto parts business, our sales growth may be limited.**

Although we are one of the largest sellers of auto parts in the commercial market, we must effectively compete against national and regional auto parts chains, independently owned parts stores, wholesalers and jobbers in order to increase our commercial market share. Although we believe we compete effectively in the commercial market on the basis of customer service, merchandise quality, selection and availability, price, product warranty, distribution locations, and the strength of our AutoZone brand name, trademarks and service marks, some automotive aftermarket participants have been in business for substantially longer periods of time than we have, and as a result have developed long-term customer relationships and have large available inventories. If we are unable to profitably develop new commercial customers, our sales growth may be limited.

### **A downgrade in our credit ratings or a general disruption in the credit markets could make it more difficult for us to access funds, refinance our debt, obtain new funding or issue securities.**

Our short-term and long-term debt is rated investment grade by the major rating agencies. These investment-grade credit ratings have historically allowed us to take advantage of lower interest rates and other favorable terms on our short-term credit lines, in our senior debt offerings and in the commercial paper markets. To maintain our investment-grade ratings, we are required to meet certain financial performance ratios. A change by the rating agencies in these ratios, an increase in our debt, and/or a decline in our earnings could result in downgrades in our credit ratings. A downgrade in our credit ratings could limit our access to public debt markets, limit the institutions willing to provide credit facilities to us, result in more restrictive financial and other covenants in our public and private debt and would likely significantly increase our overall borrowing costs and adversely affect our earnings.

Moreover, significant deterioration in the financial condition of large financial institutions during the Great Recession resulted in a severe loss of liquidity and availability of credit in global credit markets and in more stringent borrowing terms. During brief time intervals, there was limited liquidity in the commercial paper markets, resulting in an absence of commercial paper buyers and extraordinarily high interest rates. We can provide no assurance that such similar events that occurred during the Great Recession will not occur again in the foreseeable future. Conditions and events in the global credit markets could have a material adverse effect on our access to short-term and long-term debt and the terms and cost of that debt.

### **Significant changes in macroeconomic and geo-political factors could adversely affect our financial condition and results of operations.**

Macroeconomic conditions impact both our customers and our suppliers. Job growth in the U.S. was stagnated and unemployment was at historically high levels during the Great Recession; however, in recent years, the unemployment rate has improved to pre-recession levels. Moreover, the United States government continues to operate under historically large deficits and debt burden. Continued distress in global credit markets, business failures, inflation, foreign exchange rate fluctuations, significant geo-political conflicts, continued volatility in energy prices and other factors continue to affect the global economy. Moreover, rising energy prices could impact our merchandise distribution, commercial delivery, utility and product costs. Over the short term, such factors could positively impact our business. Over a longer period of time, all of these macroeconomic and geo-political conditions could adversely affect our sales growth, margins and overhead, which could adversely affect our financial condition and operations.

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### **Our business depends upon hiring and retaining qualified employees.**

We believe that much of our brand value lies in the quality of the more than 87,000 AutoZoners employed in our stores, distribution centers, store support centers, ALLDATA, AutoAnything and IMC. Our workforce costs represent our largest operating expense, and our business is subject to employment laws and regulations, including requirements related to minimum wage and benefits. In addition, the implementation of potential regulatory changes relating to overtime exemptions and benefits for certain employees under federal and state laws could result in increased labor costs to our business and negatively impact our operating results. We cannot be assured that we can continue to hire and retain qualified employees at current wage rates since we operate in a competitive labor market and there is a risk of market increases in compensation.

If we are unable to hire, properly train and/or retain qualified employees, we could experience higher employment costs, reduced sales, losses of customers and diminution of our brand, which could adversely affect our earnings. If we do not maintain competitive wages, our customer service could suffer due to a declining quality of our workforce or, alternatively, our earnings could decrease if we increase our wage rates. A violation or change in employment laws and/or regulations could have a material adverse effect on our results of operations, financial condition and cash flows.

### **Inability to acquire and provide quality merchandise at competitive prices could adversely affect our sales and results of operations.**

We are dependent upon our domestic and international vendors continuing to supply us with quality merchandise at favorable prices and payment terms. If our merchandise offerings do not meet our customers' expectations regarding quality and safety, we could experience lost sales, increased costs and exposure to legal and reputational risk. All of our vendors must comply with applicable product safety laws, and we are dependent on them to ensure that the products we buy comply with all safety and quality standards. Events that give rise to actual, potential or perceived product safety concerns could expose us to government enforcement action or private litigation and result in costly product recalls and other liabilities. To the extent our suppliers are subject to added government regulation of their product design and/or manufacturing processes, the cost of the merchandise we purchase may rise. In addition, negative customer perceptions regarding the safety or quality of the products we sell could cause our customers to seek alternative sources for their needs, resulting in lost sales. In those circumstances, it may be difficult and costly for us to rebuild our reputation and regain the confidence of our customers. Moreover, our vendors are impacted by global economic conditions. Credit market and other macroeconomic conditions could have a material adverse effect on the ability of our suppliers to finance and operate their businesses, resulting in increased product costs and difficulties in meeting our inventory demands. If any of our significant vendors experience financial difficulties or otherwise are unable to deliver merchandise to us on a timely basis, or at all, we could have product shortages in our stores that could adversely affect customers' perceptions of us and cause us to lose customers and sales.

We directly imported approximately 10% of our purchases in fiscal 2017, but many of our domestic vendors directly import their products or components of their products. Disruptions in the price or flow of these goods for any reason, such as political unrest or acts of war, currency fluctuations, disruptions in maritime lanes, port labor disputes and economic conditions and instability in the countries in which foreign suppliers are located, the financial instability of suppliers, suppliers' failure to meet our standards, issues with labor practices of our suppliers or labor problems they may experience (such as strikes, stoppages or slowdowns, which could also increase labor costs during and following the disruption), the availability and cost of raw materials to suppliers, increased import duties, merchandise quality or safety issues, transport availability and cost, increases in wage rates and taxes, transport security, inflation and other factors relating to the suppliers and the countries in which they are located or from which they import, are beyond our control and could adversely affect our operations and profitability. In addition, the United States' foreign trade policies, tariffs and other impositions on imported goods, trade sanctions imposed on certain countries, the limitation on the importation of certain types of goods or of goods containing certain materials from other countries and other factors relating to foreign trade and port labor agreements are beyond our control. These and other factors affecting our suppliers and our access to products could adversely affect our business and financial performance. As we increase our imports of merchandise from foreign vendors, the risks associated with these imports will also increase.

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### **Our ability to grow depends in part on new location openings, existing location remodels and expansions and effective utilization of our existing supply chain and hub network.**

Our continued growth and success will depend in part on our ability to open and operate new locations and expand and remodel existing locations to meet customers' needs on a timely and profitable basis. Accomplishing our new and existing location expansion goals will depend upon a number of factors, including the ability to partner with developers and landlords to obtain suitable sites for new and expanded locations at acceptable costs, the hiring and training of qualified personnel and the integration of new locations into existing operations. There can be no assurance we will be able to achieve our location expansion goals, manage our growth effectively, successfully integrate the planned new locations into our operations or operate our new, remodeled and expanded locations profitably.

In addition, we extensively utilize our hub network, our supply chain and logistics management techniques to efficiently stock our locations. We have made, and plan to continue to make, significant investments in our supply chain to improve our ability to provide the best parts at the right price and to meet consumer product needs. If we fail to effectively utilize our existing hubs and/or supply chains or if our investments in our supply chain initiatives, including directly sourcing some products from outside the United States, do not provide the anticipated benefits, we could experience sub-optimal inventory levels in our locations or increases in our operating costs, which could adversely affect our sales volume and/or our margins.

### **Our failure to protect our reputation could have a material adverse effect on our brand name and profitability.**

We believe our continued strong sales growth is driven in significant part by our brand name. The value in our brand name and its continued effectiveness in driving our sales growth are dependent to a significant degree on our ability to maintain our reputation for safety, high product quality, friendliness, service, trustworthy advice, integrity and business ethics. Any negative publicity about these areas could damage our reputation and may result in reduced demand for our merchandise. The increasing use of technology also poses a risk as customers are able to quickly compare products and prices and use social media to provide feedback in a manner that is rapidly and broadly dispersed. Our reputation could be impacted if customers have a bad experience and share it over social media.

Failure to comply with ethical, social, product, labor, environmental, and anti-corruption standards could also jeopardize our reputation and potentially lead to various adverse actions by consumer or environmental groups, employees or regulatory bodies. Failure to comply with applicable laws and regulations, to maintain an effective system of internal controls or to provide accurate and timely financial statement information could also hurt our reputation. If we fail to comply with existing or future laws or regulations, we may be subject to governmental or judicial fines or sanctions, while incurring substantial legal fees and costs. In addition, our capital and operating expenses could increase due to implementation of and compliance with existing and future laws and regulations or remediation measures that may be required if we are found to be noncompliant with any existing or future laws or regulations. The inability to pass through any increased expenses through higher prices would have an adverse effect on our results of operations.

Damage to our reputation or loss of consumer confidence for any of these or other reasons could have a material adverse effect on our results of operations and financial condition, as well as require additional resources to rebuild our reputation.

### **Our success in international operations is dependent on our ability to manage the unique challenges presented by international markets.**

The various risks we face in our U.S. operations generally also exist when conducting operations in and sourcing products and materials from outside of the U.S., in addition to the unique costs, risks and difficulties of managing international operations. Our expansion into international markets may be adversely affected by local laws and customs, U.S. laws applicable to foreign operations, and political and socio-economic conditions.

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Risks inherent in international operations also include potential adverse tax consequences, potential changes to trade policies and trade agreements, compliance with the Foreign Corrupt Practices Act and local anti-bribery and anti-corruption laws, greater difficulty in enforcing intellectual property rights, challenges to identify and gain access to local suppliers, and possibly misjudging the response of consumers in foreign countries to our product assortment and marketing strategy.

In addition, our operations in international markets are conducted primarily in the local currency of those countries. Since our consolidated financial statements are denominated in U.S. dollars, amounts of assets, liabilities, net sales, and other revenues and expenses denominated in local currencies must be translated into U.S. dollars using exchange rates for the current period. As a result, foreign currency exchange rates and fluctuations in those rates may adversely impact our financial performance.

### **Failure to protect or effectively respond to a breach of the privacy and security of customers', suppliers', AutoZoners' or Company information could damage our reputation, subject us to litigation, and cause us to incur substantial costs.**

Our business, like that of most retailers and distributors, involves the receipt, storage and transmission of personal information about our customers, suppliers and AutoZoners, some of which is entrusted to third-party service providers and vendors. Failure to protect the security of our customers', suppliers', employees' and company information could subject us to costly regulatory enforcement actions, expose us to litigation and impair our reputation, which may have a negative impact on our sales. While we and our third-party service providers and vendors take significant steps to protect customer, supplier, employee and other confidential information, including maintaining compliance with payment card industry standards, these security measures may be breached in the future due to cyber-attack, employee error, system compromises, fraud, trickery, hacking or other intentional or unintentional acts, and unauthorized parties may obtain access to this data. Failure to effectively respond to system compromises may undermine our security measures. The methods used to obtain unauthorized access are constantly evolving, and may be difficult to anticipate or detect for long periods of time. As the regulatory environment related to information security, data collection and use, and privacy becomes increasingly rigorous, compliance with these requirements could also result in significant additional costs.

We accept payments using a variety of methods, including cash, checks, credit, debit and gift cards, and we may offer new payment options over time, which may have information security risk implications. As a retailer accepting debit and credit cards for payment, we are subject to various industry data protection standards and protocols, such as the American National Standards Institute encryption standards and payment network security operating guidelines and Payment Card Industry Data Security Standard. Even though we comply with these standards and protocols and other information security measures, we cannot be certain that the security measures we maintain to protect all of our information technology systems are able to prevent, contain or detect any cyber-attacks, cyber terrorism, or security breaches from known cyber-attacks or malware that may be developed in the future. To the extent that any cyber-attack or incursion in our or one of our third-party service provider's information systems results in the loss, damage or misappropriation of information, we may be materially adversely affected by claims from customers, financial institutions, regulatory authorities, payment card networks and others. In certain circumstances, payment card association rules and obligations to which we are subject under our contracts with payment card processors make us liable to payment card issuers if information in connection with payment cards and payment card transactions that we hold is compromised, which liabilities could be substantial. In addition, the cost of complying with stricter and more complex data privacy, data collection and information security laws and standards could be significant to us.

### **We rely heavily on our information technology systems for our key business processes. Any failure or interruption in these systems could have a material adverse impact on our business.**

We rely extensively on our information technology systems, some of which are managed or provided by third-party service providers, to manage inventory, communicate with customers, process transactions and summarize results. Our systems and the third-party systems we rely on are subject to damage or interruption from power outages, telecommunications failures, computer viruses, security breaches, malicious cyber-attacks, catastrophic events, and design or usage errors by our AutoZoners, contractors or third-party service providers. Although we and our third-party service providers work diligently to maintain our respective systems, we may not be successful in doing so.

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If our systems are damaged or fail to function properly, we may incur substantial costs to repair or replace them, and may experience loss of critical data and interruptions or delays in our ability to manage inventories or process transactions, which could result in lost sales, inability to process purchase orders and/or a potential loss of customer loyalty, which could adversely affect our results of operations.

**Business interruptions may negatively impact our location hours, operability of our computer and other systems, availability of merchandise and otherwise have a material negative effect on our sales and our business.**

War or acts of terrorism, political unrest, unusual weather conditions, hurricanes, tornadoes, windstorms, fires, earthquakes, floods and other natural or other disasters or the threat of any of them, may result in certain of our locations being closed for a period of time or permanently or have a negative impact on our ability to obtain merchandise available for sale in our locations. Some of our merchandise is imported from other countries. If imported goods become difficult or impossible to bring into the United States, and if we cannot obtain such merchandise from other sources at similar costs, our sales and profit margins may be negatively affected.

In the event that commercial transportation is curtailed or substantially delayed, our business may be adversely impacted, as we may have difficulty shipping merchandise to our distribution centers and locations resulting in lost sales and/or a potential loss of customer loyalty. Transportation issues could also cause us to cancel purchase orders if we are unable to receive merchandise in our distribution centers.

**Item 1B. Unresolved Staff Comments**

None.

**Item 2. Properties**

The following table reflects the square footage and number of leased and owned properties for our AutoZone stores as of August 26, 2017:

	<u>No. of AZ Stores</u>	<u>AZ Store Square Footage</u>
Leased	3,115	20,177,795
Owned	2,888	19,506,505
Total	<u>6,003</u>	<u>39,684,300</u>

We have approximately 5.3 million square feet in distribution centers servicing our AutoZone stores, of which approximately 1.8 million square feet is leased and the remainder is owned. Our 11 AutoZone distribution centers are located in Arizona, California, Georgia, Illinois, Ohio, Pennsylvania, Tennessee, Texas, Washington and two in Mexico. We currently have one additional domestic distribution center under development. Of our 26 IMC branches, 25 branches, consisting of 854,804 square feet, are leased, and one branch, consisting of approximately 23 thousand square feet, is owned. Our primary store support center is located in Memphis, Tennessee, and consists of approximately 260,000 square feet. We also have three additional AutoZone store support centers located in Monterrey, Mexico; Chihuahua, Mexico and Sao Paulo, Brazil, and an IMC branch support center located in Canoga Park, California. The ALLDATA headquarters in Elk Grove, California and the AutoAnything headquarters space in San Diego, California are leased, and we also own or lease other properties that are not material in the aggregate.

**Item 3. Legal Proceedings**

In 2004, we acquired a store site in Mount Ephraim, New Jersey that had previously been the site of a gasoline service station and contained evidence of groundwater contamination. Upon acquisition, we voluntarily reported the groundwater contamination issue to the New Jersey Department of Environmental Protection (“NJDEP”) and entered into a Voluntary Remediation Agreement providing for the remediation of the contamination associated with the property. We have conducted and paid for (at an immaterial cost to us) remediation of contamination on the property.

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We have also voluntarily investigated and addressed potential vapor intrusion impacts in downgradient residences and businesses. The NJDEP has asserted, in a Directive and Notice to Insurers dated February 19, 2013 and again in an Amended Directive and Notice to Insurers dated January 13, 2014 (collectively the "Directives"), that we are liable for the downgradient impacts under a joint and severable liability theory. By letter dated April 23, 2015, NJDEP has demanded payment from us, and other parties, in the amount of approximately \$296 thousand for costs incurred by NJDEP in connection with contamination downgradient of the property. By letter dated January 29, 2016, we were informed that NJDEP has filed a lien against the property in connection with approximately \$355 thousand in costs incurred by NJDEP in connection with contamination downgradient of the property. We have contested, and will continue to contest, any such assertions due to the existence of other entities/sources of contamination, some of which are named in the Directives and the April 23, 2015 demand, in the area of the property. Pursuant to the Voluntary Remediation Agreement, upon completion of all remediation required by the agreement, we believe we should be eligible to be reimbursed up to 75 percent of qualified remediation costs by the State of New Jersey. We have asked the state for clarification that the agreement applies to off-site work, and the state is considering the request. Although the aggregate amount of additional costs that we may incur pursuant to the remediation cannot currently be ascertained, we do not currently believe that fulfillment of our obligations under the agreement or otherwise will result in costs that are material to our financial condition, results of operations or cash flow.

In July 2014, we received a subpoena from the District Attorney of the County of Alameda, along with other environmental prosecutorial offices in the state of California, seeking documents and information related to the handling, storage and disposal of hazardous waste. We received notice that the District Attorney will seek injunctive and monetary relief. We are cooperating fully with the request and cannot predict the ultimate outcome of these efforts, although we have accrued all amounts we believe to be probable and reasonably estimable. We do not believe the ultimate resolution of this matter will have a material adverse effect on our consolidated financial position, results of operations or cash flows.

In April 2016, we received a letter from the California Air Resources Board seeking payment for alleged violations of the California Health and Safety Code related to the sale of certain aftermarket emission parts in the State of California. We do not believe that any resolution of the matter will have a material adverse effect on our consolidated financial position, results of operations or cash flows.

We are involved in various other legal proceedings incidental to the conduct of our business, including several lawsuits containing class-action allegations in which the plaintiffs are current and former hourly and salaried employees who allege various wage and hour violations and unlawful termination practices. We do not currently believe that, either individually or in the aggregate, these matters will result in liabilities material to our financial condition, results of operations or cash flows.

**Item 4. Mine Safety Disclosures**

Not applicable.

[Table of Contents](#)**PART II****Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities**

Our common stock is listed on the New York Stock Exchange under the symbol "AZO." On October 23, 2017, there were 2,347 stockholders of record, which does not include the number of beneficial owners whose shares were represented by security position listings.

We currently do not pay a dividend on our common stock. Our ability to pay dividends is subject to limitations imposed by Nevada law. Any future payment of dividends would be dependent upon our financial condition, capital requirements, earnings and cash flow.

The following table sets forth the high and low sales prices per share of common stock, as reported by the New York Stock Exchange, for the periods indicated:

	<b>Price Range of Common Stock</b>	
	<b>High</b>	<b>Low</b>
Fiscal Year ended August 26, 2017:		
Fourth quarter	\$ 709.98	\$ 493.15
Third quarter	\$ 741.05	\$ 682.99
Second quarter	\$ 809.87	\$ 714.99
First quarter	\$ 779.61	\$ 722.44
Fiscal Year Ended August 27, 2016:		
Fourth quarter	\$ 815.98	\$ 742.08
Third quarter	\$ 805.40	\$ 748.51
Second quarter	\$ 796.09	\$ 695.46
First quarter	\$ 797.29	\$ 714.37

During 1998, the Company announced a program permitting the Company to repurchase a portion of its outstanding shares not to exceed a dollar maximum established by the Company's Board of Directors. The program was most recently amended on March 21, 2017, to increase the repurchase authorization by \$750 million bringing total value of authorized share repurchases to \$18.65 billion.

Shares of common stock repurchased by the Company during the quarter ended August 26, 2017, were as follows:

<u>Period</u>	<u>Total Number of Shares Purchased</u>	<u>Average Price Paid per Share</u>	<u>Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs</u>	<u>Maximum Dollar Value that May Yet Be Purchased Under the Plans or Programs</u>
May 7, 2017, to June 3, 2017	131,400	\$ 689.21	131,400	\$ 960,606,233
June 4, 2017, to July 1, 2017	187,136	597.99	187,136	848,701,210
July 2, 2017, to July 29, 2017	—	—	—	848,701,210
July 30, 2017, to August 26, 2017	47,118	530.57	47,118	823,701,893
Total	<u>365,654</u>	<u>\$ 622.08</u>	<u>365,654</u>	<u>\$ 823,701,893</u>

The Company also repurchased, at market value, an additional 12,455 shares in fiscal 2017, 12,460 shares in fiscal 2016, and 15,594 shares in fiscal 2015 from employees electing to sell their stock under the Company's Sixth Amended and Restated Employee Stock Purchase Plan (the "Employee Plan"), qualified under Section 423 of the Internal Revenue Code, under which all eligible employees may purchase AutoZone's common stock at 85% of the lower of the market price of the common stock on the first day or last day of each calendar quarter through payroll deductions. Maximum permitted annual purchases are \$15,000 per employee or 10 percent of compensation, whichever is less. Under the Employee Plan, 14,205 shares were sold to employees in fiscal 2017, 12,662 shares in fiscal 2016, and 14,222 shares were sold to employees in fiscal 2015. At August 26, 2017, 178,300 shares of common stock were reserved for future issuance under the Employee Plan.

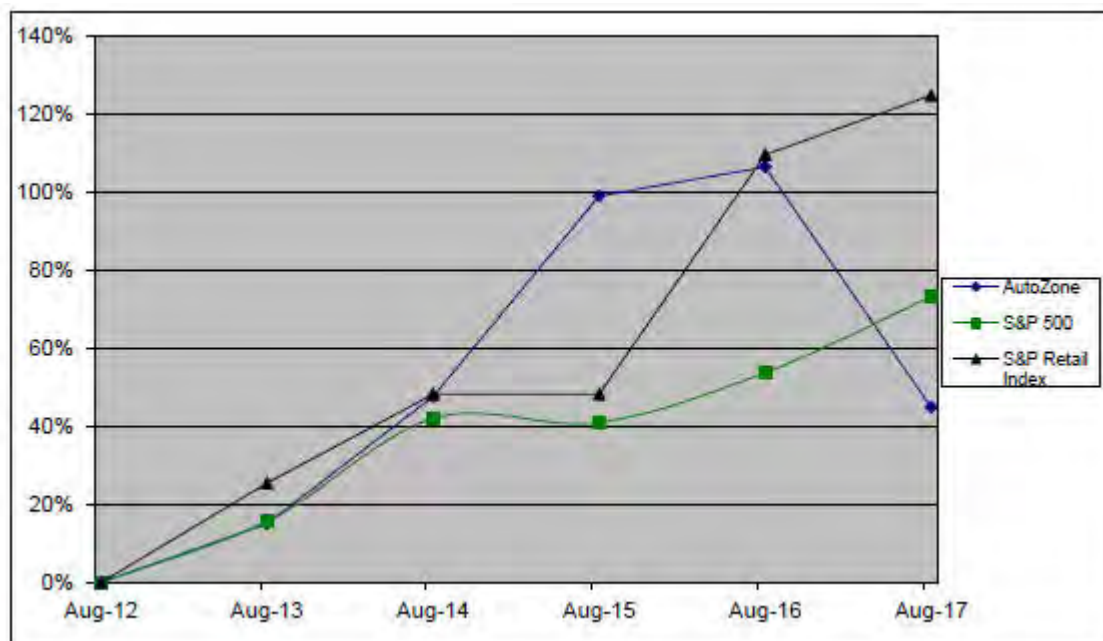


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Once executives have reached the maximum purchases under the Employee Plan, the Fifth Amended and Restated Executive Stock Purchase Plan (the “Executive Plan”) permits all eligible executives to purchase AutoZone’s common stock up to 25 percent of his or her annual salary and bonus. Purchases by executives under the Executive Plan were 1,865 shares in fiscal 2017, 1,943 shares in fiscal 2016, and 2,229 shares in fiscal 2015. At August 26, 2017, 239,888 shares of common stock were reserved for future issuance under the Executive Plan.

### Stock Performance Graph

The graph below presents changes in the value of AutoZone’s stock as compared to Standard & Poor’s 500 Composite Index (“S&P 500”) and to Standard & Poor’s Retail Index (“S&P Retail Index”) for the five-year period beginning August 25, 2012 and ending August 26, 2017.



[Table of Contents](#)**Item 6. Selected Financial Data***(in thousands, except per share data, same store sales and selected operating data)*

	Fiscal Year Ended August				
	2017	2016	2015	2014	2013(1)
<b>Income Statement Data</b>					
Net sales	\$10,888,676	\$10,635,676	\$10,187,340	\$ 9,475,313	\$ 9,147,530
Cost of sales, including warehouse and delivery expenses	5,149,056	5,026,940	4,860,309	4,540,406	4,406,595
Gross profit	5,739,620	5,608,736	5,327,031	4,934,907	4,740,935
Operating, selling, general and administrative expenses	3,659,551	3,548,341	3,373,980	3,104,684	2,967,837
Operating profit	2,080,069	2,060,395	1,953,051	1,830,223	1,773,098
Interest expense, net	154,580	147,681	150,439	167,509	185,415
Income before income taxes	1,925,489	1,912,714	1,802,612	1,662,714	1,587,683
Income tax expense(2)	644,620	671,707	642,371	592,970	571,203
Net income(2)	<u>\$ 1,280,869</u>	<u>\$ 1,241,007</u>	<u>\$ 1,160,241</u>	<u>\$ 1,069,744</u>	<u>\$ 1,016,480</u>
Diluted earnings per share(2)	<u>\$ 44.07</u>	<u>\$ 40.70</u>	<u>\$ 36.03</u>	<u>\$ 31.57</u>	<u>\$ 27.79</u>
Weighted average shares for diluted earnings per share(2)	<u>29,065</u>	<u>30,488</u>	<u>32,206</u>	<u>33,882</u>	<u>36,581</u>
Adjusted diluted earnings per share(2)	<u>\$ 43.26</u>	<u>\$ 40.70</u>	<u>\$ 36.03</u>	<u>\$ 31.57</u>	<u>\$ 27.79</u>
<b>Same Store Sales</b>					
Increase in domestic comparable store net sales(3)	0.5%	2.4%	3.8%	2.8%	0.0%
<b>Balance Sheet Data</b>					
Current assets	\$ 4,611,255	\$ 4,239,573	\$ 3,970,294	\$ 3,580,612	\$ 3,278,013
Working capital (deficit)	(155,046)	(450,747)	(742,579)	(960,482)	(891,137)
Total assets	9,259,781	8,599,787	8,102,349	7,497,163	6,869,167
Current liabilities	4,766,301	4,690,320	4,712,873	4,541,094	4,169,150
Debt	5,081,238	4,924,119	4,624,876	4,323,106	4,164,078
Long-term capital leases	102,322	102,451	87,639	83,098	73,925
Stockholders' (deficit)	(1,428,377)	(1,787,538)	(1,701,390)	(1,621,857)	(1,687,319)
<b>Selected Operating Data</b>					
Number of locations at beginning of year	5,814	5,609	5,391	5,201	5,006
Acquired locations(4)	—	—	17	—	—
New locations	215	205	202	190	197
Closed locations	—	—	1	—	2
Net new locations	215	205	201	190	195
Relocated locations	5	6	5	8	11
Number of locations at end of year	<u>6,029</u>	<u>5,814</u>	<u>5,609</u>	<u>5,391</u>	<u>5,201</u>
AutoZone domestic commercial programs	4,592	4,390	4,141	3,845	3,421
Inventory per location (in thousands)	\$ 644	\$ 625	\$ 610	\$ 582	\$ 550
Total AutoZone store square footage (in thousands)	39,684	38,198	36,815	35,424	34,076
Average square footage per AutoZone store	6,611	6,600	6,587	6,571	6,552
Increase in AutoZone store square footage	3.9%	3.8%	3.9%	4.0%	4.2%
Average net sales per AutoZone store (in thousands)	\$ 1,756	\$ 1,773	\$ 1,761	\$ 1,724	\$ 1,736
Net sales per AutoZone store square foot	\$ 266	\$ 269	\$ 268	\$ 263	\$ 265
Total employees at end of year (in thousands)	87	84	81	76	71
Inventory turnover(5)	1.4x	1.4x	1.4x	1.5x	1.6x
Accounts payable to inventory ratio	107.4%	112.8%	112.9%	114.9%	115.6%
After-tax return on invested capital(6)	29.9%	31.3%	31.2%	32.1%	32.9%
Adjusted debt to EBITDAR(7)	2.6	2.5	2.5	2.5	2.5
Net cash provided by operating activities (in thousands)(2)	\$ 1,570,612	\$ 1,641,060	\$ 1,573,018	\$ 1,365,005	\$ 1,481,763

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Cash flow before share repurchases and changes					
in debt (in thousands)(8)	\$ 1,017,585	\$ 1,166,987	\$ 1,018,440	\$ 924,706	\$ 1,007,761
Share repurchases (in thousands)	\$ 1,071,649	\$ 1,452,462	\$ 1,271,416	\$ 1,099,212	\$ 1,387,315
Number of shares repurchased (in thousands)	1,495	1,903	2,010	2,232	3,511

- (1) *The fiscal year ended August 31, 2013 consisted of 53 weeks.*
- (2) *As described in the consolidated financial statements and notes, thereto, we have adopted the provisions of ASU 2016-09, Compensation – Stock Compensation (Topic 718): Improvement to Employee Share-based Payment Accounting, as of August 28, 2016. The ASU simplifies several aspects of accounting for share-based payments transactions, including income tax consequences, classification of awards as either equity or liabilities and classification on the statement of cash flows. We have applied the amendment requiring recognition of excess tax deficiencies and tax benefits in the income statement, prospectively. Prior period income tax expense, net income and diluted earnings per share amounts were not restated. The adoption of*

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*the new standard increased diluted earnings per share for fiscal 2017 by \$0.81, driven by a lower effective tax rate of 162 basis points, partially offset by a change to the dilutive outstanding shares calculation. Excluding the impact of excess tax benefits from option exercises, adjusted diluted earnings per share was \$43.26. See Reconciliation of Non-GAAP Financial Measures in Management's Discussion and Analysis of Financial Condition and Results of Operations. We have applied the amendment relating to the presentation of the excess tax benefits on the Consolidated Statements of Cash Flows retrospectively. Prior period amounts for net cash provided by operating activities for all years presented above were restated to conform to the current period presentation.*

- (3) *The domestic comparable sales increases are based on sales for all AutoZone domestic stores open at least one year. Relocated stores are included in the same store sales computation based on the year the original store was opened. Closed store sales are included in the same store sales computation up to the week it closes, and excluded from the computation for all periods subsequent to closing. All sales through our www.autozone.com website, including consumer direct ship-to-home sales, are also included in the computation.*
- (4) *17 IMC branches acquired on September 27, 2014.*
- (5) *Inventory turnover is calculated as cost of sales divided by the average merchandise inventory balance over the trailing 5 quarters.*
- (6) *After-tax return on invested capital is defined as after-tax operating profit (excluding rent charges) divided by invested capital (which includes a factor to capitalize operating leases). See Reconciliation of Non-GAAP Financial Measures in Management's Discussion and Analysis of Financial Condition and Results of Operations.*
- (7) *Adjusted debt to EBITDAR is defined as the sum of total debt, capital lease obligations and annual rents times six; divided by net income plus interest, taxes, depreciation, amortization, rent and share-based compensation expense. See Reconciliation of Non-GAAP Financial Measures in Management's Discussion and Analysis of Financial Condition and Results of Operations.*
- (8) *Cash flow before share repurchases and changes in debt is defined as the change in cash and cash equivalents less the change in debt plus treasury stock purchases. See Reconciliation of Non-GAAP Financial Measures in Management's Discussion and Analysis of Financial Condition and Results of Operations.*

## **Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations**

We are the nation's leading retailer, and a leading distributor, of automotive replacement parts and accessories in the United States. We began operations in 1979 and at August 26, 2017, operated 5,465 AutoZone stores in the United States, including Puerto Rico; 524 stores in Mexico; 14 stores in Brazil; and 26 IMC branches. Each AutoZone store carries an extensive product line for cars, sport utility vehicles, vans and light trucks, including new and remanufactured automotive hard parts, maintenance items, accessories and non-automotive products. At August 26, 2017, in 4,592 of our domestic AutoZone stores, we also had a commercial sales program that provides commercial credit and prompt delivery of parts and other products to local, regional and national repair garages, dealers, service stations and public sector accounts. We also have commercial programs in AutoZone stores in Mexico and Brazil. IMC branches carry an extensive line of original equipment quality import replacement parts. We also sell the ALLDATA brand automotive diagnostic and repair software through www.alldata.com and www.alldatadiy.com. Additionally, we sell automotive hard parts, maintenance items, accessories and non-automotive products through www.autozone.com, and accessories, performance and replacement parts through www.autoanything.com, and our commercial customers can make purchases through www.autozonepro.com and www.imcparts.net. We do not derive revenue from automotive repair or installation services.

### **Executive Summary**

For fiscal 2017, we achieved record net income of \$1.281 billion, a 3.2% increase over the prior year, and sales growth of \$253.0 million, a 2.4% increase over the prior year. Both our retail sales and commercial sales grew this past year, as we continue to make progress on our initiatives that are aimed at improving our ability to say yes to our customers more frequently, drive traffic to our stores and accelerate our commercial growth.

Our business is impacted by various factors within the economy that affect both our consumer and our industry, including but not limited to fuel costs, wage rates, and other economic conditions. Given the nature of these macroeconomic factors, we cannot predict whether or for how long certain trends will continue, nor can we predict to what degree these trends will impact us in the future.

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One macroeconomic factor affecting our customers and our industry during fiscal 2017 was gas prices. During fiscal 2017, the average price per gallon of unleaded gasoline in the United States was \$2.31 per gallon, compared to \$2.14 per gallon during fiscal 2016. We believe fluctuations in gas prices impact our customers' level of disposable income. With approximately 12 billion gallons of unleaded gas consumption each month across the U.S., each \$1 increase at the pump reduces approximately \$12 billion of additional spending capacity to consumers each month. Given the unpredictability of gas prices, we cannot predict whether gas prices will increase or decrease, nor can we predict how any future changes in gas prices will impact our sales in future periods.

We have also experienced accelerated pressure on wages in the United States during fiscal 2017. Some of this is attributed to regulatory changes in certain states and municipalities, while the larger portion is being driven by general market pressures with lower unemployment rates and some specific actions taken in recent years by other retailers. The regulatory changes are going to continue, as evidenced by the areas that have passed legislation to increase their wages substantially over the next few years, but we are still assessing to what degree these changes will impact our earnings growth in future periods.

During fiscal 2017, failure and maintenance related categories represented the largest portion of our sales mix, at approximately 84% of total sales, with failure related categories continuing to be our largest set of categories. While we have not experienced any fundamental shifts in our category sales mix as compared to previous years, in our domestic stores we did experience a slight increase in mix of sales of the failure category as compared to last year. We believe the improvement in this sales category was driven by differences in regional weather patterns and improved merchandise assortments due to the products we have added over the last year. Our sales mix can be impacted by severe or unusual weather over a short term period. Over the long term, we believe the impact of the weather on our sales mix is not significant.

Our primary response to fluctuations in the demand for the products we sell is to adjust our advertising message, store staffing, and product assortment. In recent years, we initiated a variety of strategic tests focused on increasing inventory availability in our domestic stores. As part of those tests, we closely studied our hub distribution model, store inventory levels and product assortment, which led to strategic tests on increased frequency of delivery to our domestic stores and significantly expanding parts and assortment in select domestic stores we call mega hubs. During fiscal 2015, we concluded our tests on these specific new concepts. During fiscal 2016 and most of fiscal 2017, we continued the implementation of more frequent deliveries from our distribution centers to additional domestic stores and the execution of our mega hub strategy. In the fourth quarter of fiscal 2017, however, we made substantial changes to test different scenarios to determine the optimal approach around increased delivery frequency. We expect to conclude this test in fiscal 2018.

The two statistics we believe have the closest correlation to our market growth over the long-term are miles driven and the number of seven year old or older vehicles on the road.

### *Miles Driven*

We believe that as the number of miles driven increases, consumers' vehicles are more likely to need service and maintenance, resulting in an increase in the need for automotive hard parts and maintenance items. While over the long-term we have seen a close correlation between our net sales and the number of miles driven, we have also seen certain time frames of minimal correlation in sales performance and miles driven. During the periods of minimal correlation between net sales and miles driven, we believe net sales have been positively impacted by other factors, including the number of seven year old or older vehicles on the road. Since the beginning of the fiscal year and through June 2017 (latest publicly available information), miles driven in the U.S. increased by 1.2% compared to the same period in the prior year.

### *Seven Year Old or Older Vehicles*

Between 2008 and 2012, new vehicle sales were significantly lower than historical levels, which we believe contributed to an increasing number of seven year old or older vehicles on the road. We estimate vehicles are driven an average of approximately 12,500 miles each year. In seven years, the average miles driven equates to approximately 87,500 miles. Our experience is that at this point in a vehicle's life, most vehicles are not covered by warranties and increased maintenance is needed to keep the vehicle operating.

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According to the latest data provided by the Auto Care Association, as of January 1, 2017, the average age of vehicles on the road is 11.7 years as compared to 11.6 years as of January 1, 2016. Although the average age of vehicles continues to increase, it is increasing at a decelerated rate primarily driven by the improvement in new car sales in recent years. However, in the near term, we expect the aging vehicle population to continue to increase as consumers keep their cars longer in an effort to save money. As the number of seven year old or older vehicles on the road increases, we expect an increase in demand for the products we sell.

### **Results of Operations**

#### *Fiscal 2017 Compared with Fiscal 2016*

For the fiscal year ended August 26, 2017, we reported net sales of \$10.889 billion compared with \$10.636 billion for the year ended August 27, 2016, a 2.4% increase from fiscal 2016. This growth was driven primarily by net sales of \$172.5 million from new domestic AutoZone stores and domestic same store sales increase of 0.5%. Domestic commercial sales increased \$110.9 million, or 5.7%, over domestic commercial sales for fiscal 2016.

At August 26, 2017, we operated 5,465 domestic AutoZone stores, 524 in Mexico, 14 in Brazil, and 26 IMC branches compared with 5,297 domestic AutoZone stores, 483 in Mexico, eight in Brazil, and 26 IMC branches at August 27, 2016. We reported a total auto parts (domestic, Mexico, Brazil, and IMC) sales increase of 2.6% for fiscal 2017.

Gross profit for fiscal 2017 was \$5.740 billion, or 52.7% of net sales, a 2 basis point decrease compared with \$5.609 billion, or 52.7% of net sales for fiscal 2016. The slight decline in gross margin was attributable to higher supply chain costs (-20 basis points) associated with current year inventory initiatives, partially offset by higher merchandise margins.

Operating, selling, general and administrative expenses for fiscal 2017 increased to \$3.660 billion, or 33.6% of net sales, from \$3.548 billion, or 33.4% of net sales for fiscal 2016. The increase in operating expenses, as a percentage of sales, was primarily due to deleverage on occupancy costs (-23 basis points) and domestic store payroll driven by higher wage pressure.

Interest expense, net for fiscal 2017 was \$154.6 million compared with \$147.7 million during fiscal 2016. This increase was primarily due to higher borrowing levels and borrowing rates. Average borrowings for fiscal 2017 were \$5.070 billion, compared with \$4.860 billion for fiscal 2016, and weighted average borrowing rates were 2.8% for fiscal 2017, compared to 2.7% for fiscal 2016.

Our effective income tax rate was 33.5% of pre-tax income for fiscal 2017 compared to 35.1% for fiscal 2016. The decrease in the tax rate was primarily due to the Company's adoption of the new accounting guidance for share-based payments, which lowered the effective tax rate by 162 basis points.

Net income for fiscal 2017 increased by 3.2% to \$1.281 billion, and diluted earnings per share increased 8.3% to \$44.07 from \$40.70 in fiscal 2016. The Company's adoption of the new accounting guidance for share-based payments increased earnings per share by \$0.81, driven by a lower effective tax rate of 162 basis points, (a \$1.08 benefit to earnings per share), partially offset by a change to the dilutive outstanding shares calculations (a \$0.27 reduction to earnings per share). Excluding the \$0.81 net benefit for the year from the adoption of this new standard, adjusted diluted earnings per share increased 6.3% to \$43.26. We believe that adjusted diluted earnings per share provides us with an understanding of the results from the primary operations of our business by excluding the tax effects of option exercise activity. We use adjusted diluted earnings per share to evaluate period-over-period operating performance because we believe it provides a more comparable measure of our continuing business by adjusting for items that are not reflective of the normal earnings of our business. This measure may be useful to an investor in evaluating the underlying operating performance of our business. Refer to the "Reconciliation of Non-GAAP Financial Measures" section for further details of our calculation.

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The impact of the fiscal 2017 stock repurchases on diluted earnings per share in fiscal 2017 was an increase of approximately \$1.03.

### *Fiscal 2016 Compared with Fiscal 2015*

For the fiscal year ended August 27, 2016, we reported net sales of \$10.636 billion compared with \$10.187 billion for the year ended August 29, 2015, a 4.4% increase from fiscal 2015. This growth was driven primarily by domestic same store sales increase of 2.4% and net sales of \$177.0 million from new domestic AutoZone stores. Domestic commercial sales for fiscal 2016 increased \$129.8 million, or 7.1%, over domestic commercial sales for fiscal 2015.

At August 27, 2016, we operated 5,297 domestic AutoZone stores, 483 in Mexico, eight in Brazil and 26 IMC branches compared with 5,141 domestic AutoZone stores, 441 in Mexico, seven in Brazil and 20 IMC branches at August 29, 2015. We reported a total auto parts (domestic, Mexico, Brazil and IMC) sales increase of 4.4% for fiscal 2016.

Gross profit for fiscal 2016 was \$5.609 billion, or 52.7% of net sales, compared with \$5.327 billion, or 52.3% of net sales for fiscal 2015. The improvement in gross margin was attributable to lower acquisition costs, partially offset by higher supply chain costs associated with current year inventory initiatives (-18 basis points).

Operating, selling, general and administrative expenses for fiscal 2016 increased to \$3.548 billion, or 33.4% of net sales, from \$3.374 billion, or 33.1% of net sales for fiscal 2015. The increase in operating expenses, as a percentage of sales, was primarily due to higher store payroll.

Interest expense, net for fiscal 2016 was \$147.7 million compared with \$150.4 million during fiscal 2015. This decrease was primarily due to a decline in borrowing rates, partially offset by higher borrowing levels over the comparable year period. Average borrowings for fiscal 2016 were \$4.860 billion, compared with \$4.520 billion for fiscal 2015 and weighted average borrowing rates were 2.7% for fiscal 2016, compared to 3.0% for fiscal 2015.

Our effective income tax rate was 35.1% of pre-tax income for fiscal 2016 compared to 35.6% for fiscal 2015. The decrease in the effective income tax rate was driven by a discrete tax item during fiscal 2016.

Net income for fiscal 2016 increased by 7.0% to \$1.241 billion, and diluted earnings per share increased 13.0% to \$40.70 from \$36.03 in fiscal 2015. The impact of the fiscal 2016 stock repurchases on diluted earnings per share in fiscal 2016 was an increase of approximately \$1.17.

### **Seasonality and Quarterly Periods**

Our business is somewhat seasonal in nature, with the highest sales typically occurring in the spring and summer months of February through September, in which average weekly per-store sales historically have been about 15% to 20% higher than in the slower months of December and January. During short periods of time, a store's sales can be affected by weather conditions. Extremely hot or extremely cold weather may enhance sales by causing parts to fail; thereby increasing sales of seasonal products. Mild or rainy weather tends to soften sales, as parts failure rates are lower in mild weather and elective maintenance is deferred during periods of rainy weather. Over the longer term, the effects of weather balance out, as we have locations throughout the United States, Puerto Rico, Mexico and Brazil.

Each of the first three quarters of our fiscal year consists of 12 weeks, and the fourth quarter consisted of 16 weeks in 2017, 2016 and 2015. Because the fourth quarter contains seasonally high sales volume and consists of 16 weeks, compared with 12 weeks for each of the first three quarters, our fourth quarter represents a disproportionate share of the annual net sales and net income. The fourth quarter of fiscal year 2017 represented 32.3% of annual sales and 33.9% of net income; the fourth quarter of fiscal year 2016 represented 32.0% of annual sales and 34.4% of net income; and the fourth quarter of fiscal 2015 represented 32.3% of annual sales and 34.6% of net income.

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### **Liquidity and Capital Resources**

The primary source of our liquidity is our cash flows realized through the sale of automotive parts, products and accessories. Net cash provided by operating activities was \$1.571 billion in 2017, \$1.641 billion in 2016, and \$1.573 billion in fiscal 2015. Cash flows from operations are unfavorable compared to last year primarily due to timing of payment of accounts payable and accrued expenses, partially offset by growth in net income and a decrease in pension contributions.

Our primary capital requirement has been the funding of our continued new-location development program and the building of new distribution centers. From the beginning of fiscal 2015 to August 26, 2017, we have opened 622 new locations. We opened two distribution centers in fiscal 2017 and currently have one additional distribution center under development. Net cash flows used in investing activities were \$553.6 million in fiscal 2017, compared to \$505.8 million in fiscal 2016 and \$567.9 million in fiscal 2015. We invested \$553.8 million in capital assets in fiscal 2017, compared to \$488.8 million in fiscal 2016 and \$480.6 million in fiscal 2015. The increase in capital expenditures during this time was primarily attributable to the building of the new distribution centers and increased investment in our existing locations. We had new location openings of 215 for fiscal 2017, 205 for fiscal 2016, and 202 for fiscal 2015. Cash flows used in the acquisition of IMC were \$75.7 million in fiscal 2015. Cash flows were also used in the purchase of other intangibles for \$10 million in each of fiscal 2016 and fiscal 2015. We invest a portion of our assets held by our wholly owned insurance captive in marketable securities. We purchased \$85.7 million in marketable securities in fiscal 2017, \$130.2 million in fiscal 2016 and \$49.7 million in fiscal 2015. We had proceeds from the sale of marketable securities of \$83.0 million in fiscal 2017, \$120.5 million in fiscal 2016 and \$46.4 million in fiscal 2015.

Net cash used in financing activities was \$914.3 million in 2017, \$1.117 billion in 2016 and \$944.6 million in fiscal 2015. The net cash used in financing activities reflected purchases of treasury stock which totaled \$1.072 billion for fiscal 2017, \$1.452 billion for fiscal 2016 and \$1.271 billion for fiscal 2015. The treasury stock purchases in fiscal 2017, 2016 and 2015 were primarily funded by cash flows from operations and by increases in debt levels. Proceeds from issuance of debt were \$600 million for fiscal 2017 and \$650 million for each of fiscal 2016 and 2015. In fiscal 2017, the proceeds from the issuance of debt were used for the repayment of a portion of our outstanding commercial paper borrowings, which were used to repay the \$400 million Senior Notes due in January 2017. In fiscal 2016, the proceeds from the issuance of debt were used for general corporate purposes, including for working capital requirements, capital expenditures, store openings and stock repurchases. In fiscal 2015, the proceeds from the issuance of debt were used for the repayment of a portion of our outstanding commercial paper borrowings, which were used to repay the \$500 million 5.750% Senior Notes due January 2015 and for the acquisition of IMC. We used commercial paper borrowings to repay the \$300 million Senior Notes due in November 2015 and the \$200 million Senior Notes due in June 2016. In 2017, we made net repayments of commercial paper and short-term borrowings in the amount of \$42.4 million. Net proceeds from the issuance of commercial paper and short-term borrowings for fiscal 2016 and 2015 were \$149.9 million and \$153.8 million, respectively.

During fiscal 2018, we expect to invest in our business at a decreased rate as compared to fiscal 2017, as fiscal 2017 included significant investment for the building of new distribution centers. Our investments are expected to be directed primarily to new locations, supply chain infrastructure, enhancements to existing locations and investments in technology. The amount of our investments in our new locations is impacted by different factors, including such factors as whether the building and land are purchased (requiring higher investment) or leased (generally lower investment), located in the United States, Mexico or Brazil, or located in urban or rural areas. During fiscal 2017, 2016 and 2015, our capital expenditures have increased by approximately 13%, 2%, and 10%, respectively, as compared to the prior year.

In addition to the building and land costs, our new locations require working capital, predominantly for inventories. Historically, we have negotiated extended payment terms from suppliers, reducing the working capital required and resulting in a high accounts payable to inventory ratio. We plan to continue leveraging our inventory purchases; however, our ability to do so may be limited by our vendors' capacity to factor their receivables from us. Certain vendors participate in financing arrangements with financial institutions whereby they factor their receivables from us, allowing them to receive payment on our invoices at a discounted rate. In recent years, we initiated a variety of strategic tests focused on increasing inventory availability, which increased our inventory per location. Many of our vendors have supported our initiative to update our product assortments



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by providing extended payment terms. These extended payment terms have allowed us to continue our high accounts payable to inventory ratio. We had an accounts payable to inventory ratio of 107.4% at August 26, 2017, 112.8% at August 27, 2016, and 112.9% at August 29, 2015. The decrease from fiscal 2016 to fiscal 2017 was due to inventory growth and slowing inventory turns.

Depending on the timing and magnitude of our future investments (either in the form of leased or purchased properties or acquisitions), we anticipate that we will rely primarily on internally generated funds and available borrowing capacity to support a majority of our capital expenditures, working capital requirements and stock repurchases. The balance may be funded through new borrowings. We anticipate that we will be able to obtain such financing in view of our credit ratings and favorable experiences in the debt markets in the past.

Our cash balances are held in various locations around the world. As of August 26, 2017, and August 27, 2016, cash and cash equivalents of \$148.4 million and \$78.1 million, respectively, were held outside of the U.S. and were generally utilized to support liquidity needs in our foreign operations. We intend to continue to permanently reinvest the cash held outside of the U.S. in our foreign operations.

For the fiscal year ended August 26, 2017, our after-tax return on invested capital (“ROIC”) was 29.9% as compared to 31.3% for the comparable prior year period. ROIC is calculated as after-tax operating profit (excluding rent charges) divided by invested capital (which includes a factor to capitalize operating leases). The decrease in ROIC is primarily due to the increase in average debt, along with the impact of recent investments in the business. Currently, these investments are diluting our return metrics. We use ROIC to evaluate whether we are effectively using our capital resources and believe it is an important indicator of our overall operating performance. Refer to the “Reconciliation of Non-GAAP Financial Measures” section for further details of our calculation.

### *Debt Facilities*

On November 18, 2016, we amended and restated our existing Multi-Year revolving credit facility (the “New Multi-Year Revolving Credit Agreement”) by increasing the committed credit amount from \$1.25 billion to \$1.6 billion, extending the expiration date by two years and renegotiating other terms and conditions. This credit facility is available to primarily support commercial paper borrowings, letters of credit and other short-term unsecured bank loans. The capacity of the credit facility may be increased to \$2.1 billion prior to the maturity date at our election and subject to bank credit capacity and approval, and may include up to \$200 million in letters of credit. Under the revolving credit facility, we may borrow funds consisting of Eurodollar loans, base rate loans or a combination of both. Interest accrues on Eurodollar loans at a defined Eurodollar rate, defined as LIBOR plus the applicable percentage, as defined in the revolving credit facility, depending upon our senior, unsecured, (non-credit enhanced) long-term debt rating. Interest accrues on base rate loans as defined in the credit facility. We also have the option to borrow funds under the terms of a swingline loan subfacility. The revolving credit facility expires on November 18, 2021, but we may, by notice to the administrative agent, make up to two requests to extend the termination date for an additional period of one year. The first such request must be made no earlier than 60 days, and no later than 45 days, prior to November 18, 2017, while the second request must be made no earlier than 60 days, and no later than 45 days, prior to November 18, 2018.

On November 18, 2016, we amended and restated our existing 364-Day revolving credit facility (the “New 364-Day Credit Agreement”) by decreasing the committed credit amount from \$500 million to \$400 million, extending the expiration date by one year and renegotiating other terms and conditions. The credit facility is available to primarily support commercial paper borrowings and other short-term unsecured bank loans. Under the credit facility, we may borrow funds consisting of Eurodollar loans, base rate loans or a combination of both. Interest accrues on Eurodollar loans at a defined Eurodollar rate, defined as LIBOR plus the applicable margin, as defined in the revolving credit facility, depending upon our senior, unsecured, (non-credit enhanced) long-term debt rating. Interest accrues on base rate loans as defined in the credit facility. The New 364-Day Credit Agreement expires on November 17, 2017, but we may request an extension of the term date for 364 days no later than 45 days prior to November 17, 2017, subject to bank approval. In addition, at least 15 days prior to November 17, 2017, we have the right to convert the credit facility to a term loan for up to one year from the termination date, subject to a 1% penalty.

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As of August 26, 2017, we had no outstanding borrowings under either of the revolving credit facilities and \$3.3 million of outstanding letters of credit under the New Multi-Year Revolving Credit Agreement.

The revolving credit facility agreements require that our consolidated interest coverage ratio as of the last day of each quarter shall be no less than 2.5:1. This ratio is defined as the ratio of (i) consolidated earnings before interest, taxes and rents to (ii) consolidated interest expense plus consolidated rents. Our consolidated interest coverage ratio as of August 26, 2017 was 6.0:1.

As of August 26, 2017, \$1.155 billion of commercial paper borrowings and the \$250 million 7.125% Senior Notes due August 2018 were classified as long-term in the Consolidated Balance Sheets as we have the ability and intent to refinance on a long-term basis through available capacity in our revolving credit facilities. As of August 26, 2017, we had \$1.997 billion of availability under our \$2.0 billion revolving credit facilities, which would allow us to replace these short-term obligations with long-term financing facilities.

We also maintain a letter of credit facility that allows us to request the participating bank to issue letters of credit on our behalf up to an aggregate amount of \$75 million. The letter of credit facility is in addition to the letters of credit that may be issued under the New Multi-Year Revolving Credit Agreement. As of August 26, 2017 we had \$74.9 million in letters of credit outstanding under the letter of credit facility, which expires June 2019.

In addition to the outstanding letters of credit issued under the committed facilities discussed above, we had \$10.4 million in letters of credit outstanding as of August 26, 2017. These letters of credit have various maturity dates and were issued on an uncommitted basis. On April 18, 2017, we issued \$600 million in 3.750% Senior Notes due June 2027 under our shelf registration statement filed with the SEC on April 15, 2015 (the "2015 Shelf Registration"). The 2015 Shelf Registration allows us to sell an indeterminate amount of debt securities to fund general corporate purposes, including repaying, redeeming or repurchasing outstanding debt and for working capital, capital expenditures, new location openings, stock repurchases and acquisitions. Proceeds from the debt issuance were used for general corporate purposes.

On April 21, 2016, we issued \$400 million in 3.125% Senior Notes due April 2026 and \$250 million in 1.625% Senior Notes due April 2019 under the 2015 Shelf Registration. Proceeds from the debt issuances were used for general corporate purposes.

On April 29, 2015, we issued \$400 million in 3.250% Senior Notes due April 2025 and \$250 million in 2.500% Senior Notes due April 2021 under the 2015 Shelf Registration. Proceeds from the debt issuances were used to repay a portion of the outstanding commercial paper borrowings, which were used to repay the \$500 million in 5.750% Senior Notes due in January 2015, and for general corporate purposes.

All senior notes are subject to an interest rate adjustment if the debt ratings assigned to the senior notes are downgraded (as defined in the agreements). Further, the senior notes contain a provision that repayment of the senior notes may be accelerated if we experience a change in control (as defined in the agreements). Our borrowings under our senior notes contain minimal covenants, primarily restrictions on liens. Under our revolving credit facilities, covenants include restrictions on liens, a maximum debt to earnings ratio, a minimum fixed charge coverage ratio and a change of control provision that may require acceleration of the repayment obligations under certain circumstances. All of the repayment obligations under our borrowing arrangements may be accelerated and come due prior to the scheduled payment date if covenants are breached or an event of default occurs.

As of August 26, 2017, we were in compliance with all covenants related to our borrowing arrangements and expect to remain in compliance with those covenants in the future.

For the fiscal year ended August 26, 2017, our adjusted debt to earnings before interest, taxes, depreciation, amortization, rent and share-based compensation expense ("EBITDAR") ratio was 2.6:1 as compared to 2.5:1 as of the comparable prior year end. We calculate adjusted debt as the sum of total debt, capital lease obligations and rent times six; and we calculate EBITDAR by adding interest, taxes, depreciation, amortization, rent and share-based compensation expense to net income. We target our debt levels to a specified ratio of adjusted debt to

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EBITDAR in order to maintain our investment grade credit ratings and believe this is important information for the management of our debt levels. To the extent EBITDAR continues to grow in future years, we expect our debt levels to increase; conversely, if EBITDAR declines, we would expect our debt levels to decrease. Refer to the “Reconciliation of Non-GAAP Financial Measures” section for further details of our calculation.

### *Stock Repurchases*

During 1998, we announced a program permitting us to repurchase a portion of our outstanding shares not to exceed a dollar maximum established by our Board of Directors (the “Board”). On March 21, 2017, the Board voted to increase the authorization by \$750 million to raise the cumulative share repurchase authorization from \$17.9 billion to \$18.65 billion. From January 1998 to August 26, 2017, we have repurchased a total of 142.3 million shares at an aggregate cost of \$17.826 billion. We repurchased 1.5 million shares of common stock at an aggregate cost of \$1.072 billion during fiscal 2017, 1.9 million shares of common stock at an aggregate cost of \$1.452 billion during fiscal 2016, and 2.0 million shares of common stock at an aggregate cost of \$1.271 billion during fiscal 2015. Considering cumulative repurchases as of August 26, 2017, we had \$823.7 million remaining under the Board’s authorization to repurchase our common stock.

For the fiscal year ended August 26, 2017, cash flow before share repurchases and changes in debt was \$1.018 billion as compared to \$1.167 billion during the comparable prior year period. Cash flow before share repurchases and changes in debt is calculated as the net increase or decrease in cash and cash equivalents less increases in debt plus share repurchases. We use cash flow before share repurchases and changes in debt to calculate the cash flows remaining and available in an effort to increase shareholder value in the form of share repurchases. We believe this is important information regarding our allocation of available capital where we prioritize investments in the business and utilize the remaining funds to repurchase shares, while maintaining debt levels that support our investment grade credit ratings. If we allowed these funds to accumulate on our balance sheet instead of repurchasing our shares, we believe our earnings per share and stock price would be negatively impacted. Refer to the “Reconciliation of Non-GAAP Financial Measures” section for further details of our calculation.

Subsequent to August 26, 2017, we have repurchased 383,165 shares of common stock at an aggregate cost of \$225.8 million. Considering the cumulative repurchases subsequent to August 26, 2017, we have \$597.9 million remaining under the Board’s authorization to repurchase our common stock.

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The following table shows our significant contractual obligations as of August 26, 2017:

<i>(in thousands)</i>	<b>Total Contractual Obligations</b>	<b>Payment Due by Period</b>			
		<b>Less than 1 year</b>	<b>Between 1-3 years</b>	<b>Between 3-5 years</b>	<b>Over 5 years</b>
Debt <sup>(1)</sup>	\$5,105,100	\$1,405,100	\$ 250,000	\$1,250,000	\$2,200,000
Interest payments <sup>(2)</sup>	796,125	138,875	238,063	197,750	221,437
Operating leases <sup>(3)</sup>	2,153,180	293,826	547,305	450,640	861,409
Capital leases <sup>(4)</sup>	159,076	48,134	86,418	24,524	—
Self-insurance reserves <sup>(5)</sup>	231,079	84,756	75,195	31,320	39,808
Construction commitments	69,914	69,914	—	—	—
	<u>\$8,514,474</u>	<u>\$2,040,605</u>	<u>\$1,196,981</u>	<u>\$1,954,234</u>	<u>\$3,322,654</u>

(1) Debt balances represent principal maturities, excluding interest, discounts, and debt issuance costs.

(2) Represents obligations for interest payments on long-term debt.

(3) Operating lease obligations are inclusive of amounts accrued within deferred rent and closed store obligations reflected in our consolidated balance sheets.

(4) Capital lease obligations include related interest.

(5) Self-insurance reserves reflect estimates based on actuarial calculations. Although these obligations do not have scheduled maturities, the timing of future payments are predictable based upon historical patterns. Accordingly, we reflect the net present value of these obligations in our consolidated balance sheets.

We have pension obligations reflected in our consolidated balance sheets that are not reflected in the table above due to the absence of scheduled maturities and the nature of the account. During fiscal 2017, we made contributions of \$17.8 million to the pension plan. We expect to make contributions of approximately \$20.3 million during fiscal 2018; however a change to the expected cash funding may be impacted by a change in interest rates or a change in the actual or expected return on plan assets.

As of August 26, 2017, our defined benefit obligation associated with our pension plans is \$314.7 million and our pension assets are valued at \$316.3 million, resulting in a net pension asset position of \$1.5 million. Amounts recorded in Accumulated other comprehensive loss are \$118.9 million at August 26, 2017. The balance in Accumulated other comprehensive loss will be amortized into pension expense in the future, unless the losses are recovered in future periods through actuarial gains.

Additionally, our tax liability for uncertain tax positions, including interest and penalties, was \$15.4 million at August 26, 2017. Approximately \$2.6 million is classified as current liabilities and \$12.8 million is classified as long-term liabilities. We did not reflect these obligations in the table above as we are unable to make an estimate of the timing of payments of the long-term liabilities due to uncertainties in the timing and amounts of the settlement of these tax positions.

*Off-Balance Sheet Arrangements*

The following table reflects outstanding letters of credit and surety bonds as of August 26, 2017:

<i>(in thousands)</i>	<b>Total Other Commitments</b>
Standby letters of credit	\$ 88,633
Surety bonds	28,759
	<u>\$ 117,392</u>

A substantial portion of the outstanding standby letters of credit (which are primarily renewed on an annual basis) and surety bonds are used to cover reimbursement obligations to our workers' compensation carriers.

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There are no additional contingent liabilities associated with these instruments as the underlying liabilities are already reflected in our consolidated balance sheets. The standby letters of credit and surety bond arrangements expire within one year, but have automatic renewal clauses.

**Reconciliation of Non-GAAP Financial Measures**

“Selected Financial Data” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” include certain financial measures not derived in accordance with generally accepted accounting principles (“GAAP”). These non-GAAP financial measures provide additional information for determining our optimum capital structure and are used to assist management in evaluating performance and in making appropriate business decisions to maximize stockholders’ value.

Non-GAAP financial measures should not be used as a substitute for GAAP financial measures, or considered in isolation, for the purpose of analyzing our operating performance, financial position or cash flows. However, we have presented the non-GAAP financial measures, as we believe they provide additional information that is useful to investors as it indicates more clearly our comparative year-to-year operating results. Furthermore, our management and Compensation Committee of the Board use the above-mentioned non-GAAP financial measures to analyze and compare our underlying operating results and use select measurements to determine payments of performance-based compensation. We have included a reconciliation of this information to the most comparable GAAP measures in the following reconciliation tables.

*Reconciliation of Non-GAAP Financial Measure: Cash Flow Before Share Repurchases and Changes in Debt*

The following table reconciles net increase (decrease) in cash and cash equivalents to cash flow before share repurchases and changes in debt, which is presented in “Selected Financial Data” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” :

<i>(in thousands)</i>	<b>Fiscal Year Ended August</b>				
	<b>2017</b>	<b>2016</b>	<b>2015</b>	<b>2014</b>	<b>2013(1)</b>
Net cash provided by/(used in):					
Operating activities(2)	\$ 1,570,612	\$ 1,641,060	\$ 1,573,018	\$ 1,365,005	\$ 1,481,763
Investing activities	(553,599)	(505,835)	(567,911)	(447,968)	(527,295)
Financing activities(2)	(914,329)	(1,116,528)	(944,597)	(935,328)	(913,774)
Effect of exchange rate changes on cash	852	(4,272)	(9,686)	585	(1,596)
Net increase/(decrease) in cash and cash equivalents	\$ 103,536	\$ 14,425	\$ 50,824	\$ (17,706)	\$ 39,098
Less: Increase in debt, excluding deferred financing costs	157,600	299,900	303,800	156,800	418,652
Plus: Share repurchases	1,071,649	1,452,462	1,271,416	1,099,212	1,387,315
Cash flow before share repurchases and changes in debt	<u>\$ 1,017,585</u>	<u>\$ 1,166,987</u>	<u>\$ 1,018,440</u>	<u>\$ 924,706</u>	<u>\$ 1,007,761</u>

(1) The fiscal year ended August 31, 2013 consisted of 53 weeks.

(2) As described in the consolidated financial statements and notes, thereto, we have adopted the provisions of ASU 2016-09, Compensation – Stock Compensation (Topic 718): Improvement to Employee Share-based Payment Accounting, as of August 28, 2016. The ASU simplifies several aspects of accounting for share-based payments transactions, including income tax consequences, classification of awards as either equity or liabilities and classification on the statement of cash flows. We have applied the amendment relating to the presentation of the excess tax benefits on the Consolidated Statements of Cash Flows retrospectively. Prior period amounts for net cash provided by operating and financing activities for all years presented above were restated to conform to the current period presentation.

[Table of Contents](#)*Reconciliation of Non-GAAP Financial Measure: After-tax Return on Invested Capital ("ROIC")*

The following table calculates the percentage of ROIC. ROIC is calculated as after-tax operating profit (excluding rent) divided by invested capital (which includes a factor to capitalize operating leases). The ROIC percentages are presented in "Selected Financial Data" and "Management's Discussion and Analysis of Financial Condition and Results of Operations":

<i>(in thousands, except percentages)</i>	Fiscal Year Ended August				
	2017	2016	2015	2014	2013(1)
Net income	\$ 1,280,869	\$ 1,241,007	\$ 1,160,241	\$ 1,069,744	\$ 1,016,480
Adjustments:					
Interest expense	154,580	147,681	150,439	167,509	185,415
Rent expense	302,928	280,490	269,458	253,813	246,340
Tax effect(2)	(153,265)	(150,288)	(149,483)	(150,412)	(155,432)
After-tax return	\$ 1,585,112	\$ 1,518,890	\$ 1,430,655	\$ 1,340,654	\$ 1,292,803
Average debt(3)	\$ 5,061,502	\$ 4,820,402	\$ 4,458,114	\$ 4,258,796	\$ 3,930,975
Average (deficit)(4)	(1,730,559)	(1,774,329)	(1,619,596)	(1,709,778)	(1,581,832)
Rent x 6(5)	1,817,568	1,682,940	1,616,748	1,522,878	1,478,040
Average capital lease obligations(6)	150,066	131,008	126,096	108,475	102,729
Invested capital	\$ 5,298,577	\$ 4,860,021	\$ 4,581,362	\$ 4,180,371	\$ 3,929,912
ROIC	29.9%	31.3%	31.2%	32.1%	32.9%

(1) The fiscal year ended August 31, 2013 consisted of 53 weeks.

(2) The effective tax rate during fiscal 2017, 2016, 2015, 2014 and 2013 was 33.5%, 35.1%, 35.6%, 35.7% and 36.0%, respectively.

(3) Average debt is equal to the average of our debt measured as of the previous five quarters.

(4) Average equity is equal to the average of our stockholders' (deficit) measured as of the previous five quarters.

(5) Rent is multiplied by a factor of six to capitalize operating leases in the determination of pre-tax invested capital.

(6) Average capital lease obligations is computed as the average of our capital lease obligations over the previous five quarters.

**Table of Contents***Reconciliation of Non-GAAP Financial Measure: Adjusted Debt to Earnings before Interest, Taxes, Depreciation, Rent and Share-Based Expense "EBITDAR"*

The following table calculates the ratio of adjusted debt to EBITDAR. Adjusted debt to EBITDAR is calculated as the sum of total debt, capital lease obligations and annual rents times six; divided by net income plus interest, taxes, depreciation, amortization, rent and share-based compensation expense. The adjusted debt to EBITDAR ratios are presented in "Selected Financial Data" and "Management's Discussion and Analysis of Financial Condition and Results of Operations":

<i>(in thousands, except ratios)</i>	Fiscal Year Ended August				
	2017	2016	2015	2014	2013(1)
Net income	\$1,280,869	\$1,241,007	\$1,160,241	\$1,069,744	\$1,016,480
Add: Interest expense	154,580	147,681	150,439	167,509	185,415
Income tax expense	644,620	671,707	642,371	592,970	571,203
EBIT	2,080,069	2,060,395	1,953,051	1,830,223	1,773,098
Add: Depreciation and amortization expense	323,051	297,397	269,919	251,267	227,251
Rent expense	302,928	280,490	269,458	253,813	246,340
Share-based expense	38,244	39,825	40,995	39,390	37,307
EBITDAR	<u>\$2,744,292</u>	<u>\$2,678,107</u>	<u>\$2,533,423</u>	<u>\$2,374,693</u>	<u>\$2,283,996</u>
Debt	\$5,081,238	\$4,924,119	\$4,624,876	\$4,323,106	\$4,164,078
Capital lease obligations	150,456	147,285	128,167	119,603	106,171
Rent x 6	1,817,568	1,682,940	1,616,748	1,522,878	1,478,040
Adjusted debt	<u>\$7,049,262</u>	<u>\$6,754,344</u>	<u>\$6,369,791</u>	<u>\$5,965,587</u>	<u>\$5,748,289</u>
Adjusted debt to EBITDAR	<u>2.6</u>	<u>2.5</u>	<u>2.5</u>	<u>2.5</u>	<u>2.5</u>

(1) The fiscal year ended August 31, 2013 consisted of 53 weeks.

*Reconciliation of Non-GAAP Financial Measure: Adjusted Diluted Earnings Per Share*

The following table calculates the adjusted diluted earnings per share. Adjusted diluted earnings per share is calculated to exclude the impact of excess tax benefits from option exercises under the new accounting guidance for share-based payments. The adjusted diluted earnings per share amounts are presented in "Selected Financial Data" and "Management's Discussion and Analysis of Financial Condition and Results of Operations":

	Fiscal Year Ended August				
	2017	2016	2015	2014	2013(1)
Diluted earnings per share	\$ 44.07	\$ 40.70	\$ 36.03	\$ 31.57	\$ 27.79
Impact of excess tax benefits from option exercises	(0.81)	—	—	—	—
Adjusted diluted earnings per share	<u>\$ 43.26</u>	<u>\$ 40.70</u>	<u>\$ 36.03</u>	<u>\$ 31.57</u>	<u>\$ 27.79</u>

(1) The fiscal year ended August 31, 2013 consisted of 53 weeks.

**Recent Accounting Pronouncements**

See Note A of the Notes to Consolidated Financial Statements for a discussion on recent accounting pronouncements.

**Critical Accounting Policies and Estimates**

Preparation of our consolidated financial statements requires us to make estimates and assumptions affecting the reported amounts of assets and liabilities at the date of the financial statements, reported amounts of revenues and expenses during the reporting period and related disclosures of contingent liabilities. In the notes to our consolidated financial statements, we describe our significant accounting policies used in preparing the consolidated financial statements. Our policies are evaluated on an ongoing basis and are drawn from historical experience and other assumptions that we believe to be reasonable under the circumstances. Actual results could differ under different assumptions or conditions.

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Our senior management has identified the critical accounting policies for the areas that are materially impacted by estimates and assumptions and have discussed such policies with the Audit Committee of our Board. The following items in our consolidated financial statements represent our critical accounting policies that require significant estimation or judgment by management:

### *Inventory Reserves and Cost of Sales*

#### LIFO

We state our inventories at the lower of cost or market. Inventory cost has been determined using the last-in, first-out (“LIFO”) method for domestic inventories and the weighted average cost method for Mexico and Brazil inventories. Due to price deflation on our merchandise purchases, we have exhausted our LIFO reserve balance. Our policy is to not write up inventory in excess of replacement cost, which is based on average cost. The difference between LIFO cost and replacement cost, which will be reduced upon experiencing price inflation on our merchandise purchases, was \$414.9 million at August 26, 2017.

#### Inventory Obsolescence and Shrinkage

Our inventory, primarily hard parts, maintenance items, accessories and non-automotive products, is used on vehicles that have rather long lives; and therefore, the risk of obsolescence is minimal and the majority of excess inventory has historically been returned to our vendors for credit. In the isolated instances where less than full credit will be received for such returns and where we anticipate that items will be sold at retail prices that are less than recorded costs, we record a charge (less than \$3 million in each of the last three years) through cost of sales for the difference. These charges are based on management’s judgment, including estimates and assumptions regarding marketability of products and the market value of inventory to be sold in future periods.

Historically, we have not encountered material exposure to inventory obsolescence or excess inventory, nor have we experienced material changes to our estimates. However, we may be exposed to material losses should our vendors alter their policy with regard to accepting excess inventory returns.

Additionally, we reduce inventory for projected losses related to shrinkage, which is estimated based on historical losses and current inventory loss trends resulting from previous physical inventories. Shrinkage may occur due to theft, loss or inaccurate records for the receipt of goods, among other things. Throughout the year, we take physical inventory counts of our stores and distribution centers to verify these estimates. We make assumptions regarding upcoming physical inventory counts that may differ from actual results.

Each quarter, we evaluate the accrued shrinkage in light of the actual shrink results from physical inventory counts. To the extent our actual physical inventory count results differ from our estimates, we may experience material adjustments to our financial statements. Historically, we have not experienced material adjustments to our shrinkage estimates and do not believe there is a reasonable likelihood that there will be a material change in the future estimates or assumptions we use. Over the last three years, there has been less than a 50 basis point fluctuation in our shrinkage rate (shrink loss as a percent of sales).

A 10% difference in our inventory reserves as of August 26, 2017, would have affected net income by approximately \$6.7 million in fiscal 2017.

### *Vendor Allowances*

We receive various payments and allowances from our vendors through a variety of programs and arrangements, including allowances for warranties, advertising and general promotion of vendor products. Vendor allowances are treated as a reduction of inventory, unless they are provided as a reimbursement of specific, incremental, identifiable costs incurred by the Company in selling the vendor’s products. Approximately 81% of the vendor funds received are recorded as a reduction of the cost of inventories and recognized as a reduction to cost of sales as these inventories are sold.

Based on our vendor agreements, a significant portion of vendor funding we receive is earned as we purchase inventory. Therefore, we record receivables for funding earned but not yet received as we purchase inventory. During the year, we regularly review the receivables from vendors to ensure vendors are able to meet their obligations. We generally have not recorded a reserve against these receivables as we have not experienced significant losses and typically have legal right of offset with our vendors for payments owed them. Historically, we have had write-offs less than \$1 million in each of the last three years.



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### *Goodwill and Intangibles*

We evaluate goodwill and indefinite-lived intangibles for impairment annually in the fourth quarter of each fiscal year or whenever events or changes in circumstances indicate the carrying values exceed the current fair values. We evaluate the likelihood of impairment by considering qualitative factors, such as macroeconomic, industry, market, or any other factors that could impact the reporting unit's fair value. If these factors indicate impairment, we perform a quantitative assessment to determine if the carrying value exceeds the fair value. Goodwill is evaluated at the reporting unit level and involves valuation methods including forecasting future financial performance, estimates of discount rates and other factors. If the carrying value of the reporting unit's goodwill exceeds the fair value, we recognize an impairment loss.

Indefinite-lived intangibles are evaluated by comparing the carrying amount of the asset to the future discounted cash flows that the asset is expected to generate. If the carrying value of the indefinite-lived intangible asset exceeds the fair value based on the future discounted cash flows, we recognize an impairment loss. These impairment analyses require a significant amount of subjective judgment by management, and as a result these estimates are uncertain and our actual results may be different from our estimates.

The carrying value of goodwill and indefinite-lived intangibles at August 26, 2017 and August 27, 2016 was \$418.8 million with \$302.6 million related to our Domestic Auto Parts reporting unit, \$89.8 million relating to our AutoAnything reporting unit and \$26.4 million relating to our Interamerican Motor Corporation reporting unit. No impairment charges were recognized in fiscal 2017, 2016 and 2015 as the fair value of our reporting units exceeded our carrying values. If profitability trends do not improve as projected during fiscal 2018 for our AutoAnything and Interamerican Motor Corporation reporting units, it is possible that an interim test, or our annual impairment test, may result in an impairment of these assets.

### *Self-Insurance Reserves*

We retain a significant portion of the risks associated with workers' compensation, employee health, general and products liability, property and vehicle liability; and we obtain third party insurance to limit the exposure related to certain of these risks. Our self-insurance reserve estimates totaled \$220.5 million at August 26, 2017, and \$214.4 million at August 27, 2016. This change is primarily reflective of our growing operations, including inflation, increases in health care costs, the number of vehicles and the number of hours worked, as well as our historical claims experience.

The assumptions made by management in estimating our self-insurance reserves include consideration of historical cost experience, judgments about the present and expected levels of cost per claim and retention levels. We utilize various methods, including analyses of historical trends and actuarial methods, to estimate the cost to settle reported claims and claims incurred but not yet reported. The actuarial methods develop estimates of the future ultimate claim costs based on the claims incurred as of the balance sheet date. When estimating these liabilities, we consider factors, such as the severity, duration and frequency of claims, legal costs associated with claims, healthcare trends, and projected inflation of related factors. In recent history, our methods for determining our exposure have remained consistent, and our historical trends have been appropriately factored into our reserve estimates. As we obtain additional information and refine our methods regarding the assumptions and estimates we use to recognize liabilities incurred, we will adjust our reserves accordingly.

Management believes that the various assumptions developed and actuarial methods used to determine our self-insurance reserves are reasonable and provide meaningful data and information that management uses to make its best estimate of our exposure to these risks. Arriving at these estimates, however, requires a significant amount of subjective judgment by management, and as a result these estimates are uncertain and our actual exposure may be different from our estimates. For example, changes in our assumptions about health care costs, the severity of accidents and the incidence of illness, the average size of claims and other factors could cause actual claim costs to vary materially from our assumptions and estimates, causing our reserves to be overstated or understated. For instance, a 10% change in our self-insurance liability would have affected net income by approximately \$14.7 million for fiscal 2017.

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Our liabilities for workers' compensation, certain general and product liability, property and vehicle claims do not have scheduled maturities; however, the timing of future payments is predictable based on historical patterns and is relied upon in determining the current portion of these liabilities. Accordingly, we reflect the net present value of the obligations we determine to be long-term using the risk-free interest rate as of the balance sheet date. If the discount rate used to calculate the present value of these reserves changed by 50 basis points, net income would have been affected by approximately \$2.1 million for fiscal 2017. Our liability for health benefits is classified as current, as the historical average duration of claims is approximately six weeks.

### *Income Taxes*

Our income tax returns are audited by state, federal and foreign tax authorities, and we are typically engaged in various tax examinations at any given time. Tax contingencies often arise due to uncertainty or differing interpretations of the application of tax rules throughout the various jurisdictions in which we operate. The contingencies are influenced by items such as tax audits, changes in tax laws, litigation, appeals and prior experience with similar tax positions. We regularly review our tax reserves for these items and assess the adequacy of the amount we have recorded. As of August 26, 2017, we had approximately \$15.4 million reserved for uncertain tax positions.

We evaluate potential exposures associated with our various tax filings by estimating a liability for uncertain tax positions based on a two-step process. The first step is to evaluate the tax position for recognition by determining if the weight of available evidence indicates that it is more likely than not that the position will be sustained on audit, including resolution of related appeals or litigation processes, if any. The second step requires us to estimate and measure the tax benefit as the largest amount that is more than 50% likely to be realized upon ultimate settlement.

We believe our estimates to be reasonable and have not experienced material adjustments to our reserves in the previous three years; however, actual results could differ from our estimates, and we may be exposed to gains or losses that could be material. Specifically, management has used judgment and made assumptions to estimate the likely outcome of uncertain tax positions. Additionally, to the extent we prevail in matters for which a liability has been established, or must pay in excess of recognized reserves, our effective tax rate in any particular period could be materially affected.

### *Pension Obligation*

Prior to January 1, 2003, substantially all full-time employees were covered by a qualified defined benefit pension plan. The benefits under the plan were based on years of service and the employee's highest consecutive five-year average compensation. On January 1, 2003, the plan was frozen. Accordingly, pension plan participants will earn no new benefits under the plan formula and no new participants will join the pension plan. On January 1, 2003, our supplemental, unqualified defined benefit pension plan for certain highly compensated employees was also frozen. Accordingly, plan participants will earn no new benefits under the plan formula and no new participants will join the pension plan. As the plan benefits are frozen, the annual pension expense and recorded liabilities are not impacted by increases in future compensation levels or additional years of service, but are impacted by the use of two key assumptions in the calculation of these balances:

*Expected long-term rate of return on plan assets:* For the fiscal year ended August 26, 2017, we have assumed a 7.0% long-term rate of return on our plan assets. This estimate is a judgmental matter in which management considers the composition of our asset portfolio, our historical long-term investment performance and current market conditions. We review the expected long-term rate of return on an annual basis, and revise it accordingly. Additionally, we monitor the mix of investments in our portfolio to ensure alignment with our long-term strategy to manage pension cost and reduce volatility in our assets. In January 2017, our Investment Committee approved a revised asset allocation target for the investments held by the pension plan. Based on the revised asset allocation target, the expected long-term rate of return on plan assets changed from 7.0% for the year ended August 26, 2017, to 6.0% for the year ending August 25, 2018. At August 26, 2017, our plan assets totaled \$316.3 million in our qualified plan. Our assets are generally valued using the net asset values, which are determined by valuing investments at the closing price or last trade reported on such date on the major market on which the individual securities are traded. We have no assets in our nonqualified plan. A 50 basis point change in our expected long term rate of return would impact annual pension expense by approximately \$1.6 million for the qualified plan.

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*Discount rate used to determine benefit obligations:* This rate is highly sensitive and is adjusted annually based on the interest rate for long-term, high-quality, corporate bonds as of the measurement date using yields for maturities that are in line with the duration of our pension liabilities. For fiscal 2017, we assumed a discount rate of 3.9%. A decrease in the discount rate increases our projected benefit obligation and pension expense. A 50 basis point change in the discount rate at August 26, 2017 would impact annual pension expense/income by approximately \$1.7 million for the qualified plan and \$30 thousand for the nonqualified plan.

### **Item 7A. Quantitative and Qualitative Disclosures about Market Risk**

We are exposed to market risk from, among other things, changes in interest rates, foreign exchange rates and fuel prices. From time to time, we use various derivative instruments to reduce interest rate and fuel price risks. To date, based upon our current level of foreign operations, no derivative instruments have been utilized to reduce foreign exchange rate risk. All of our hedging activities are governed by guidelines that are authorized by the Board. Further, we do not buy or sell derivative instruments for trading purposes.

#### *Interest Rate Risk*

Our financial market risk results primarily from changes in interest rates. At times, we reduce our exposure to changes in interest rates by entering into various interest rate hedge instruments such as interest rate swap contracts, treasury lock agreements and forward-starting interest rate swaps.

We have historically utilized interest rate swaps to convert variable rate debt to fixed rate debt and to lock in fixed rates on future debt issuances. We reflect the current fair value of all interest rate hedge instruments as a component of either other current assets or accrued expenses and other. Our interest rate hedge instruments are designated as cash flow hedges.

Unrealized gains and losses on interest rate hedges are deferred in stockholders' deficit as a component of Accumulated other comprehensive loss. These deferred gains and losses are recognized in income as a decrease or increase to interest expense in the period in which the related cash flows being hedged are recognized in expense. However, to the extent that the change in value of an interest rate hedge instrument does not perfectly offset the change in the value of the cash flow being hedged, that ineffective portion is immediately recognized in earnings.

The fair value of our debt was estimated at \$5.171 billion as of August 26, 2017, and \$5.117 billion as of August 27, 2016, based on the quoted market prices for the same or similar debt issues or on the current rates available to us for debt having the same remaining maturities. Such fair value is greater than the carrying value of debt by \$90.3 million and \$192.7 million at August 26, 2017 and August 27, 2016, respectively. We had \$1.155 billion of variable rate debt outstanding at August 26, 2017, and \$1.198 billion of variable rate debt outstanding at August 27, 2016. In fiscal 2017, at this borrowing level for variable rate debt, a one percentage point increase in interest rates would have had an unfavorable impact on our pre-tax earnings and cash flows of approximately \$11.6 million. The primary interest rate exposure on variable rate debt is based on LIBOR. We had outstanding fixed rate debt of \$3.926 billion, net of unamortized debt issuance costs of \$23.9 million, at August 26, 2017, and \$3.727 billion, net of unamortized debt issuance costs of \$23.4 million, at August 27, 2016. A one percentage point increase in interest rates would reduce the fair value of our fixed rate debt by approximately \$191.3 million at August 26, 2017.

#### *Fuel Price Risk*

From time to time, we utilize fuel swap contracts in order to lower fuel cost volatility in our operating results. Historically, the instruments were executed to economically hedge a portion of our diesel and unleaded fuel exposure. However, we have not designated the fuel swap contracts as hedging instruments; and therefore, the contracts have not qualified for hedge accounting treatment. In fiscal 2015, we entered into a fuel swap to economically hedge the commodity cost associated with our unleaded fuel usage. The notional amount of the contract was 2.9 million gallons and terminated March 31, 2015. The swap had no significant impact on the results of operations. We did not enter into any fuel swap contracts during fiscal 2017 or 2016.

**Table of Contents***Foreign Currency Risk*

Foreign currency exposures arising from transactions include firm commitments and anticipated transactions denominated in a currency other than our entities' functional currencies. To minimize our risk, we generally enter into transactions denominated in the respective functional currencies. We are exposed to Brazilian reals, Canadian dollars, euros, Chinese yuan renminbi and British pounds, but our primary foreign currency exposure arises from Mexican peso-denominated revenues and profits and their translation into U.S. dollars. Foreign currency exposures arising from transactions denominated in currencies other than the functional currency are not material.

We view our investments in Mexican subsidiaries as long-term. As a result, we generally do not hedge these net investments. The net asset exposure in the Mexican subsidiaries translated into U.S. dollars using the year-end exchange rates was \$519.3 million at August 26, 2017 and \$398.0 million at August 27, 2016. The year-end exchange rates with respect to the Mexican peso increased by approximately 4% with respect to the U.S. dollar during fiscal 2017 and decreased by approximately 9% during fiscal 2016. The potential loss in value of our net assets in the Mexican subsidiaries resulting from a hypothetical 10 percent adverse change in quoted foreign currency exchange rates at August 26, 2017 and August 27, 2016, would be approximately \$47.2 million and approximately \$36.2 million, respectively. Any changes in our net assets in the Mexican subsidiaries relating to foreign currency exchange rates would be reflected in the foreign currency translation component of Accumulated other comprehensive loss, unless the Mexican subsidiaries are sold or otherwise disposed.

A hypothetical 10 percent adverse change in average exchange rates would not have a material impact on our results of operations.

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[Table of Contents](#)**Management's Report on Internal Control Over Financial Reporting**

Our management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934, as amended). Our internal control over financial reporting includes, among other things, defined policies and procedures for conducting and governing our business, sophisticated information systems for processing transactions and properly trained staff. Mechanisms are in place to monitor the effectiveness of our internal control over financial reporting, including regular testing performed by the Company's internal audit team. Actions are taken to correct deficiencies as they are identified. Our procedures for financial reporting include the active involvement of senior management, our Audit Committee and a staff of highly qualified financial and legal professionals.

Management, with the participation of our principal executive and financial officers, assessed our internal control over financial reporting as of August 26, 2017, the end of our fiscal year. Management based its assessment on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission 2013 framework.

Based on this assessment, management has concluded that our internal control over financial reporting was effective as of August 26, 2017.

Our independent registered public accounting firm, Ernst & Young LLP, audited the effectiveness of our internal control over financial reporting. Ernst & Young LLP's attestation report on the Company's internal control over financial reporting as of August 26, 2017 is included in this Annual Report on Form 10-K.

/s/ WILLIAM C. RHODES, III

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William C. Rhodes, III  
Chairman, President and  
Chief Executive Officer  
(Principal Executive Officer)

/s/ WILLIAM T. GILES

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William T. Giles  
Chief Financial Officer and Executive  
Vice President – Finance and Information  
Technology  
(Principal Financial Officer)

**Certifications***Compliance with NYSE Corporate Governance Listing Standards*

On January 4, 2017, the Company submitted to the New York Stock Exchange the Annual CEO Certification required pursuant to Section 303A.12(a) of the New York Stock Exchange Listed Company Manual.

*Rule 13a-14(a) Certifications of Principal Executive Officer and Principal Financial Officer*

The Company has filed, as exhibits to its Annual Report on Form 10-K for the fiscal year ended August 26, 2017, the certifications of its Principal Executive Officer and Principal Financial Officer required pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.

[Table of Contents](#)**Report of Independent Registered Public Accounting Firm**

The Board of Directors and Stockholders of AutoZone, Inc.

We have audited AutoZone, Inc.'s internal control over financial reporting as of August 26, 2017, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission 2013 framework (the "COSO criteria"). AutoZone, Inc.'s management is responsible for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on AutoZone, Inc.'s internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, AutoZone, Inc. maintained, in all material respects, effective internal control over financial reporting as of August 26, 2017, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of AutoZone, Inc. as of August 26, 2017 and August 27, 2016, and the related consolidated statements of income, comprehensive income, stockholders' deficit, and cash flows for each of the three years in the period ended August 26, 2017 of AutoZone, Inc. and our report dated October 25, 2017 expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP

Memphis, Tennessee  
October 25, 2017

[Table of Contents](#)**Report of Independent Registered Public Accounting Firm**

The Board of Directors and Stockholders of AutoZone, Inc.

We have audited the accompanying consolidated balance sheets of AutoZone, Inc. as of August 26, 2017 and August 27, 2016, and the related consolidated statements of income, comprehensive income, stockholders' deficit, and cash flows for each of the three years in the period ended August 26, 2017. These financial statements are the responsibility of AutoZone, Inc.'s management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of AutoZone, Inc. as of August 26, 2017 and August 27, 2016 and the consolidated results of its operations and its cash flows for each of the three years in the period ended August 26, 2017, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), AutoZone, Inc.'s internal control over financial reporting as of August 26, 2017, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission 2013 framework and our report dated October 25, 2017 expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP

Memphis, Tennessee  
October 25, 2017



[Table of Contents](#)**Consolidated Statements of Income**

	Year Ended		
	August 26, 2017 (52 weeks)	August 27, 2016 (52 weeks)	August 29, 2015 (52 weeks)
<i>(in thousands, except per share data)</i>			
Net sales	\$10,888,676	\$10,635,676	\$10,187,340
Cost of sales, including warehouse and delivery expenses	5,149,056	5,026,940	4,860,309
Gross profit	5,739,620	5,608,736	5,327,031
Operating, selling, general and administrative expenses	3,659,551	3,548,341	3,373,980
Operating profit	2,080,069	2,060,395	1,953,051
Interest expense, net	154,580	147,681	150,439
Income before income taxes	1,925,489	1,912,714	1,802,612
Income tax expense	644,620	671,707	642,371
Net income	<u>\$ 1,280,869</u>	<u>\$ 1,241,007</u>	<u>\$ 1,160,241</u>
Weighted average shares for basic earnings per share	28,430	29,889	31,560
Effect of dilutive stock equivalents	635	599	646
Weighted average shares for diluted earnings per share	29,065	30,488	32,206
Basic earnings per share	<u>\$ 45.05</u>	<u>\$ 41.52</u>	<u>\$ 36.76</u>
Diluted earnings per share	<u>\$ 44.07</u>	<u>\$ 40.70</u>	<u>\$ 36.03</u>

See Notes to Consolidated Financial Statements.

**Consolidated Statements of Comprehensive Income**

	Year Ended		
	August 26, 2017 (52 weeks)	August 27, 2016 (52 weeks)	August 29, 2015 (52 weeks)
<i>(in thousands)</i>			
Net income	\$1,280,869	\$1,241,007	\$1,160,241
Other comprehensive income (loss):			
Pension liability adjustments, net of taxes <sup>(1)</sup>	16,514	(18,095)	(6,975)
Foreign currency translation adjustments	35,198	(39,524)	(113,652)
Unrealized (losses) gains on marketable securities, net of taxes <sup>(2)</sup>	(131)	146	(102)
Net derivative activity, net of taxes <sup>(3)</sup>	1,391	(538)	114
Total other comprehensive income (loss)	52,972	(58,011)	(120,615)
Comprehensive income	<u>\$1,333,841</u>	<u>\$1,182,996</u>	<u>\$1,039,626</u>

(1) Pension liability adjustments are presented net of taxes of \$10,542 in 2017, \$11,394 in 2016 and \$4,638 in 2015

(2) Unrealized (losses) gains on marketable securities are presented net of taxes of \$69 in 2017, \$79 in 2016 and \$55 in 2015

(3) Net derivative activities are presented net of taxes of \$814 in 2017, \$315 in 2016 and \$68 in 2015

See Notes to Consolidated Financial Statements.

[Table of Contents](#)**Consolidated Balance Sheets**

<i>(in thousands)</i>	<u>August 26, 2017</u>	<u>August 27, 2016</u>
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 293,270	\$ 189,734
Accounts receivable	280,733	287,680
Merchandise inventories	3,882,086	3,631,916
Other current assets	155,166	130,243
Total current assets	<u>4,611,255</u>	<u>4,239,573</u>
Property and equipment:		
Land	1,056,187	998,460
Buildings and improvements	3,423,056	3,169,575
Equipment	1,704,653	1,550,792
Leasehold improvements	470,998	434,615
Construction in progress	218,299	176,673
	<u>6,873,193</u>	<u>6,330,115</u>
Less: Accumulated depreciation and amortization	<u>2,842,175</u>	<u>2,596,861</u>
	4,031,018	3,733,254
Goodwill	391,887	391,887
Deferred income taxes	35,308	36,855
Other long-term assets	190,313	198,218
	<u>617,508</u>	<u>626,960</u>
	<u>\$ 9,259,781</u>	<u>\$ 8,599,787</u>
<b>Liabilities and Stockholders' Deficit</b>		
Current liabilities:		
Accounts payable	\$ 4,168,940	\$ 4,095,854
Accrued expenses and other	563,350	551,625
Income taxes payable	34,011	42,841
Total current liabilities	<u>4,766,301</u>	<u>4,690,320</u>
Long-term debt	5,081,238	4,924,119
Deferred income taxes	371,111	284,500
Other long-term liabilities	469,508	488,386
Commitments and contingencies	—	—
Stockholders' deficit:		
Preferred stock, authorized 1,000 shares; no shares issued	—	—
Common stock, par value \$.01 per share, authorized 200,000 shares; 28,735 shares issued and 27,833 shares outstanding in 2017 and 30,329 shares issued and 29,118 shares outstanding in 2016	287	303
Additional paid-in capital	1,086,671	1,054,647
Retained deficit	(1,642,387)	(1,602,186)
Accumulated other comprehensive loss	(254,557)	(307,529)
Treasury stock, at cost	(618,391)	(932,773)
Total stockholders' deficit	<u>(1,428,377)</u>	<u>(1,787,538)</u>
	<u>\$ 9,259,781</u>	<u>\$ 8,599,787</u>

See Notes to Consolidated Financial Statements.

[Table of Contents](#)**Consolidated Statements of Cash Flows**

<i>(in thousands)</i>	Year Ended		
	August 26, 2017 (52 weeks)	August 27, 2016 (52 weeks)	August 29, 2015 (52 weeks)
Cash flows from operating activities:			
Net income	\$ 1,280,869	\$ 1,241,007	\$ 1,160,241
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization of property and equipment and intangibles	323,051	297,397	269,919
Amortization of debt origination fees	8,369	7,980	6,230
Deferred income taxes	74,902	45,019	35,971
Share-based compensation expense	38,244	39,825	40,995
Pension plan contributions	(17,761)	(52,721)	—
Changes in operating assets and liabilities:			
Accounts receivable	7,795	(41,447)	(36,466)
Merchandise inventories	(236,807)	(227,518)	(266,776)
Accounts payable and accrued expenses	82,614	271,198	291,520
Income taxes payable	(3,659)	50,122	74,487
Other, net	12,995	10,198	(3,103)
Net cash provided by operating activities	<u>1,570,612</u>	<u>1,641,060</u>	<u>1,573,018</u>
Cash flows from investing activities:			
Capital expenditures	(553,832)	(488,791)	(480,579)
Acquisition of business, net of cash	—	—	(75,744)
Purchase of intangibles	—	(10,000)	(10,000)
Purchase of marketable securities	(85,711)	(130,170)	(49,740)
Proceeds from sale of marketable securities	82,993	120,472	46,411
Proceeds from disposal of capital assets and other, net	2,951	2,654	1,741
Net cash used in investing activities	<u>(553,599)</u>	<u>(505,835)</u>	<u>(567,911)</u>
Cash flows from financing activities:			
Net (payments) proceeds of commercial paper	(42,400)	149,900	153,800
Proceeds from issuance of debt	600,000	650,000	650,000
Repayment of debt	(400,000)	(500,000)	(500,000)
Net proceeds from sale of common stock	54,686	80,289	66,717
Purchase of treasury stock	(1,071,649)	(1,452,462)	(1,271,416)
Payments of capital lease obligations	(47,604)	(36,320)	(34,986)
Other, net	(7,362)	(7,935)	(8,712)
Net cash used in financing activities	<u>(914,329)</u>	<u>(1,116,528)</u>	<u>(944,597)</u>
Effect of exchange rate changes on cash	852	(4,272)	(9,686)
Net increase in cash and cash equivalents	103,536	14,425	50,824
Cash and cash equivalents at beginning of year	189,734	175,309	124,485
Cash and cash equivalents at end of year	<u>\$ 293,270</u>	<u>\$ 189,734</u>	<u>\$ 175,309</u>
Supplemental cash flow information:			
Interest paid, net of interest cost capitalized	<u>\$ 135,331</u>	<u>\$ 136,731</u>	<u>\$ 137,630</u>
Income taxes paid	<u>\$ 579,925</u>	<u>\$ 582,384</u>	<u>\$ 539,152</u>
Assets acquired through capital lease	<u>\$ 84,011</u>	<u>\$ 94,052</u>	<u>\$ 71,047</u>

See Notes to Consolidated Financial Statements.

[Table of Contents](#)**Consolidated Statements of Stockholders' Deficit**

<i>(in thousands)</i>	Common Shares Issued	Common Stock	Additional Paid-in Capital	Retained Deficit	Accumulated Other Comprehensive Loss	Treasury Stock	Total
Balance at August 30, 2014	33,858	\$ 339	\$ 843,504	\$(1,529,123)	\$ (128,903)	\$ (807,674)	\$(1,621,857)
Net income				1,160,241			1,160,241
Total other comprehensive loss					(120,615)		(120,615)
Purchase of 2,010 shares of treasury stock						(1,271,416)	(1,271,416)
Retirement of treasury shares	(2,125)	(21)	(57,403)	(1,049,856)		1,107,280	—
Issuance of common stock under stock options and stock purchase plans	365	3	66,714				66,717
Share-based compensation expense			37,645				37,645
Income tax benefit from exercise of stock options			47,895				47,895
Balance at August 29, 2015	32,098	321	938,355	(1,418,738)	(249,518)	(971,810)	(1,701,390)
Net income				1,241,007			1,241,007
Total other comprehensive loss					(58,011)		(58,011)
Purchase of 1,903 shares of treasury stock						(1,452,462)	(1,452,462)
Retirement of treasury shares	(2,132)	(21)	(67,023)	(1,424,455)		1,491,499	—
Issuance of common stock under stock options and stock purchase plans	363	3	80,286				80,289
Share-based compensation expense			39,298				39,298
Income tax benefit from exercise of stock options			63,731				63,731
Balance at August 27, 2016	30,329	303	1,054,647	(1,602,186)	(307,529)	(932,773)	(1,787,538)
Net income				1,280,869			1,280,869
Total other comprehensive income					52,972		52,972
Purchase of 1,495 shares of treasury stock						(1,071,649)	(1,071,649)
Retirement of treasury shares	(1,804)	(18)	(64,943)	(1,321,070)		1,386,031	—
Issuance of common stock under stock options and stock purchase plans	210	2	54,684				54,686
Share-based compensation expense			42,283				42,283
Balance at August 26, 2017	<u>28,735</u>	<u>\$ 287</u>	<u>\$1,086,671</u>	<u>\$(1,642,387)</u>	<u>\$ (254,557)</u>	<u>\$ (618,391)</u>	<u>\$(1,428,377)</u>

See Notes to Consolidated Financial Statements.

[Table of Contents](#)**Notes to Consolidated Financial Statements****Note A – Significant Accounting Policies**

**Business:** AutoZone, Inc. and its wholly owned subsidiaries (“AutoZone” or the “Company”) are principally a retailer and distributor of automotive replacement parts and accessories. At the end of fiscal 2017, the Company operated 5,465 AutoZone stores in the United States, including Puerto Rico; 524 stores in Mexico; 14 stores in Brazil; and 26 Interamerican Motor Corporation (“IMC”) branches. Each AutoZone store carries an extensive product line for cars, sport utility vehicles, vans and light trucks, including new and remanufactured automotive hard parts, maintenance items, accessories and non-automotive products. At the end of fiscal 2017, 4,592 of the domestic AutoZone stores had a commercial sales program that provides commercial credit and prompt delivery of parts and other products to local, regional and national repair garages, dealers, service stations and public sector accounts. The company also had commercial programs in AutoZone stores in Mexico and Brazil. IMC branches carry an extensive line of original equipment quality import replacement parts. The Company also sells the ALLDATA brand automotive diagnostic and repair software through [www.alldata.com](http://www.alldata.com) and [www.alldatadiy.com](http://www.alldatadiy.com). Additionally, the Company sells automotive hard parts, maintenance items, accessories, and non-automotive products through [www.autozone.com](http://www.autozone.com), and accessories, performance and replacement parts through [www.autoanything.com](http://www.autoanything.com), and its commercial customers can make purchases through [www.autozonepro.com](http://www.autozonepro.com) and [www.imcparts.net](http://www.imcparts.net). The Company does not derive revenue from automotive repair or installation services.

**Fiscal Year:** The Company’s fiscal year consists of 52 or 53 weeks ending on the last Saturday in August. Fiscal 2017, fiscal 2016 and fiscal 2015 represented 52 weeks.

**Basis of Presentation:** The consolidated financial statements include the accounts of AutoZone, Inc. and its wholly owned subsidiaries. All significant intercompany transactions and balances have been eliminated in consolidation. Certain reclassifications have been made to the prior years’ Consolidated Statements of Cash Flows to conform to the current year’s presentation due to the adoption of the new accounting guidance for share-based payments.

**Use of Estimates:** Management of the Company has made a number of estimates and assumptions relating to the reporting of assets and liabilities and the disclosure of contingent liabilities to prepare these financial statements. Actual results could differ from those estimates.

**Cash and Cash Equivalents:** Cash equivalents consist of investments with original maturities of 90 days or less at the date of purchase. Cash equivalents include proceeds due from credit and debit card transactions with settlement terms of less than five days. Credit and debit card receivables included within cash and cash equivalents were \$48.3 million at August 26, 2017 and \$46.8 million at August 27, 2016.

Cash balances are held in various locations around the world. Cash and cash equivalents of \$148.4 million and \$78.1 million were held outside of the U.S. as of August 26, 2017, and August 27, 2016, respectively, and were generally utilized to support liquidity needs in foreign operations. The Company intends to continue to permanently reinvest the cash held outside of the U.S. in its foreign operations.

**Accounts Receivable:** Accounts receivable consists of receivables from commercial customers and vendors, and are presented net of an allowance for uncollectible accounts. AutoZone routinely grants credit to certain of its commercial customers. The risk of credit loss in its trade receivables is substantially mitigated by the Company’s credit evaluation process, short collection terms and sales to a large number of customers, as well as the low dollar value per transaction for most of its sales. Allowances for potential credit losses are determined based on historical experience and current evaluation of the composition of accounts receivable. Historically, credit losses have been within management’s expectations and the balance of the allowance for uncollectible accounts was \$5.9 million at August 26, 2017, and \$7.4 million at August 27, 2016.

**Merchandise Inventories:** Inventories are stated at the lower of cost or market. Merchandise inventories include related purchasing, storage and handling costs. Inventory cost has been determined using the last-in, first-out (“LIFO”) method for domestic inventories and the weighted average cost method for Mexico and Brazil inventories. Due to price deflation on the Company’s merchandise purchases, the Company has exhausted its LIFO reserve balance. The Company’s policy is to not write up inventory in excess of replacement cost. The difference between LIFO cost and replacement cost, which will be reduced upon experiencing price inflation on the Company’s merchandise purchases, was \$414.9 million at August 26, 2017, and \$364.1 million at August 27, 2016.

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**Marketable Securities:** The Company invests a portion of its assets held by the Company's wholly owned insurance captive in marketable debt securities and classifies them as available-for-sale. The Company includes these securities within the Other current assets and Other long-term assets captions in the accompanying Consolidated Balance Sheets and records the amounts at fair market value, which is determined using quoted market prices at the end of the reporting period. A discussion of marketable securities is included in "Note E – Fair Value Measurements" and "Note F – Marketable Securities."

**Property and Equipment:** Property and equipment is stated at cost. Depreciation and amortization are computed principally using the straight-line method over the following estimated useful lives: buildings, 40 to 50 years; building improvements, 5 to 15 years; equipment, 3 to 10 years; and leasehold improvements, over the shorter of the asset's estimated useful life or the remaining lease term, which includes any reasonably assured renewal periods. Depreciation and amortization include amortization of assets under capital lease.

**Impairment of Long-Lived Assets:** The Company evaluates the recoverability of its long-lived assets whenever events or changes in circumstances indicate that the carrying value of an asset may not be recoverable. When such an event occurs, the Company compares the sum of the undiscounted expected future cash flows of the asset (asset group) with the carrying amounts of the asset. If the undiscounted expected future cash flows are less than the carrying value of the assets, the Company measures the amount of impairment loss as the amount by which the carrying amount of the assets exceeds the fair value of the assets. There were no material impairment losses recorded in the three years ended August 26, 2017.

**Goodwill:** The cost in excess of fair value of identifiable net assets of businesses acquired is recorded as goodwill. Goodwill has not been amortized since fiscal 2001, but an analysis is performed at least annually to compare the fair value of the reporting unit to the carrying amount to determine if any impairment exists. The Company performs its annual impairment assessment in the fourth quarter of each fiscal year, unless circumstances dictate more frequent assessments. Refer to "Note N – Goodwill and Intangibles" for additional disclosures regarding the Company's goodwill and impairment assessment.

**Intangible Assets:** Intangible assets consist of assets from the acquisitions of IMC and AutoAnything and assets purchased relating to ALLDATA operations, and include technology, non-compete agreements, customer relationships and trade names. Amortizing intangible assets are amortized over periods ranging from 3 to 10 years. Trade names are non-amortizing intangibles as their lives are indefinite. These non-amortizing assets are reviewed at least annually for impairment by comparing the carrying amount to fair value. The Company performs its annual impairment assessment in the fourth quarter of each fiscal year, unless circumstances dictate more frequent assessments. Refer to "Note N – Goodwill and Intangibles" for additional disclosures regarding the Company's intangible assets and impairment assessment.

**Derivative Instruments and Hedging Activities:** AutoZone is exposed to market risk from, among other things, changes in interest rates, foreign exchange rates and fuel prices. From time to time, the Company uses various derivative instruments to reduce such risks. To date, based upon the Company's current level of foreign operations, no derivative instruments have been utilized to reduce foreign exchange rate risk. All of the Company's hedging activities are governed by guidelines that are authorized by AutoZone's Board of Directors (the "Board"). Further, the Company does not buy or sell derivative instruments for trading purposes.

AutoZone's financial market risk results primarily from changes in interest rates. At times, AutoZone reduces its exposure to changes in interest rates by entering into various interest rate hedge instruments such as interest rate swap contracts, treasury lock agreements and forward-starting interest rate swaps.

All of the Company's interest rate hedge instruments are designated as cash flow hedges. Refer to "Note H – Derivative Financial Instruments" for additional disclosures regarding the Company's derivative instruments and hedging activities. Cash flows related to these instruments designated as qualifying hedges are reflected in the accompanying Consolidated Statements of Cash Flows in the same categories as the cash flows from the items being hedged. Accordingly, cash flows relating to the settlement of interest rate derivatives hedging the forecasted issuance of debt have been reflected upon settlement as a component of financing cash flows. The resulting gain

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or loss from such settlement is deferred to Accumulated other comprehensive loss and reclassified to interest expense over the term of the underlying debt. This reclassification of the deferred gains and losses impacts the interest expense recognized on the underlying debt that was hedged and is therefore reflected as a component of operating cash flows in periods subsequent to settlement.

**Foreign Currency:** The Company accounts for its Mexican, Brazilian, Canadian, European, Chinese and British operations using the Mexican peso, Brazilian real, Canadian dollar, euro, Chinese yuan renminbi and British pound as the functional currencies, respectively, and converts its financial statements from these currencies to U.S. dollars. The cumulative loss on currency translation is recorded as a component of Accumulated other comprehensive loss (see “Note G – Accumulated Other Comprehensive Loss”).

**Self-Insurance Reserves:** The Company retains a significant portion of the risks associated with workers’ compensation, employee health, general, products liability, property and vehicle insurance. Through various methods, which include analyses of historical trends and utilization of actuaries, the Company estimates the costs of these risks. The costs are accrued based upon the aggregate of the liability for reported claims and an estimated liability for claims incurred but not reported. Estimates are based on calculations that consider historical lag and claim development factors. The long-term portions of these liabilities are recorded at the Company’s estimate of their net present value.

**Deferred Rent:** The Company recognizes rent expense on a straight-line basis over the course of the lease term, which includes any reasonably assured renewal periods, beginning on the date the Company takes physical possession of the property (see “Note O – Leases”). Differences between this calculated expense and cash payments are recorded as a liability within the Accrued expenses and other and Other long-term liabilities captions in the accompanying Consolidated Balance Sheets, based on the terms of the lease. Deferred rent approximated \$130.2 million as of August 26, 2017, and \$121.7 million as of August 27, 2016.

**Financial Instruments:** The Company has financial instruments, including cash and cash equivalents, accounts receivable, other current assets and accounts payable. The carrying amounts of these financial instruments approximate fair value because of their short maturities. A discussion of the carrying values and fair values of the Company’s debt is included in “Note I – Financing,” marketable securities is included in “Note F – Marketable Securities,” and derivatives is included in “Note H – Derivative Financial Instruments.”

**Income Taxes:** The Company accounts for income taxes under the liability method. Deferred tax assets and liabilities are determined based on differences between financial reporting and tax bases of assets and liabilities and are measured using the enacted tax rates and laws that will be in effect when the differences are expected to reverse. Our effective tax rate is based on income by tax jurisdiction, statutory rates, and tax saving initiatives available to the Company in the various jurisdictions in which we operate.

The Company recognizes liabilities for uncertain income tax positions based on a two-step process. The first step is to evaluate the tax position for recognition by determining if the weight of available evidence indicates that it is more likely than not that the position will be sustained on audit, including resolution of related appeals or litigation processes, if any. The second step requires the Company to estimate and measure the tax benefit as the largest amount that is more than 50% likely to be realized upon ultimate settlement. It is inherently difficult and subjective to estimate such amounts, as the Company must determine the probability of various possible outcomes. The Company reevaluates these uncertain tax positions on a quarterly basis or when new information becomes available to management. These reevaluations are based on factors including, but not limited to, changes in facts or circumstances, changes in tax law, successfully settled issues under audit, expirations due to statutes and new audit activity. Such a change in recognition or measurement could result in the recognition of a tax benefit or an increase to the tax accrual.

The Company classifies interest related to income tax liabilities, and if applicable, penalties, as a component of Income tax expense. The income tax liabilities and accrued interest and penalties that are expected to be payable within one year of the balance sheet date are presented within the Accrued expenses and other caption in the accompanying Consolidated Balance Sheets. The remaining portion of the income tax liabilities and accrued interest and penalties are presented within the Other long-term liabilities caption in the accompanying Consolidated Balance Sheets because payment of cash is not anticipated within one year of the balance sheet date. Refer to “Note D – Income Taxes” for additional disclosures regarding the Company’s income taxes.

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**Sales and Use Taxes:** Governmental authorities assess sales and use taxes on the sale of goods and services. The Company excludes taxes collected from customers in its reported sales results; such amounts are included within the Accrued expenses and other caption until remitted to the taxing authorities.

**Dividends:** The Company currently does not pay a dividend on its common stock. The ability to pay dividends is subject to limitations imposed by Nevada law. Under Nevada law, any future payment of dividends would be dependent upon the Company's financial condition, capital requirements, earnings and cash flow.

**Revenue Recognition:** The Company recognizes sales at the time the sale is made and the product is delivered to the customer. Revenue from sales are presented net of allowances for estimated sales returns, which are based on historical return rates.

A portion of the Company's transactions include the sale of auto parts that contain a core component. The core component represents the recyclable portion of the auto part. Customers are not charged for the core component of the new part if a used core is returned at the point of sale of the new part; otherwise the Company charges customers a specified amount for the core component. The Company refunds that same amount upon the customer returning a used core to the store at a later date. The Company does not recognize sales or cost of sales for the core component of these transactions when a used part is returned or expected to be returned from the customer.

**Vendor Allowances and Advertising Costs:** The Company receives various payments and allowances from its vendors through a variety of programs and arrangements. Monies received from vendors include rebates, allowances and promotional funds. The amounts to be received are subject to the terms of the vendor agreements, which generally do not state an expiration date, but are subject to ongoing negotiations that may be impacted in the future based on changes in market conditions, vendor marketing strategies and changes in the profitability or sell-through of the related merchandise.

Rebates and other miscellaneous incentives are earned based on purchases or product sales and are accrued ratably over the purchase or sale of the related product. These monies are generally recorded as a reduction of merchandise inventories and are recognized as a reduction to cost of sales as the related inventories are sold.

For arrangements that provide for reimbursement of specific, incremental, identifiable costs incurred by the Company in selling the vendors' products, the vendor funds are recorded as a reduction to Operating, selling, general and administrative expenses in the period in which the specific costs were incurred.

The Company expenses advertising costs as incurred. Advertising expense, net of vendor promotional funds, was \$93.1 million in fiscal 2017, \$98.3 million in fiscal 2016, and \$98.0 million in fiscal 2015. Vendor promotional funds, which reduced advertising expense, amounted to \$28.3 million in fiscal 2017, \$21.4 million in fiscal 2016, and \$22.0 million in fiscal 2015.



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**Cost of Sales and Operating, Selling, General and Administrative Expenses:** The following illustrates the primary costs classified in each major expense category:

### *Cost of Sales*

- Total cost of merchandise sold, including:
  - Freight expenses associated with moving merchandise inventories from the Company's vendors to the distribution centers;
  - Vendor allowances that are not reimbursements for specific, incremental and identifiable costs
- Costs associated with operating the Company's supply chain, including payroll and benefit costs, warehouse occupancy costs, transportation costs and depreciation; and
- Inventory shrinkage

### *Operating, Selling, General and Administrative Expenses*

- Payroll and benefit costs for store, field leadership and store support employees;
- Occupancy costs of store and store support facilities;
- Depreciation and amortization related to store and store support assets;
- Transportation costs associated with field leadership, commercial sales force and hub deliveries;
- Advertising;
- Self insurance costs; and
- Other administrative costs, such as credit card transaction fees, legal costs, supplies, and travel and lodging

**Warranty Costs:** The Company or the vendors supplying its products provides the Company's customers limited warranties on certain products that range from 30 days to lifetime. In most cases, the Company's vendors are primarily responsible for warranty claims. Warranty costs relating to merchandise sold under warranty not covered by vendors are estimated and recorded as warranty obligations at the time of sale based on each product's historical return rate. These obligations, which are often funded by vendor allowances, are recorded within the Accrued expenses and other caption in the Consolidated Balance Sheets. For vendor allowances that are in excess of the related estimated warranty expense for the vendor's products, the excess is recorded in inventory and recognized as a reduction to cost of sales as the related inventory is sold.

**Shipping and Handling Costs:** The Company does not generally charge customers separately for shipping and handling. Substantially all the costs the Company incurs to ship products to our stores are included in cost of sales.

**Pre-opening Expenses:** Pre-opening expenses, which consist primarily of payroll and occupancy costs, are expensed as incurred.

**Earnings per Share:** Basic earnings per share is based on the weighted average outstanding common shares. Diluted earnings per share is based on the weighted average outstanding common shares adjusted for the effect of common stock equivalents, which are primarily stock options. There were 620,915 stock options excluded from the diluted earnings per share calculation because they would have been anti-dilutive as of August 26, 2017. There were 329,900 stock options excluded for the year ended August 27, 2016, and 778 stock options excluded for the year ended August 29, 2015, because they would have been anti-dilutive.

**Share-Based Payments:** Share-based payments include stock option grants and certain other transactions under the Company's stock plans. The Company recognizes compensation expense for its share-based payments over the requisite service period based on the fair value of the awards. See "Note B – Share-Based Payments" for further discussion.

**Risk and Uncertainties:** In fiscal 2017, one class of similar products accounted for approximately 11 percent of the Company's total revenues, and one vendor supplied approximately 11 percent of the Company's total purchases. No other class of similar products accounted for 10 percent or more of total revenues, and no other individual vendor provided more than 10 percent of total purchases.

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### **Recently Adopted Accounting Pronouncements:**

In March 2016, the Financial Accounting Standards Board (“FASB”) issued Accounting Standard Update (“ASU”) 2016-09, *Compensation – Stock Compensation (Topic 718): Improvement to Employee Share-based Payment Accounting*. ASU 2016-09 simplifies several aspects of accounting for share-based payments transactions, including income tax consequences, classification of awards as either equity or liabilities and classification on the statement of cash flows. The Company adopted this standard on August 28, 2016. The Company has applied the amendment requiring recognition of excess tax deficiencies and tax benefits in the income statement prospectively. The adoption of the new standard increased earnings per share for the year ended August 26, 2017 by \$0.81, driven by a lower effective tax rate of 162 basis points (a \$1.08 benefit to earnings per share), partially offset by a change to the dilutive outstanding shares calculation (a \$0.27 reduction to earnings per share). The Company has applied the amendment relating to the presentation of the excess tax benefits on the Consolidated Statements of Cash Flows retrospectively, resulting in the reclassification of \$63.7 million and \$47.9 million of excess tax benefits from cash flows from financing activities to cash flows from operating activities for the years ended August 27, 2016 and August 29, 2015, respectively. The Company will continue to estimate forfeitures of share-based awards.

In January 2017, the FASB issued ASU 2017-04, *Intangibles – Goodwill and Other (Topic 350): Simplifying the Test for Goodwill Impairment*. ASU 2017-04 eliminates Step 2 from the goodwill impairment test and instead requires an entity to perform its annual, or interim, goodwill impairment test by comparing the fair value of a reporting unit with its carrying amount. The entity should recognize an impairment charge for the amount by which the carrying amount exceeds the reporting unit’s fair value, not to exceed the total amount of goodwill allocated to the reporting unit. The updated guidance requires a prospective adoption. Early adoption is permitted. The Company early adopted ASU 2017-04 in the fourth quarter of fiscal 2017, and it had no material impact on the consolidated financial statements.

In August 2014, the FASB issued ASU 2014-15, *Presentation of Financial Statements – Going Concern (Subtopic 2015-40), Disclosure of Uncertainties about an Entity’s Ability to Continue as a Going Concern*. ASU 2014-15 requires management to perform two steps. Management must first evaluate whether there are conditions and events that raise substantial doubt about the entity’s ability to continue as a going concern (Step 1). If management concludes that substantial doubt is raised, management also is required to consider whether its plans alleviate that doubt (Step 2). Management must perform a going concern evaluation to assess whether it is probable that both management’s plans will be effectively implemented and those plans will mitigate the relevant conditions and events within one year after the financial statements are issued (or available to be issued, when applicable). The Company adopted ASU 2014-15 in fiscal 2017, concluding no significant conditions or events are present to raise substantial doubt about the Company’s ability to continue as a going concern.

### **Recently Issued Accounting Pronouncements:**

In May 2014, the FASB issued ASU 2014-09, *Revenue from Contracts with Customers*. Under ASU 2014-09, an entity will recognize revenue to depict the transfer of promised goods or services to customers at an amount that reflects what it expects in exchange for the goods or services. It also requires more detailed disclosures to enable users of financial statements to understand the nature, amount, timing and uncertainty of revenue and cash flows arising from contracts with customers. This update will be effective for the Company at the beginning of its fiscal 2019 year. The Company established a cross-functional implementation team to evaluate and identify the impact of ASU 2014-09 on the Company’s financial position, results of operations and cash flows. The Company is currently in the process of identifying changes to its business processes, systems and controls to support adoption of the new standard. The Company is considering the possible implications of the new standard on the Company’s revenue streams at each of the business units, the application of the Company’s loyalty programs and all applicable financial statement disclosures required by the new guidance. At this time, the team has not completed its full analysis or means of adoption for the new guidance; however, the Company does not expect the adoption of the new standard to have a material impact on its consolidated financial condition, results of operations or cash flows.

In February 2016, the FASB issued ASU 2016-02, *Leases (Topic 842)*. ASU 2016-02 requires an entity to recognize a right-of-use asset and lease liability for all leases with terms of more than 12 months. Recognition, measurement and presentation of expenses will depend on classification as a finance or operating lease. The amendments also require certain quantitative and qualitative disclosures about leasing arrangements. Early adoption is permitted. The updated guidance requires a modified retrospective adoption. This update will be effective for the Company beginning with its fiscal 2020 first quarter. The Company established a cross-

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functional implementation team to evaluate and identify the impact of *ASU 2016-02* on the Company's financial position, results of operations and cash flows. The Company is currently in the process of identifying changes to its business processes, systems and controls to support adoption of the new standard. The Company is considering the possible implications of the new standard on determining the valuation of new and existing leases, procedural and operational changes that may be necessary to comply with the provisions of the accounting update and all applicable financial statement disclosures required by the new guidance. At this time, the team has not completed its full analysis and is unable to quantify the impact; however, the Company believes the adoption of the new guidance will have a material impact on the total assets and total liabilities reported on the Company's consolidated balance sheets.

In May 2016, the FASB issued ASU 2016-11, *Revenue Recognition (Topic 605) and Derivatives Hedging (Topic 815): Rescission of SEC Guidance Because of Accounting Standards Updates 2014-09 and 2014-16 Pursuant to Staff Announcements at the March 3, 2016 EITF Meeting (SEC Update)*. ASU 2016-11 rescinds certain SEC Staff Observer comments under Topic 605, Revenue Recognition and Topic 932, Extractive Activities-Oil and Gas. This guidance clarifies that the registrants should not rely on the rescinded SEC Staff Observer comments upon adoption of ASU 2014-09. The Company does not expect ASU 2016-11 to have a material impact on its consolidated financial statements. This update will be effective for the Company at the beginning of its fiscal 2019 year.

In October 2016, the FASB issued ASU 2016-16, *Income Taxes (Topic 740): Intra-Entity Transfers of Assets Other than Inventory*. ASU 2016-16 requires that an entity recognize the income tax consequences of an intra-entity transfer of assets other than inventory when the transfer occurs. The guidance must be applied using the modified retrospective basis. The Company does not expect the provisions of ASU 2016-16 to have a material impact on its financial statements. This update will be effective for the Company at the beginning of fiscal 2019.

In December 2016, the FASB issued ASU 2016-20, *Technical Corrections and Improvements to Topic 606, Revenue from Contracts with Customers*. ASU 2016-20 provides correction or improvement to the guidance previously issued in ASU 2014-09, *Revenue from Contracts with Customers*. Under ASU 2014-09, an entity will recognize revenue to depict the transfer of promised goods or services to customers at an amount that reflects what it expects in exchange for the goods or services. It also requires more detailed disclosures to enable users of financial statements to understand the nature, amount, timing and uncertainty of revenue and cash flows arising from contracts with customers. The Company is in the process of evaluating the impact of the provisions of the ASUs on its consolidated financial statements. This update will be effective for the Company at the beginning of its fiscal 2019 year.

In January 2017, the FASB issued ASU 2017-01, *Business Combinations (Topic 805): Clarifying the Definition of a Business*. ASU 2017-01 provides guidance to assist entities in evaluating whether transactions should be accounted for as acquisitions (or disposals) of assets or businesses. The updated guidance requires a prospective adoption. Early adoption is permitted. The Company does not expect the provisions of ASU 2017-01 to have a material impact on its consolidated financial statements. This update will be effective for the Company beginning with its fiscal 2019 first quarter.

In March 2017, the FASB issued ASU 2017-07, *Compensation – Retirement Benefits (Topic 715): Improving the Presentation of Net Periodic Pension Cost and Net Periodic Postretirement Benefit Cost*. ASU 2017-07 requires an employer to separate the service cost component from other components of net benefit cost. It also provides specific guidance on the presentation of the service cost component and other components of net benefit in the income statement; only the service cost component of net benefit cost is eligible for capitalization. The Company is in the process of evaluating the effects of the provisions of ASU 2017-07 on its consolidated financial statements. This update will be effective for the Company beginning with its fiscal 2019 first quarter.

### **Note B – Share-Based Payments**

Total share-based compensation expense (a component of Operating, selling, general and administrative expenses) was \$38.2 million for fiscal 2017, \$39.8 million for fiscal 2016, and \$41.0 million for fiscal 2015. As of August 26, 2017, share-based compensation expense for unvested awards not yet recognized in earnings is \$37.9 million and will be recognized over a weighted average period of 1.98 years. As a result of the adoption of the new accounting guidance for share-based payments, cash flows related to tax deductions in excess of recognized

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compensation cost are classified as operating cash flows for each period presented. Retrospective application of the cash flow presentation resulted in increases to both net cash provided by operations and net cash required for financing activities of \$63.7 million and \$47.9 million for fiscal 2016 and 2015, respectively.

On December 15, 2010, the Company's stockholders approved the 2011 Equity Incentive Award Plan (the "2011 Plan"), allowing the Company to provide equity-based compensation to non-employee directors and employees for their service to AutoZone or its subsidiaries or affiliates. Prior to the Company's adoption of the 2011 Plan, equity-based compensation was provided to employees under the 2006 Stock Option Plan and to non-employee directors under the 2003 Director Compensation Plan (the "2003 Comp Plan") and the 2003 Director Stock Option Plan (the "2003 Option Plan").

During fiscal 2016, the Company's stockholders approved the Amended and Restated AutoZone, Inc. 2011 Equity Incentive Award Plan (the "Amended 2011 Equity Plan"). The Amended 2011 Equity Plan imposes a maximum limit on the compensation, measured as the sum of any cash compensation and the aggregate grant date fair value of awards granted under the Amended 2011 Equity Plan, which may be paid to non-employee directors for such service during any calendar year. The Amended 2011 Equity Plan also applies a ten-year term on the Amended 2011 Equity Plan through December 16, 2025 and extends the Company's ability to grant incentive stock options through October 7, 2025.

The Company grants options to purchase common stock to certain of its employees under its plan at prices equal to the market value of the stock on the date of grant. Options have a term of 10 years or 10 years and one day from grant date. Employee options generally vest in equal annual installments on the first, second, third and fourth anniversaries of the grant date and generally have 30 or 90 days after the service relationship ends, or one year after death, to exercise all vested options. The fair value of each option grant is separately estimated for each vesting date. The fair value of each option is amortized into compensation expense on a straight-line basis between the grant date for the award and each vesting date.

In addition to the 2011 Plan, on December 15, 2010, the Company adopted the 2011 Director Compensation Program (the "2011 Program"), which stated that non-employee directors would receive their compensation in awards of restricted stock units under the 2011 Plan. Under the 2011 Program, restricted stock units are granted the first day of each calendar quarter. The number of restricted stock units granted each quarter is determined by dividing one-fourth of the amount of the annual retainer by the fair market value of the shares of common stock as of the grant date. The restricted stock units are fully vested on the date they are issued and are paid in shares of the Company's common stock subsequent to the non-employee director ceasing to be a member of the Board.

The 2011 Program replaced the 2003 Comp Plan and the 2003 Option Plan. Under the 2003 Comp Plan, non-employee directors could receive no more than one-half of their director fees immediately in cash, and the remainder of the fees was required to be taken in common stock or stock appreciation rights. The director had the option to elect to receive up to 100% of the fees in stock or defer all or part of the fees in units with value equivalent to the value of shares of common stock as of the grant date. At August 26, 2017, the Company had \$9.5 million accrued related to 17,990 outstanding units issued under the 2003 Comp Plan and prior plans, and there was \$13.6 million accrued related to 17,990 outstanding units issued as of August 27, 2016. No additional shares of stock or units will be issued in future years under the 2003 Comp Plan.

Under the 2003 Option Plan, each non-employee director received an option grant on January 1 of each year, and each new non-employee director received an option to purchase 3,000 shares upon election to the Board, plus a portion of the annual directors' option grant prorated for the portion of the year actually served. These stock option grants were made at the fair market value as of the grant date and generally vested three years from the grant date. There were 19,000 and 24,000 outstanding options under the 2003 Option Plan as of August 26, 2017 and August 27, 2016, respectively. No additional shares of stock will be issued in future years under the 2003 Option Plan.

During the second quarter of fiscal 2014, the Company adopted the 2014 Director Compensation Program (the "Program"), which states that non-employee directors will receive their compensation in awards of restricted stock units under the 2011 Equity Incentive Award Plan, with an option for a certain portion of a director's compensation to be paid in cash at the non-employee director's election. The Program replaces the 2011 Director Compensation Program. Under the Program, restricted stock units are granted January 1 of each year (the "Grant

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Date”). The number of restricted stock units is determined by dividing the amount of the annual retainer by the fair market value of the shares of common stock as of the Grant Date. The restricted stock units are fully vested on January 1 of each year and are paid in shares of the Company’s common stock on the earlier to occur of the fifth anniversary of the Grant Date or the date the non-employee director ceases to be a member of the Board (“Separation from Service”). Non-employee directors may elect to defer receipt of the restricted stock units until their Separation from Service. The cash portion of the award, if elected, is paid ratably over the remaining calendar quarters.

The Company has estimated the fair value of all stock option awards as of the date of the grant by applying the Black-Scholes-Merton multiple-option pricing valuation model. The application of this valuation model involves assumptions that are judgmental and highly sensitive in the determination of compensation expense. The following table presents the weighted average for key assumptions used in determining the fair value of options granted and the related share-based compensation expense:

	Year Ended		
	August 26, 2017	August 27, 2016	August 29, 2015
Expected price volatility	18%	18%	20%
Risk-free interest rates	1.2%	1.5%	1.4%
Weighted average expected lives (in years)	5.1	5.1	5.1
Forfeiture rate	10%	10%	9%
Dividend yield	0%	0%	0%

The following methodologies were applied in developing the assumptions used in determining the fair value of options granted:

*Expected price volatility* – This is a measure of the amount by which a price has fluctuated or is expected to fluctuate. The Company uses actual historical changes in the market value of its stock to calculate the volatility assumption as it is management’s belief that this is the best indicator of future volatility. The Company calculates daily market value changes from the date of grant over a past period representative of the expected life of the options to determine volatility. An increase in the expected volatility will increase compensation expense.

*Risk-free interest rate* – This is the U.S. Treasury rate for the week of the grant having a term equal to the expected life of the option. An increase in the risk-free interest rate will increase compensation expense.

*Expected lives* – This is the period of time over which the options granted are expected to remain outstanding and is based on historical experience. Separate groups of employees that have similar historical exercise behavior are considered separately for valuation purposes. Options granted have a maximum term of ten years or ten years and one day. An increase in the expected life will increase compensation expense.

*Forfeiture rate* – This is the estimated percentage of options granted that are expected to be forfeited or canceled before becoming fully vested. This estimate is based on historical experience at the time of valuation and reduces expense ratably over the vesting period. An increase in the forfeiture rate will decrease compensation expense. This estimate is evaluated periodically based on the extent to which actual forfeitures differ, or are expected to differ, from the previous estimate.

*Dividend yield* – The Company has not made any dividend payments nor does it have plans to pay dividends in the foreseeable future. An increase in the dividend yield will decrease compensation expense.

The weighted average grant date fair value per share of options granted was \$139.80 during fiscal 2017, \$156.20 during fiscal 2016, and \$106.27 during fiscal 2015. The intrinsic value of options exercised was \$93.9 million in fiscal 2017, \$178.0 million in fiscal 2016, and \$154.8 million in fiscal 2015. The total fair value of options vested was \$34.7 million in fiscal 2017, \$32.2 million in fiscal 2016, and \$30.6 million in fiscal 2015.

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The Company generally issues new shares when options are exercised. The following table summarizes information about stock option activity for the year ended August 26, 2017:

	<u>Number of Shares</u>	<u>Weighted Average Exercise Price</u>	<u>Weighted- Average Remaining Contractual Term (in years)</u>	<u>Aggregate Intrinsic Value (in thousands)</u>
Outstanding – August 27, 2016	1,759,408	\$ 428.72		
Granted	290,805	744.80		
Exercised	(207,069)	263.02		
Cancelled	(45,089)	657.78		
Outstanding – August 26, 2017	<u>1,798,055</u>	493.18	6.17	\$ 199,752
Exercisable	<u>1,041,933</u>	362.38	4.76	189,790
Expected to vest	<u>680,510</u>	673.42	8.10	8,966
Available for future grants	<u>898,992</u>			

The Company recognized \$1.8 million in expense related to the discount on the selling of shares to employees and executives under various share purchase plans in fiscal 2017, \$2.0 million in fiscal 2016 and \$2.1 million in fiscal 2015. The Sixth Amended and Restated AutoZone, Inc. Employee Stock Purchase Plan (the “Employee Plan”), which is qualified under Section 423 of the Internal Revenue Code, permits all eligible employees to purchase AutoZone’s common stock at 85% of the lower of the market price of the common stock on the first day or last day of each calendar quarter through payroll deductions. Maximum permitted annual purchases are \$15,000 per employee or 10 percent of compensation, whichever is less. Under the Employee Plan, 14,205 shares were sold to employees in fiscal 2017, 12,662 shares were sold to employees in fiscal 2016, and 14,222 shares were sold to employees in fiscal 2015. The Company repurchased 12,455 shares at market value in fiscal 2017, 12,460 shares in fiscal 2016 and 15,594 shares in fiscal 2015 from employees electing to sell their stock. Issuances of shares under the Employee Plan are netted against repurchases and such repurchases are not included in share repurchases disclosed in “Note K – Stock Repurchase Program.” At August 26, 2017, 178,300 shares of common stock were reserved for future issuance under the Employee Plan.

Once executives have reached the maximum purchases under the Employee Plan, the Fifth Amended and Restated Executive Stock Purchase Plan (the “Executive Plan”) permits all eligible executives to purchase AutoZone’s common stock up to 25 percent of his or her annual salary and bonus. Purchases under the Executive Plan were 1,865 shares in fiscal 2017, 1,943 shares in fiscal 2016 and 2,229 shares in fiscal 2015. At August 26, 2017, 239,888 shares of common stock were reserved for future issuance under the Executive Plan.

**Note C – Accrued Expenses and Other**

Accrued expenses and other consisted of the following:

<i>(in thousands)</i>	<u>August 26, 2017</u>	<u>August 27, 2016</u>
Accrued compensation, related payroll taxes and benefits	\$ 181,591	\$ 180,012
Property, sales, and other taxes	98,829	95,293
Medical and casualty insurance claims (current portion)	84,756	78,458
Capital lease obligations	48,134	44,834
Accrued interest	41,047	34,179
Accrued gift cards	24,192	24,129
Accrued sales and warranty returns	19,520	19,527
Other	65,281	75,193
	<u>\$ 563,350</u>	<u>\$ 551,625</u>

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The Company retains a significant portion of the insurance risks associated with workers' compensation, employee health, general, products liability, property and vehicle insurance. A portion of these self-insured losses is managed through a wholly owned insurance captive. The Company maintains certain levels for stop-loss coverage for each self-insured plan in order to limit its liability for large claims. The limits are per claim and are \$1.5 million for workers' compensation, \$2.0 million for vehicles, \$21.5 million for property, \$0.7 million for employee health, and \$1.0 million for general and products liability.

**Note D – Income Taxes**

The components of income from continuing operations before income taxes are as follows:

<i>(in thousands)</i>	Year Ended		
	August 26, 2017	August 27, 2016	August 29, 2015
Domestic	\$ 1,737,401	\$ 1,737,727	\$ 1,676,640
International	188,088	174,987	125,972
	<u>\$ 1,925,489</u>	<u>\$ 1,912,714</u>	<u>\$ 1,802,612</u>

The provision for income tax expense consisted of the following:

<i>(in thousands)</i>	Year Ended		
	August 26, 2017	August 27, 2016	August 29, 2015
Current:			
Federal	\$ 487,492	\$ 534,621	\$ 522,073
State	31,733	39,223	41,921
International	50,493	52,844	42,406
	<u>569,718</u>	<u>626,688</u>	<u>606,400</u>
Deferred:			
Federal	72,208	48,509	38,299
State	7,769	9,453	941
International	(5,075)	(12,943)	(3,269)
	<u>74,902</u>	<u>45,019</u>	<u>35,971</u>
Income tax expense	<u>\$ 644,620</u>	<u>\$ 671,707</u>	<u>\$ 642,371</u>

A reconciliation of the provision for income taxes to the amount computed by applying the federal statutory tax rate of 35% to income before income taxes is as follows:

<i>(in thousands)</i>	Year Ended		
	August 26, 2017	August 27, 2016	August 29, 2015
Federal tax at statutory U.S. income tax rate	35.0%	35.0%	35.0%
State income taxes, net	1.3%	1.6%	1.5%
Other	(2.8%)	(1.5%)	(0.9%)
Effective tax rate	<u>33.5%</u>	<u>35.1%</u>	<u>35.6%</u>

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Significant components of the Company's deferred tax assets and liabilities were as follows:

<i>(in thousands)</i>	<u>August 26, 2017</u>	<u>August 27, 2016</u>
Deferred tax assets:		
Net operating loss and credit carryforwards	\$ 48,062	\$ 50,859
Accrued benefits	96,664	93,212
Other	<u>56,052</u>	<u>68,600</u>
Total deferred tax assets	200,778	212,671
Less: Valuation allowances	<u>(13,501)</u>	<u>(13,338)</u>
Net deferred tax asset	187,277	199,333
Deferred tax liabilities:		
Property and equipment	(117,580)	(93,943)
Inventory	(333,422)	(315,563)
Prepaid Expenses	(60,920)	(27,395)
Other	<u>(11,158)</u>	<u>(10,077)</u>
Total deferred tax liabilities	<u>(523,080)</u>	<u>(446,978)</u>
Net deferred tax liability	<u>\$ (335,803)</u>	<u>\$ (247,645)</u>

Deferred taxes are not provided for temporary differences of approximately \$712.6 million at August 26, 2017, and \$572.0 million at August 27, 2016, representing earnings of non-U.S. subsidiaries that are intended to be permanently reinvested. If a deferred tax liability associated with these undistributed earnings had been recorded it would have been approximately \$37.5 million and \$35.0 million at August 26, 2017 and August 27, 2016, respectively.

At August 26, 2017 and August 27, 2016, the Company had deferred tax assets of \$30.8 million and \$25.2 million, respectively, from net operating loss ("NOL") carryforwards available to reduce future taxable income totaling approximately \$198.2 million and \$122.0 million, respectively. Certain NOLs have no expiration date and others will expire, if not utilized, in various years from fiscal 2018 through 2037. At August 26, 2017 and August 27, 2016, the Company had deferred tax assets for income tax credit carryforwards of \$17.2 million and \$25.7 million, respectively. Income tax credit carryforwards will expire, if not utilized, in various years from fiscal 2023 through 2027.

At August 26, 2017 and August 27, 2016, the Company had a valuation allowance of \$13.5 million and \$13.3 million, respectively, on deferred tax assets associated with NOL and tax credit carryforwards for which management has determined it is more likely than not that the deferred tax asset will not be realized. Management believes it is more likely than not that the remaining deferred tax assets will be fully realized.

A reconciliation of the beginning and ending amount of unrecognized tax benefits is as follows:

<i>(in thousands)</i>	<u>August 26, 2017</u>	<u>August 27, 2016</u>
Beginning balance	\$ 27,726	\$ 28,434
Additions based on tax positions related to the current year	7,089	7,172
Additions for tax positions of prior years	278	95
Reductions for tax positions of prior years	(6,954)	(2,405)
Reductions due to settlements	(1,964)	(858)
Reductions due to statute of limitations	<u>(3,974)</u>	<u>(4,712)</u>
Ending balance	<u>\$ 22,201</u>	<u>\$ 27,726</u>

Included in the August 26, 2017 and the August 27, 2016 balances are \$9.9 million and \$15.5 million, respectively, of unrecognized tax benefits that, if recognized, would reduce the Company's effective tax rate.

The Company accrues interest on unrecognized tax benefits as a component of income tax expense. Penalties, if incurred, would be recognized as a component of income tax expense. The Company had \$1.2 million and \$2.8 million accrued for the payment of interest and penalties associated with unrecognized tax benefits at August 26, 2017 and August 27, 2016, respectively.



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The Company files U.S. federal, U.S. state and local, and international income tax returns. With few exceptions, the Company is no longer subject to state and local or Non-U.S. examinations by tax authorities for fiscal year 2013 and prior. The Company is typically engaged in various tax examinations at any given time by U.S. federal, U.S. state and local, and Non-U.S. taxing jurisdictions. As of August 26, 2017, the Company estimates that the amount of unrecognized tax benefits could be reduced by approximately \$2.3 million over the next twelve months as a result of tax audit settlements. While the Company believes that it has adequately accrued for possible audit adjustments, the final resolution of these examinations cannot be determined at this time and could result in final settlements that differ from current estimates.

### Note E – Fair Value Measurements

The Company has adopted ASC Topic 820, *Fair Value Measurement*, which defines fair value, establishes a framework for measuring fair value in GAAP and expands disclosure requirements about fair value measurements. This standard defines fair value as the price received to transfer an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. ASC Topic 820 establishes a framework for measuring fair value by creating a hierarchy of valuation inputs used to measure fair value, and although it does not require additional fair value measurements, it applies to other accounting pronouncements that require or permit fair value measurements.

The hierarchy prioritizes the inputs into three broad levels:

*Level 1 inputs* — unadjusted quoted prices in active markets for identical assets or liabilities that the Company has the ability to access. An active market for the asset or liability is one in which transactions for the asset or liability occur with sufficient frequency and volume to provide ongoing pricing information.

*Level 2 inputs* — inputs other than quoted market prices included in Level 1 that are observable, either directly or indirectly, for the asset or liability. Level 2 inputs include, but are not limited to, quoted prices for similar assets or liabilities in an active market, quoted prices for identical or similar assets or liabilities in markets that are not active and inputs other than quoted market prices that are observable for the asset or liability, such as interest rate curves and yield curves observable at commonly quoted intervals, volatilities, credit risk and default rates.

*Level 3 inputs* — unobservable inputs for the asset or liability.

#### *Financial Assets & Liabilities Measured at Fair Value on a Recurring Basis*

The Company's assets and liabilities measured at fair value on a recurring basis were as follows:

<i>(in thousands)</i>	August 26, 2017			Fair Value
	Level 1	Level 2	Level 3	
Other current assets	\$ 18,453	\$ 120	\$ —	\$ 18,573
Other long-term assets	53,319	28,981	—	82,300
	<u>\$ 71,772</u>	<u>\$ 29,101</u>	<u>\$ —</u>	<u>\$ 100,873</u>

<i>(in thousands)</i>	August 27, 2016			Fair Value
	Level 1	Level 2	Level 3	
Other current assets	\$ 7,326	\$ —	\$ —	\$ 7,326
Other long-term assets	65,350	25,675	—	91,025
	<u>\$ 72,676</u>	<u>\$ 25,675</u>	<u>\$ —</u>	<u>\$ 98,351</u>

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At August 26, 2017, the fair value measurement amounts for assets and liabilities recorded in the accompanying Consolidated Balance Sheet consisted of short-term marketable securities of \$18.6 million, which are included within Other current assets and long-term marketable securities of \$82.3 million, which are included in Other long-term assets. The Company's marketable securities are typically valued at the closing price in the principal active market as of the last business day of the quarter or through the use of other market inputs relating to the securities, including benchmark yields and reported trades.

A discussion on how the Company's cash flow hedges are valued is included in "Note H – Derivative Financial Instruments," while the fair value of the Company's pension plan assets are disclosed in "Note L – Pension and Savings Plans."

### *Non-Financial Assets Measured at Fair Value on a Non-Recurring Basis*

Non-financial assets are required to be measured at fair value on a non-recurring basis in certain circumstances, including the event of impairment. The assets could include assets acquired in an acquisition as well as property, plant and equipment that are determined to be impaired. During fiscal 2017 and fiscal 2016, the Company did not have any significant non-financial assets measured at fair value on a non-recurring basis in periods subsequent to initial recognition.

### *Financial Instruments not Recognized at Fair Value*

The Company has financial instruments, including cash and cash equivalents, accounts receivable, other current assets and accounts payable. The carrying amounts of these financial instruments approximate fair value because of their short maturities. The fair value of the Company's debt is disclosed in "Note I – Financing."

## **Note F – Marketable Securities**

The Company's basis for determining the cost of a security sold is the "Specific Identification Model." Unrealized gains (losses) on marketable securities are recorded in Accumulated other comprehensive loss. The Company's available-for-sale marketable securities consisted of the following:

<i>(in thousands)</i>	August 26, 2017			<u>Fair Value</u>
	<u>Amortized Cost Basis</u>	<u>Gross Unrealized Gains</u>	<u>Gross Unrealized Losses</u>	
Corporate securities	\$ 39,917	\$ 73	\$ (13)	\$ 39,977
Government bonds	31,076	49	(74)	31,051
Mortgage-backed securities	4,850	2	(42)	4,810
Asset-backed securities and other	25,042	28	(35)	25,035
	<u>\$ 100,885</u>	<u>\$ 152</u>	<u>\$ (164)</u>	<u>\$ 100,873</u>

<i>(in thousands)</i>	August 27, 2016			<u>Fair Value</u>
	<u>Amortized Cost Basis</u>	<u>Gross Unrealized Gains</u>	<u>Gross Unrealized Losses</u>	
Corporate securities	\$ 37,789	\$ 198	\$ (6)	\$ 37,981
Government bonds	33,497	24	(35)	33,486
Mortgage-backed securities	6,865	18	(29)	6,854
Asset-backed securities and other	20,015	26	(11)	20,030
	<u>\$ 98,166</u>	<u>\$ 266</u>	<u>\$ (81)</u>	<u>\$ 98,351</u>

The debt securities held at August 26, 2017, had effective maturities ranging from less than one year to approximately three years. The Company did not realize any material gains or losses on its marketable securities during fiscal 2017, 2016 or 2015.

The Company holds 51 securities that are in an unrealized loss position of approximately \$164 thousand at August 26, 2017. The Company has the intent and ability to hold these investments until recovery of fair value or maturity, and does not deem the investments to be impaired on an other than temporary basis. In evaluating

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whether the securities are deemed to be impaired on an other than temporary basis, the Company considers factors such as the duration and severity of the loss position, the credit worthiness of the investee, the term to maturity and its intent and ability to hold the investments until maturity or until recovery of fair value.

Included above in total marketable securities are \$85.4 million and \$61.8 million of marketable securities transferred by the Company's insurance captive to a trust account to secure its obligations to an insurance company related to future workers' compensation and casualty losses as of August 26, 2017 and August 27, 2016, respectively.

**Note G – Accumulated Other Comprehensive Loss**

Accumulated other comprehensive loss includes certain adjustments to pension liabilities, foreign currency translation adjustments, certain activity for interest rate swaps and treasury rate locks that qualify as cash flow hedges and unrealized gains (losses) on available-for-sale securities. Changes in Accumulated other comprehensive loss consisted of the following:

<i>(in thousands)</i>	<u>Pension Liability</u>	<u>Foreign Currency<sup>(3)</sup></u>	<u>Net Unrealized Gain (Loss) on Securities</u>	<u>Derivatives</u>	<u>Total</u>
Balance at August 29, 2015	\$ (70,795)	\$ (171,488)	\$ (26)	\$ (7,209)	\$ (249,518)
Other comprehensive (loss) income before reclassifications	(24,542)	(39,524)	206	(2,687)	(66,547)
Amounts reclassified from Accumulated other comprehensive loss <sup>(1)</sup>	6,447 <sup>(2)</sup>	—	(60) <sup>(4)</sup>	2,149 <sup>(5)</sup>	8,536
Balance at August 27, 2016	(88,890)	(211,012)	120	(7,747)	(307,529)
Other comprehensive (loss) income before reclassifications	8,046	35,198	(60)	—	43,184
Amounts reclassified from Accumulated other comprehensive loss <sup>(1)</sup>	8,468 <sup>(2)</sup>	—	(71) <sup>(4)</sup>	1,391 <sup>(5)</sup>	9,788
Balance at August 26, 2017	<u>\$ (72,376)</u>	<u>\$ (175,814)</u>	<u>\$ (11)</u>	<u>\$ (6,356)</u>	<u>\$ (254,557)</u>

(1) Amounts in parentheses indicate debits to Accumulated other comprehensive loss.

(2) Represents amortization of pension liability adjustments, net of taxes of \$5,406 in fiscal 2017 and \$4,059 in fiscal 2016, which is recorded in Operating, selling, general and administrative expenses on the Consolidated Statements of Income. See "Note L – Pension and Savings Plans" for further discussion.

(3) Foreign currency is not shown net of additional U.S. tax as earnings of non-U.S. subsidiaries are intended to be permanently reinvested.

(4) Represents realized losses on marketable securities, net of taxes of \$38 in fiscal 2017 and \$33 in fiscal 2016, which is recorded in Operating, selling, general, and administrative expenses on the Consolidated Statements of Income. See "Note F – Marketable Securities" for further discussion.

(5) Represents gains and losses on derivatives, net of taxes of \$814 in fiscal 2017 and \$315 in fiscal 2016, which is recorded in Interest expense, net, on the Consolidated Statements of Income. See "Note H – Derivative Financial Instruments" for further discussion.

The 2017 pension actuarial gain of \$8.0 million and the 2016 pension actuarial loss of \$24.5 million include amounts not yet reflected in periodic pension costs primarily driven by changes in the discount rate.

[Table of Contents](#)**Note H – Derivative Financial Instruments**

The Company periodically uses derivatives to hedge exposures to interest rates. The Company does not hold or issue financial instruments for trading purposes. For transactions that meet the hedge accounting criteria, the Company formally designates and documents the instrument as a hedge at inception and quarterly thereafter assesses the hedges to ensure they are effective in offsetting changes in the cash flows of the underlying exposures. Derivatives are recorded in the Company's Consolidated Balance Sheet at fair value, determined using available market information or other appropriate valuation methodologies. In accordance with ASC Topic 815, *Derivatives and Hedging*, the effective portion of a financial instrument's change in fair value is recorded in Accumulated other comprehensive loss for derivatives that qualify as cash flow hedges and any ineffective portion of an instrument's change in fair value is recognized in earnings.

At August 26, 2017, the Company had \$10.1 million recorded in Accumulated other comprehensive loss related to net realized losses associated with terminated interest rate swap and treasury rate lock derivatives which were designated as hedging instruments. Net losses are amortized into Interest expense over the remaining life of the associated debt. During the fiscal year ended August 26, 2017, the Company reclassified \$2.2 million of net losses from Accumulated other comprehensive loss to Interest expense. In the fiscal year ended August 27, 2016, the Company reclassified \$1.8 million of net losses from Accumulated other comprehensive loss to Interest expense. The Company expects to reclassify \$2.2 million of net losses from Accumulated other comprehensive loss to Interest expense over the next 12 months.

**Note I – Financing**

The Company's debt consisted of the following:

<i>(in thousands)</i>	August 26, 2017	August 27, 2016
1.300% Senior Notes due January 2017, effective interest rate of 1.43%	\$ —	\$ 400,000
7.125% Senior Notes due August 2018, effective interest rate of 7.28%	250,000	250,000
1.625% Senior Notes due April 2019, effective interest rate of 1.77%	250,000	250,000
4.000% Senior Notes due November 2020, effective interest rate of 4.43%	500,000	500,000
2.500% Senior Notes due April 2021, effective interest rate of 2.62%	250,000	250,000
3.700% Senior Notes due April 2022, effective interest rate of 3.85%	500,000	500,000
2.875% Senior Notes due January 2023, effective interest rate of 3.21%	300,000	300,000
3.125% Senior Notes due July 2023, effective interest rate of 3.26%	500,000	500,000
3.250% Senior Notes due April 2025, effective interest rate 3.36%	400,000	400,000
3.125% Senior Notes due April 2026, effective interest rate of 3.28%	400,000	400,000
3.750% Senior Notes due June 2027, effective interest rate of 3.83%	600,000	—
Commercial paper, weighted average interest rate of 1.44% and 0.72% at August 26, 2017 and August 27, 2016, respectively	1,155,100	1,197,500
Total debt before discounts and debt issuance costs	5,105,100	4,947,500
Less: Discounts and debt issuance costs	23,862	23,381
Long-term debt	<u>\$ 5,081,238</u>	<u>\$ 4,924,119</u>

As of August 26, 2017, the commercial paper borrowings and the \$250 million 7.125% Senior Notes due August 2018 are classified as long-term in the accompanying Consolidated Balance Sheets as the Company has the ability and intent to refinance on a long-term basis through available capacity in its revolving credit facilities. As of August 26, 2017, the Company had \$1.997 billion of availability under its \$2.0 billion revolving credit facilities, which would allow it to replace these short-term obligations with long-term financing facilities.

On November 18, 2016, the Company amended and restated its existing Multi-Year revolving credit facility (the "New Multi-Year Revolving Credit Agreement") by increasing the committed credit amount from \$1.25 billion to \$1.6 billion, extending the expiration date by two years and renegotiating other terms and conditions. This credit facility is available to primarily support commercial paper borrowings, letters of credit and other short-term unsecured bank loans. The capacity of the credit facility may be increased to \$2.1 billion prior to the maturity date at the Company's election and subject to bank credit capacity and approval, and may include up to \$200 million in letters of credit. Under the revolving credit facility, the Company may borrow funds consisting of Eurodollar

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loans, base rate loans or a combination of both. Interest accrues on Eurodollar loans at a defined Eurodollar rate, defined as LIBOR plus the applicable percentage, as defined in the revolving credit facility, depending upon the Company's senior, unsecured, (non-credit enhanced) long-term debt rating. Interest accrues on base rate loans as defined in the credit facility. The Company also has the option to borrow funds under the terms of a swingline loan subfacility. The revolving credit facility expires on November 18, 2021, but the Company may, by notice to the administrative agent, make up to two requests to extend the termination date for an additional period of one year. The first such request must be made no earlier than 60 days, and no later than 45 days, prior to November 18, 2017, while the second request must be made no earlier than 60 days, and no later than 45 days, prior to November 18, 2018.

On November 18, 2016, the Company amended and restated its existing 364-Day revolving credit facility (the "New 364-Day Credit Agreement") by decreasing the committed credit amount from \$500 million to \$400 million, extending the expiration date by one year and renegotiating other terms and conditions. The credit facility is available to primarily support commercial paper borrowings and other short-term unsecured bank loans. Under the credit facility, the Company may borrow funds consisting of Eurodollar loans, base rate loans or a combination of both. Interest accrues on Eurodollar loans at a defined Eurodollar rate, defined as LIBOR plus the applicable margin, as defined in the revolving credit facility, depending upon the Company's senior, unsecured, (non-credit enhanced) long-term debt rating. Interest accrues on base rate loans as defined in the credit facility. The New 364-Day Credit Agreement expires on November 17, 2017, but the Company may request an extension of the termination date for 364 days no later than 45 days prior to November 17, 2017, subject to bank approval. In addition, at least 15 days prior to November 17, 2017, the Company has the right to convert the credit facility to a term loan for up to one year from the termination date, subject to a 1% penalty.

The revolving credit facility agreements require that the Company's consolidated interest coverage ratio as of the last day of each quarter shall be no less than 2.5:1. This ratio is defined as the ratio of (i) consolidated earnings before interest, taxes and rents to (ii) consolidated interest expense plus consolidated rents. The Company's consolidated interest coverage ratio as of August 26, 2017 was 6.0:1.

As of August 26, 2017, the Company had no outstanding borrowings under each of the revolving credit facilities, and \$3.3 million of outstanding letters of credit under the New Multi-Year Revolving Credit Agreement.

The Company also maintains a letter of credit facility that allows it to request the participating bank to issue letters of credit on its behalf up to an aggregate amount of \$75 million. The letter of credit facility is in addition to the letters of credit that may be issued under the New Multi-Year Revolving Credit Agreement. As of August 26, 2017, the Company had \$74.9 million in letters of credit outstanding under the letter of credit facility.

In addition to the outstanding letters of credit issued under the committed facilities discussed above, the Company had \$10.4 million in letters of credit outstanding as of August 26, 2017. These letters of credit have various maturity dates and were issued on an uncommitted basis.

On April 18, 2017, the Company issued \$600 million in 3.750% Senior Notes due June 2027 under its shelf registration statement filed with the SEC on April 15, 2015 (the "2015 Shelf Registration"). The 2015 Shelf Registration allows the Company to sell an indeterminate amount in debt securities to fund general corporate purposes, including repaying, redeeming or repurchasing outstanding debt and for working capital, capital expenditures, new location openings, stock repurchases and acquisitions. Proceeds from the debt issuance were used for general corporate purposes.

On April 21, 2016, the Company issued \$400 million in 3.125% Senior Notes due April 2026 and \$250 million in 1.625% Senior Notes due April 2019 under its 2015 Shelf Registration. Proceeds from the debt issuances were used for general corporate purposes.

On April 29, 2015, we issued \$400 million in 3.250% Senior Notes due April 2025 and \$250 million in 2.500% Notes due April 2021 under the 2015 Shelf Registration. Proceeds from the debt issuances were used to repay a portion of the outstanding commercial paper borrowings, which were used to repay the \$500 million in 5.750% Senior Notes due in January 2015, and for general corporate purposes.

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All senior notes are subject to an interest rate adjustment if the debt ratings assigned to the senior notes are downgraded (as defined in the agreements). Further, the senior notes contain a provision that repayment of the senior notes may be accelerated if the Company experiences a change in control (as defined in the agreements).

The Company's borrowings under its senior notes contain minimal covenants, primarily restrictions on liens. Under its revolving credit facilities, covenants include restrictions on liens, a maximum debt to earnings ratio, a minimum fixed charge coverage ratio and a change of control provision that may require acceleration of the repayment obligations under certain circumstances. All of the repayment obligations under its borrowing arrangements may be accelerated and come due prior to the scheduled payment date if covenants are breached or an event of default occurs.

As of August 26, 2017, the Company was in compliance with all covenants related to its borrowing arrangements. All of the Company's debt is unsecured. Scheduled maturities of debt are as follows:

<i>(in thousands)</i>	<b>Scheduled Maturities</b>
2018	\$ 1,405,100
2019	250,000
2020	—
2021	750,000
2022	500,000
Thereafter	2,200,000
Subtotal	<u>5,105,100</u>
Discount and debt issuance costs	23,862
Total Debt	<u>\$ 5,081,238</u>

The fair value of the Company's debt was estimated at \$5.171 billion as of August 26, 2017, and \$5.117 billion as of August 27, 2016, based on the quoted market prices for the same or similar issues or on the current rates available to the Company for debt of the same terms (Level 2). Such fair value is greater than the carrying value of debt by \$90.3 million at August 26, 2017 and \$192.7 million at August 27, 2016, which reflect their face amount, adjusted for any unamortized debt issuance costs and discounts.

**Note J – Interest Expense**

Net interest expense consisted of the following:

<i>(in thousands)</i>	<b>Year Ended</b>		
	<b>August 26, 2017</b>	<b>August 27, 2016</b>	<b>August 29, 2015</b>
Interest expense	\$ 159,329	\$ 150,961	\$ 153,007
Interest income	(3,502)	(2,371)	(1,605)
Capitalized interest	(1,247)	(909)	(963)
	<u>\$ 154,580</u>	<u>\$ 147,681</u>	<u>\$ 150,439</u>

[Table of Contents](#)**Note K – Stock Repurchase Program**

During 1998, the Company announced a program permitting the Company to repurchase a portion of its outstanding shares not to exceed a dollar maximum established by the Board. The program was last amended on March 21, 2017 to increase the repurchase authorization to \$18.65 billion from \$17.9 billion. From January 1998 to August 26, 2017, the Company has repurchased a total of 142.3 million shares at an aggregate cost of \$17.826 billion.

The Company's share repurchase activity consisted of the following:

<i>(in thousands)</i>	Year Ended		
	August 26, 2017	August 27, 2016	August 29, 2015
Amount	\$ 1,071,649	\$ 1,452,462	\$ 1,271,416
Shares	1,495	1,903	2,010

During fiscal year 2017, the Company retired 1.8 million shares of treasury stock which had previously been repurchased under the Company's share repurchase program. The retirement increased Retained deficit by \$1.321 billion and decreased Additional paid-in capital by \$64.9 million. During the comparable prior year period, the Company retired 2.1 million shares of treasury stock, which increased Retained deficit by \$1.424 billion and decreased Additional paid-in capital by \$67.0 million.

**Note L – Pension and Savings Plans**

Prior to January 1, 2003, substantially all full-time employees were covered by a defined benefit pension plan. The benefits under the plan were based on years of service and the employee's highest consecutive five-year average compensation. On January 1, 2003, the plan was frozen. Accordingly, pension plan participants will earn no new benefits under the plan formula and no new participants will join the pension plan.

On January 1, 2003, the Company's supplemental defined benefit pension plan for certain highly compensated employees was also frozen. Accordingly, plan participants will earn no new benefits under the plan formula and no new participants will join the pension plan.

The Company has recognized the unfunded status of the defined pension plans in its Consolidated Balance Sheets, which represents the difference between the fair value of pension plan assets and the projected benefit obligations of its defined benefit pension plans. The net unrecognized actuarial losses and unrecognized prior service costs are recorded in Accumulated other comprehensive loss. These amounts will be subsequently recognized as net periodic benefit cost pursuant to the Company's historical accounting policy for amortizing such amounts. Further, actuarial gains and losses that arise in subsequent periods and are not recognized as net periodic benefit cost in the same periods will be recognized as a component of other comprehensive income. Those amounts will be subsequently recognized as a component of net periodic benefit cost on the same basis as the amounts previously recognized in Accumulated other comprehensive loss.

The Company's investment strategy for pension plan assets is to utilize a diversified mix of domestic and international equity and fixed income portfolios to earn a long-term investment return that meets the Company's pension plan obligations. The pension plan assets are invested primarily in listed securities, and the pension plans may hold only a minimal investment in AutoZone common stock that is entirely at the discretion of third-party pension fund investment managers. The Company's largest holding classes, fixed income bonds and U.S. equities, are invested with a fund manager that holds diversified portfolios. Accordingly, the Company does not have any significant concentrations of risk in particular securities, issuers, sectors, industries or geographic regions. Alternative investment strategies were fully liquidated during fiscal 2016. The Company's investment managers are prohibited from using derivatives for speculative purposes and are not permitted to use derivatives to leverage a portfolio.

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The following is a description of the valuation methodologies used for the Company's investments measured at fair value:

*U.S., international, emerging, and high yield equities* –These investments are commingled funds and are valued using the net asset values, which are determined by valuing investments at the closing price or last trade reported on the major market on which the individual securities are traded. These investments are subject to annual audits.

*Alternative investments* –This category represents a hedge fund of funds made up of various investments in limited partnerships, limited liability companies and corporations. The fair value of the hedge fund of funds is determined using valuations provided by third party administrators for each of the underlying funds.

*Fixed income securities* –The fair values of corporate, U.S. government securities and other fixed income securities are estimated by using bid evaluation pricing models or quoted prices of securities with similar characteristics.

*Cash and cash equivalents* –These investments include cash equivalents valued using exchange rates provided by an industry pricing vendor and commingled funds valued using the net asset value. These investments also include cash.

The fair values of investments by level and asset category and the weighted-average asset allocations of the Company's pension plans at the measurement date are presented in the following table:

<b>August 26, 2017</b>						
<i>(in thousands)</i>	<b>Fair Value</b>	<b>Asset Allocation</b>		<b>Fair Value Hierarchy</b>		
		<b>Actual</b>	<b>Target</b>	<b>Level 1</b>	<b>Level 2</b>	<b>Level 3</b>
U.S. equities	\$ 50,125	15.8%	17.0%	\$ —	\$ 50,125	\$ —
International equities	33,696	10.7	11.0	—	33,696	—
Emerging equities	19,027	6.0	6.0	—	19,027	—
High yield securities	17,063	5.4	6.0	—	17,063	—
Alternative investments	—	—	—	—	—	—
Fixed income securities	178,650	56.5	60.0	—	178,650	—
Cash and cash equivalents	17,706	5.6	—	—	17,706	—
	<u>\$316,267</u>	<u>100.0%</u>	<u>100.0%</u>	<u>\$ —</u>	<u>\$316,267</u>	<u>\$ —</u>

<b>August 27, 2016</b>						
<i>(in thousands)</i>	<b>Fair Value</b>	<b>Asset Allocation</b>		<b>Fair Value Hierarchy</b>		
		<b>Actual</b>	<b>Target</b>	<b>Level 1</b>	<b>Level 2</b>	<b>Level 3</b>
U.S. equities	\$ 66,008	22.9%	26.0%	\$ —	\$ 66,008	\$ —
International equities	42,023	14.5	17.0	—	42,023	—
Emerging equities	22,848	7.9	8.5	—	22,848	—
High yield securities	21,445	7.4	8.5	—	21,445	—
Alternative investments	—	—	—	—	—	—
Fixed income securities	99,336	34.3	40.0	—	99,336	—
Cash and cash equivalents	37,726	13.0	—	—	37,726	—
	<u>\$289,386</u>	<u>100.0%</u>	<u>100.0%</u>	<u>\$ —</u>	<u>\$289,386</u>	<u>\$ —</u>

The asset allocations in the charts above include \$17.5 million and \$48.0 million in cash contributions made in the last month prior to the balance sheet date of August 26, 2017, and August 27, 2016, respectively. Subsequent to August 26, 2017, and August 27, 2016, these cash contributions were allocated to the pension plan investments in accordance with the targeted asset allocation.

In January 2017, the Company's Investment Committee approved a revised asset allocation target for the investments held by the pension plan. Based on the revised asset allocation target, the expected long-term rate of return on plan assets changed from 7.0% for the year ended August 26, 2017 to 6.0% for the year ending August 25, 2018.



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The following table sets forth the plans' funded status and amounts recognized in the Company's Consolidated Balance Sheets:

<i>(in thousands)</i>	<u>August 26, 2017</u>	<u>August 27, 2016</u>
<b>Change in Projected Benefit Obligation:</b>		
Projected benefit obligation at beginning of year	\$ 328,511	\$ 296,123
Interest cost	10,335	11,272
Actuarial (gains) losses	(8,746)	39,842
Benefits paid	<u>(15,376)</u>	<u>(18,726)</u>
Benefit obligations at end of year	<u>\$ 314,724</u>	<u>\$ 328,511</u>
<b>Change in Plan Assets:</b>		
Fair value of plan assets at beginning of year	\$ 289,386	\$ 238,755
Actual return on plan assets	24,496	16,636
Employer contributions	17,761	52,721
Benefits paid	<u>(15,376)</u>	<u>(18,726)</u>
Fair value of plan assets at end of year	<u>\$ 316,267</u>	<u>\$ 289,386</u>
<b>Amount Recognized in the Statement of Financial Position:</b>		
Current liabilities	\$ (283)	\$ (276)
Long-term assets	8,686	—
Long-term liabilities	<u>(6,860)</u>	<u>(38,849)</u>
Net amount recognized	<u>\$ 1,543</u>	<u>\$ (39,125)</u>
<b>Amount Recognized in Accumulated Other Comprehensive Loss and not yet reflected in Net Periodic Benefit Cost:</b>		
Net actuarial loss	<u>\$ (118,889)</u>	<u>\$ (145,948)</u>
Accumulated other comprehensive loss	<u>\$ (118,889)</u>	<u>\$ (145,948)</u>
<b>Amount Recognized in Accumulated Other Comprehensive Loss and not yet reflected in Net Periodic Benefit Cost and expected to be amortized in next year's Net Periodic Benefit Cost:</b>		
Net actuarial loss	<u>\$ (10,736)</u>	<u>\$ (13,874)</u>
Amount recognized	<u>\$ (10,736)</u>	<u>\$ (13,874)</u>

Net periodic benefit expense consisted of the following:

<i>(in thousands)</i>	<b>Year Ended</b>		
	<u>August 26, 2017</u>	<u>August 27, 2016</u>	<u>August 29, 2015</u>
Interest cost	\$ 10,335	\$ 11,272	\$ 12,338
Expected return on plan assets	(20,056)	(16,512)	(16,281)
Recognized net actuarial losses	13,873	10,506	8,941
Net periodic benefit expense	<u>\$ 4,152</u>	<u>\$ 5,266</u>	<u>\$ 4,998</u>

The blended actuarial assumptions used in determining the projected benefit obligation include the following:

	<b>Year Ended</b>		
	<u>August 26, 2017</u>	<u>August 27, 2016</u>	<u>August 29, 2015</u>
Discount rate to determine benefit obligation	3.86%	3.72%	4.50%
Discount rate to determine net interest cost	3.21%	3.90%	4.28%
Expected long-term rate of return on plan assets	7.00%	7.00%	7.00%

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As the plan benefits are frozen, increases in future compensation levels no longer impact the calculation and there is no service cost.

The discount rate to determine the projected benefit obligation is determined as of the measurement date and is based on the calculated yield of a portfolio of high-grade corporate bonds with cash flows that generally match the Company's expected benefit payments in future years.

During fiscal 2016, the Company changed the method used to estimate the interest cost component of net periodic benefit cost. Previously, the Company estimated interest cost using a single weighted-average discount rate derived from the yield curve used to measure the benefit obligation. The Company elected to utilize a spot rate approach by applying specific spot rates along the yield curve to calculate interest costs instead of a single weighted-average discount rate. This calculation is believed to be more refined under the applicable accounting standard. The impact of this change to net periodic benefit cost was a reduction of \$1.8 million in fiscal 2016. The Company accounted for this change as a change in accounting estimate and accounted for it prospectively.

The expected long-term rate of return on plan assets is based on the historical relationships between the investment classes and the capital markets, updated for current conditions.

The Company makes annual contributions in amounts at least equal to the minimum funding requirements of the Employee Retirement Income Security Act of 1974. The Company contributed \$17.8 million to the plans in fiscal 2017, \$52.7 million to the plans in fiscal 2016 and \$17.1 million to the plans in fiscal 2015. The Company expects to contribute approximately \$20.3 million to the plans in fiscal 2018; however, a change to the expected cash funding may be impacted by a change in interest rates or a change in the actual or expected return on plan assets or through other plans initiated by management.

Based on current assumptions about future events, benefit payments are expected to be paid as follows for each of the following fiscal years. Actual benefit payments may vary significantly from the following estimates:

<i>(in thousands)</i>	<b>Benefit Payments</b>
2018	\$ 13,608
2019	13,139
2020	13,817
2021	14,538
2022	14,917
2023 – 2027	79,742

The Company has a 401(k) plan that covers all domestic employees who meet the plan's participation requirements. The plan features include Company matching contributions, immediate 100% vesting of Company contributions and a savings option up to 25% of qualified earnings. The Company makes matching contributions, per pay period, up to a specified percentage of employees' contributions as approved by the Board. The Company made matching contributions to employee accounts in connection with the 401(k) plan of \$21.0 million in fiscal 2017, \$19.7 million in fiscal 2016, and \$17.7 million in fiscal 2015.

### **Note M – Acquisition**

Effective September 27, 2014, the Company acquired the outstanding stock of Interamerican Motor Corporation ("IMC"), the second largest distributor of quality import replacement parts in the United States, for \$75.7 million, net of cash. IMC specializes in parts coverage for European and Asian cars. With this acquisition, the Company continues to grow its share in the aftermarket import car parts market. The results of operations from IMC have been included in the Company's Auto Parts Locations business activities since the date of acquisition.

[Table of Contents](#)**Note N – Goodwill and Intangibles**

The changes in the carrying amount of goodwill are as follows:

<i>(in thousands)</i>	<u>Auto Parts Locations</u>	<u>Other</u>	<u>Total</u>
Net balance as of August 29, 2015	\$ 326,703	\$ 65,184	\$ 391,887
Goodwill added through acquisition	—	—	—
Goodwill adjustments	—	—	—
Net balance as of August 27, 2016	<u>326,703</u>	<u>65,184</u>	<u>391,887</u>
Goodwill added through acquisition	—	—	—
Goodwill adjustments	—	—	—
Net balance as of August 26, 2017	<u>\$ 326,703</u>	<u>\$ 65,184</u>	<u>\$ 391,887</u>

The Company performs its annual goodwill and intangibles impairment test in the fourth quarter of each fiscal year. In the fourth quarter of fiscal 2017 and 2016, the Company concluded that its goodwill was not impaired. Total accumulated goodwill impairment for both August 26, 2017 and August 27, 2016 is \$18.3 million.

The carrying amounts of intangible assets are included in Other long-term assets as follows:

<i>(in thousands)</i>	<u>August 26, 2017</u>			
	<u>Estimated Useful Life</u>	<u>Gross Carrying Amount</u>	<u>Accumulated Amortization</u>	<u>Net Carrying Amount</u>
Amortizing intangible assets:				
Technology	3- 5 years	\$ 10,570	\$ (9,994)	\$ 576
Noncompete agreements	5 years	1,300	(1,223)	77
Customer relationships	3- 10 years	49,676	(24,730)	24,946
		<u>\$ 61,546</u>	<u>\$ (35,947)</u>	<u>25,599</u>
Non-amortizing intangible asset:				
Trade names				26,900
Total intangible assets other than goodwill				<u>\$ 52,499</u>
<i>(in thousands)</i>	<u>August 27, 2016</u>			
	<u>Estimated Useful Life</u>	<u>Gross Carrying Amount</u>	<u>Accumulated Amortization</u>	<u>Net Carrying Amount</u>
Amortizing intangible assets:				
Technology	3- 5 years	\$ 10,570	\$ (7,988)	\$ 2,582
Noncompete agreements	5 years	1,300	(963)	337
Customer relationships	3- 10 years	49,676	(18,514)	31,162
		<u>\$ 61,546</u>	<u>\$ (27,465)</u>	<u>34,081</u>
Non-amortizing intangible asset:				
Trade names				26,900
Total intangible assets other than goodwill				<u>\$60,981</u>

During fiscal 2014, the Company purchased \$30.2 million of intangible assets relating to the rights to certain customer relationships and technology assets relating to its ALLDATA operations. Additionally, during fiscal 2016 and 2015, the Company made an installment payment of \$10 million in each year related to certain customer relationships purchased during 2014 relating to its ALLDATA operations.

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As part of its annual impairment test, the Company evaluates the AutoAnything and IMC trade names for impairment in the fourth quarter of each fiscal year. In the fourth quarter of fiscal 2017 and 2016, the Company concluded that AutoAnything's and IMC's trade names were not impaired. Trade names at August 26, 2017 and August 27, 2016 reflect a total accumulated impairment of \$4.1 million.

Amortization expense of intangible assets for the years ended August 26, 2017 and August 27, 2016 was \$8.5 million and \$8.7 million, respectively.

Total future amortization expense for intangible assets that have finite lives, based on the existing intangible assets and their current estimated useful lives as of August 26, 2017, is estimated as follows:

<i>(in thousands)</i>	<b>Total</b>
2018	\$ 6,855
2019	6,203
2020	6,203
2021	3,474
2022	2,030
Thereafter	834
	<u>\$ 25,599</u>

### **Note O – Leases**

The Company leases some of its retail stores, distribution centers, facilities, land and equipment, including vehicles. Other than vehicle leases, most of the leases are operating leases, which include renewal options made at the Company's election and provisions for percentage rent based on sales. Rental expense was \$302.9 million in fiscal 2017, \$280.5 million in fiscal 2016, and \$269.5 million in fiscal 2015. Percentage rentals were insignificant.

The Company records rent for all operating leases on a straight-line basis over the lease term, including any reasonably assured renewal periods and the period of time prior to the lease term that the Company is in possession of the leased space for the purpose of installing leasehold improvements. Differences between recorded rent expense and cash payments are recorded as a liability in Accrued expenses and other and Other long-term liabilities in the accompanying Consolidated Balance Sheets, based on the terms of the lease. The deferred rent approximated \$130.2 million on August 26, 2017, and \$121.7 million on August 27, 2016.

The Company has a fleet of vehicles used for delivery to its commercial customers and stores and travel for members of field management. The majority of these vehicles are held under capital leases. At August 26, 2017, the Company had capital lease assets of \$152.0 million, net of accumulated amortization of \$70.2 million, and capital lease obligations of \$150.5 million, of which \$48.1 million is classified as Accrued expenses and other as it represents the current portion of these obligations. At August 27, 2016, the Company had capital lease assets of \$148.5 million, net of accumulated amortization of \$59.5 million, and capital lease obligations of \$147.3 million, of which \$44.8 million is classified as Accrued expenses and other as it represents the current portion of these obligations.

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Future minimum annual rental commitments under non-cancelable operating leases and capital leases were as follows at the end of fiscal 2017:

<i>(in thousands)</i>	<b>Operating Leases</b>	<b>Capital Leases</b>
2018	\$ 293,826	\$ 48,134
2019	284,523	49,808
2020	262,782	36,610
2021	237,241	21,217
2022	213,399	3,307
Thereafter	861,409	—
Total minimum payments required	<u>\$ 2,153,180</u>	<u>159,076</u>
Less: Interest		(8,620)
Present value of minimum capital lease payments		<u>\$ 150,456</u>

**Note P – Commitments and Contingencies**

Construction commitments, primarily for new stores and new distribution centers, totaled approximately \$69.9 million at August 26, 2017.

The Company had \$88.6 million in outstanding standby letters of credit and \$28.8 million in surety bonds as of August 26, 2017, which all have expiration periods of less than one year. A substantial portion of the outstanding standby letters of credit (which are primarily renewed on an annual basis) and surety bonds are used to cover reimbursement obligations to our workers' compensation carriers. There are no additional contingent liabilities associated with these instruments as the underlying liabilities are already reflected in the consolidated balance sheet. The standby letters of credit and surety bonds arrangements have automatic renewal clauses.

**Note Q – Litigation**

In July 2014, the Company received a subpoena from the District Attorney of the County of Alameda, along with other environmental prosecutorial offices in the state of California, seeking documents and information related to the handling, storage and disposal of hazardous waste. The Company received notice that the District Attorney will seek injunctive and monetary relief. The Company is cooperating fully with the request and cannot predict the ultimate outcome of these efforts, although the Company has accrued all amounts it believes to be probable and reasonably estimable. The Company does not believe the ultimate resolution of this matter will have a material adverse effect on its consolidated financial position, results of operations or cash flows.

In April 2016, the Company received a letter from the California Air Resources Board seeking payment for alleged violations of the California Health and Safety Code related to the sale of certain aftermarket emission parts in the State of California. The Company does not believe that any resolution of the matter will have a material adverse effect on its consolidated financial position, results of operations or cash flows.

The Company is involved in various other legal proceedings incidental to the conduct of its business, including, but not limited to, several lawsuits containing class-action allegations in which the plaintiffs are current and former hourly and salaried employees who allege various wage and hour violations and unlawful termination practices. The Company does not currently believe that, either individually or in the aggregate, these matters will result in liabilities material to the Company's financial condition, results of operations or cash flows.

[Table of Contents](#)**Note R – Segment Reporting**

Four of the Company's operating segments (Domestic Auto Parts, Mexico, Brazil, and IMC) are aggregated as one reportable segment: Auto Parts Locations. The criteria the Company used to identify the reportable segment are primarily the nature of the products the Company sells and the operating results that are regularly reviewed by the Company's chief operating decision maker to make decisions about the resources to be allocated to the business units and to assess performance. The accounting policies of the Company's reportable segment are the same as those described in Note A.

The Auto Parts Locations segment is a retailer and distributor of automotive parts and accessories through the Company's 6,029 locations in the United States, Puerto Rico, Mexico and Brazil. Each location carries an extensive product line for cars, sport utility vehicles, vans and light trucks, including new and remanufactured automotive hard parts, maintenance items, accessories and non-automotive products.

The Other category reflects business activities of three operating segments that are not separately reportable due to the materiality of these operating segments. The operating segments include ALLDATA, which produces, sells and maintains diagnostic and repair information software used in the automotive repair industry; E-commerce, which includes direct sales to customers through www.autozone.com; and AutoAnything, which includes direct sales to customers through www.autoanything.com.

The Company evaluates its reportable segment primarily on the basis of net sales and segment profit, which is defined as gross profit. The following table shows segment results for the following fiscal years:

<i>(in thousands)</i>	<b>Year Ended</b>		
	<b>August 26, 2017</b>	<b>August 27, 2016</b>	<b>August 29, 2015</b>
<b>Net Sales:</b>			
Auto Parts Locations	\$10,523,272	\$10,261,112	\$ 9,824,876
Other	365,404	374,564	362,464
Total	<u>\$10,888,676</u>	<u>\$10,635,676</u>	<u>\$10,187,340</u>
<b>Segment Profit:</b>			
Auto Parts Locations	\$ 5,544,494	\$ 5,410,477	\$ 5,132,624
Other	195,126	198,259	194,407
Gross profit	5,739,620	5,608,736	5,327,031
Operating, selling, general and administrative expenses	(3,659,551)	(3,548,341)	(3,373,980)
Interest expense, net	(154,580)	(147,681)	(150,439)
Income before income taxes	<u>\$ 1,925,489</u>	<u>\$ 1,912,714</u>	<u>\$ 1,802,612</u>
<b>Segment Assets:</b>			
Auto Parts Locations	\$ 8,964,371	\$ 8,351,883	\$ 7,883,720
Other	295,410	247,904	218,629
Total	<u>\$ 9,259,781</u>	<u>\$ 8,599,787</u>	<u>\$ 8,102,349</u>
<b>Capital Expenditures:</b>			
Auto Parts Locations	\$ 533,304	\$ 470,631	\$ 464,246
Other	20,528	18,160	16,333
Total	<u>\$ 553,832</u>	<u>\$ 488,791</u>	<u>\$ 480,579</u>
<b>Auto Parts Locations Sales by Product Grouping:</b>			
Failure	\$ 5,100,702	\$ 4,913,423	\$ 4,650,271
Maintenance items	3,774,386	3,721,240	3,618,779
Discretionary	1,648,184	1,626,449	1,555,826
Auto Parts Locations net sales	<u>\$10,523,272</u>	<u>\$10,261,112</u>	<u>\$ 9,824,876</u>

[Table of Contents](#)**Note S – Quarterly Summary (1)**  
(Unaudited)

<i>(in thousands, except per share data)</i>	Twelve Weeks Ended			Sixteen Weeks Ended
	November 19, 2016	February 11, 2017	May 6, 2017	August 26, 2017(2)
Net sales	\$ 2,467,845	\$ 2,289,219	\$ 2,619,007	\$ 3,512,605
Gross profit	1,301,542	1,205,536	1,378,418	1,854,125
Operating profit	458,902	383,969	529,570	707,628
Income before income taxes	425,596	349,771	493,895	656,227
Net income(3)	278,125	237,145	331,700	433,899
Basic earnings per share(3)	9.61	8.28	11.70	15.52
Diluted earnings per share(3)	9.36	8.08	11.44	15.27

<i>(in thousands, except per share data)</i>	Twelve Weeks Ended			Sixteen Weeks Ended
	November 21, 2015	February 13, 2016	May 7, 2016	August 27, 2016(2)
Net sales	\$ 2,386,043	\$ 2,257,192	\$ 2,593,672	\$ 3,398,769
Gross profit	1,252,934	1,190,596	1,370,458	1,794,748
Operating profit	437,995	382,660	536,374	703,366
Income before income taxes	402,985	349,828	502,323	657,577
Net income	258,112	228,613	327,515	426,768
Basic earnings per share	8.46	7.58	10.99	14.58
Diluted earnings per share	8.29	7.43	10.77	14.30

- (1) The sum of quarterly amounts may not equal the annual amounts reported due to rounding. In addition, the earnings per share amounts are computed independently for each quarter while the full year is based on the annual weighted average shares outstanding.
- (2) The fourth quarter for fiscal 2017 and fiscal 2016 are based on a 16-week period. All other quarters presented are based on a 12-week period.
- (3) As discussed in Note A, the Company adopted the new accounting guidance for shared-based payments on August 28, 2016. These amounts include the impact of the adoption. For the twelve week period ended November 19, 2016, this increased net income by \$3.1 million, basic earnings per share by \$0.11 and diluted earnings per share by \$0.03. For the twelve week period ended February 11, 2017, this increased net income by \$12.5 million, basic earnings per share by \$0.43 and diluted earnings per share by \$0.37. For the twelve week period ended May 6, 2017, this increased net income by \$11.4 million, basic earnings per share by \$0.40 and diluted earnings per share by \$0.32. For the sixteen week period ended August 26, 2017, this increased net income by \$4.1 million, basic earnings per share by \$0.15 and diluted earnings per share by \$0.09. Prior period net income, basic earnings per share and diluted earnings per share amounts were not restated.

**Note T – Subsequent Event**  
(Unaudited)

Subsequent to August 26, 2017, several storms made landfall and have resulted in extensive damage and flooding in Texas, Florida, Louisiana and Puerto Rico. The damage to the Company's stores in Texas, Florida and Louisiana did not have a material impact on its consolidated financial statements. A full assessment of the extent of the damage to stores in Puerto Rico is expected to be completed in the weeks ahead. Currently, there is uncertainty as to the magnitude of the losses associated with this event and whether such losses would have a material effect on the Company's consolidated financial statements.

**Item 9. Changes In and Disagreements with Accountants on Accounting and Financial Disclosure**

Not applicable.

[Table of Contents](#)**Item 9A. Controls and Procedures**

As of August 26, 2017, an evaluation was performed under the supervision and with the participation of AutoZone's management, including the Chief Executive Officer and the Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, as amended. Based on that evaluation, our management, including the Chief Executive Officer and the Chief Financial Officer, concluded that our disclosure controls and procedures were effective. During or subsequent to the quarter ended August 26, 2017, there were no changes in our internal controls that have materially affected or are reasonably likely to materially affect, internal controls over financial reporting.

**Item 9B. Other Information**

Not applicable.



[Table of Contents](#)**PART III****Item 10. Directors, Executive Officers and Corporate Governance**

The information set forth in Part I of this document in the section entitled “Executive Officers of the Registrant,” is incorporated herein by reference in response to this item. Additionally, the information contained in AutoZone, Inc.’s Proxy Statement dated October 21, 2017, in the sections entitled “Proposal 1 – Election of Directors” and “Section 16(a) Beneficial Ownership Reporting Compliance,” is incorporated herein by reference in response to this item.

The Company has adopted a Code of Ethical Conduct for Financial Executives that applies to its chief executive officer, chief financial officer, chief accounting officer and other financial executives. The Company has made the Code of Ethical Conduct available on its investor relations website at <http://www.autozoneinc.com>.

**Item 11. Executive Compensation**

The information contained in AutoZone, Inc.’s Proxy Statement dated October 21, 2017, in the section entitled “Executive Compensation,” is incorporated herein by reference in response to this item.

**Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters**

The information contained in AutoZone, Inc.’s Proxy Statement dated October 21, 2017, in the sections entitled “Security Ownership of Management and Board of Directors” and “Security Ownership of Certain Beneficial Owners,” is incorporated herein by reference in response to this item.

**Item 13. Certain Relationships and Related Transactions, and Director Independence**

Not applicable.

**Item 14. Principal Accounting Fees and Services**

The information contained in AutoZone, Inc.’s Proxy Statement dated October 21, 2017, in the section entitled “Proposal 2 – Ratification of Independent Registered Public Accounting Firm,” is incorporated herein by reference in response to this item.

[Table of Contents](#)**PART IV****Item 15. Exhibits, Financial Statement Schedules**

The following information required under this item is filed as part of this report.

**(a) Financial Statements**

The following financial statements, related notes and reports of independent registered public accounting firm are filed with this Annual Report on Form 10-K in Part II, Item 8:

[Reports of Independent Registered Public Accounting Firm](#)

[Consolidated Statements of Income for the fiscal years ended August 26, 2017, August 27, 2016, and August 29, 2015](#)

[Consolidated Statements of Comprehensive Income for the fiscal years ended August 26, 2017, August 27, 2016, and August 29, 2015](#)

[Consolidated Balance Sheets as of August 26, 2017, and August 27, 2016](#)

[Consolidated Statements of Cash Flows for the fiscal years ended August 26, 2017, August 27, 2016, and August 29, 2015](#)

[Consolidated Statements of Stockholders' Deficit for the fiscal years ended August 26, 2017, August 27, 2016, and August 29, 2015](#)

[Notes to Consolidated Financial Statements](#)

**(b) Exhibits**

The following exhibits are being filed herewith:

- 3.1 [Restated Articles of Incorporation of AutoZone, Inc. Incorporated by reference to Exhibit 3.1 to the Quarterly Report on Form 10-Q for the quarter ended February 13, 1999.](#)
- 3.2 [Sixth Amended and Restated By-laws of AutoZone, Inc. Incorporated by reference to Exhibit 3.1 to the Current Report on Form 8-K dated October 7, 2015.](#)
- 4.1 [Indenture dated as of August 8, 2003, between AutoZone, Inc. and Bank One Trust Company, N.A. Incorporated by reference to Exhibit 4.1 to the Registration Statement on Form S-3 \(No. 333-107828\) filed August 11, 2003.](#)
- 4.2 [Officers' Certificate dated August 4, 2008, pursuant to Section 3.2 of the Indenture dated August 11, 2003, setting forth the terms of the 7.125% Senior Notes due 2018. Incorporated by reference to Exhibit 4.2 to the Current Report on Form 8-K dated August 4, 2008.](#)
- 4.3 [Form of 7.125% Senior Note due 2018. Incorporated by reference from the Form 8-K dated August 4, 2008.](#)
- 4.4 [Officers' Certificate dated November 15, 2010, pursuant to Section 3.2 of the Indenture dated August 8, 2003, setting forth the terms of the 4.000% Notes due 2020. Incorporated by reference to 4.1 to the Current Report on Form 8-K dated November 15, 2010.](#)
- 4.5 [Form of 4.000% Senior Note due 2020. Incorporated by reference from the Form 8-K dated November 15, 2010.](#)
- 4.6 [Officers' Certificate dated April 24, 2012, pursuant to section 3.2 of the indenture dated August 8, 2003, setting forth the terms of the 3.700% Senior Notes due 2022. Incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K dated April 24, 2012.](#)
- 4.7 [Form of 3.700% Senior Notes due 2022. Incorporated by reference from the Form 8-K dated April 24, 2012](#)

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- 4.8 [Officers' Certificate dated November 13, 2012, pursuant to section 3.2 of the indenture dated August 8, 2003, setting forth the terms of the 2.875% Senior Notes due 2023. Incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K dated November 13, 2012.](#)
- 4.9 [Form of 2.875% Senior Notes due 2023. Incorporated by reference from the Form 8-K dated November 13, 2012.](#)
- 4.10 [Officers' Certificate dated April 29, 2013, pursuant to section 3.2 of the indenture dated August 8, 2003, setting forth the terms of the 3.125% Senior Notes due 2023. Incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K dated April 29, 2013.](#)
- 4.11 [Form of 3.125% Senior Notes due 2023. Incorporated by reference to Exhibit 4.2 to the Form 8-K dated April 29, 2013.](#)
- 4.12 [Officers' Certificate dated April 29, 2015, pursuant to Section 3.2 of the Indenture dated August 8, 2003, setting forth the terms of the 2.500% Senior Notes due 2021. Incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K dated April 29, 2015.](#)
- 4.13 [Form of 2.500% Note dated 2021. Incorporated by reference to Exhibit 4.3 to the Current Report on Form 8-K dated April 29, 2015.](#)
- 4.14 [Officers' Certificate dated April 29, 2015, pursuant to Section 3.2 of the Indenture dated August 8, 2003, setting forth the terms of the 3.250% Senior Notes due 2025. Incorporated by reference to Exhibit 4.2 to the Current Report on Form 8-K dated April 29, 2015.](#)
- 4.15 [Form of 3.250% Note due 2025. Incorporated by reference to Exhibit 4.4 to the Current Report on Form 8-K dated April 29, 2015.](#)
- 4.16 [Officers' Certificate dated April 21, 2016, pursuant to Section 3.2 of the Indenture dated August 8, 2003, setting forth the terms of the 1.625% Senior Notes due 2019. Incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K dated April 21, 2016.](#)
- 4.17 [Form of 1.625% Senior Notes due 2019. Incorporated by reference to Exhibit 4.3 to the Current Report on Form 8-K dated April 21, 2016.](#)
- 4.18 [Officers' Certificate dated April 21, 2016, pursuant to Section 3.2 of the Indenture dated August 8, 2003, setting forth the terms of the 3.125% Senior Notes due 2026. Incorporated by reference to Exhibit 4.2 to the Current Report on Form 8-K dated April 21, 2016.](#)
- 4.19 [Form of 3.125% Senior Notes due 2026. Incorporated by reference to Exhibit 4.4 to the Current Report on Form 8-K dated April 21, 2016.](#)
- 4.20 [Officers' Certificate dated April 18, 2017, pursuant to Section 3.2 of the Indenture dated August 8, 2003, setting forth the terms of the 3.750% Senior Notes due 2027. Incorporated by reference to Exhibit 4.1 to the Current Report on Form 8-K dated April 18, 2017.](#)
- 4.21 [Form of 3.750% Senior Notes due 2027. Incorporated by reference to Exhibit 4.2 to the Current Report on Form 8-K dated April 18, 2017.](#)
- \*10.1 [Second Amended and Restated 1998 Director Compensation Plan. Incorporated by reference to Exhibit 10.2 to the Annual Report on Form 10-K for the fiscal year ended August 26, 2000.](#)
- \*10.2 [AutoZone, Inc. 2003 Director Stock Option Plan. Incorporated by reference to Appendix C to the definitive proxy statement dated November 1, 2002, for the Annual Meeting of Stockholders held December 12, 2002.](#)

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- \*10.3 [AutoZone, Inc. 2003 Director Compensation Plan. Incorporated by reference to Appendix D to the definitive proxy statement dated November 1, 2002, for the Annual Meeting of Stockholders held December 12, 2002.](#)
- \*10.4 [Third Amendment to the AutoZone, Inc. Executive Deferred Compensation Plan. Incorporated by reference to Exhibit 10.1 to the Form 8-K dated December 12, 2012.](#)
- \*10.5 [AutoZone, Inc. 2006 Stock Option Plan. Incorporated by reference to Appendix A to the definitive proxy statement dated October 25, 2006, for the Annual Meeting of Stockholders held December 13, 2006.](#)
- \*10.6 [Form of Stock Option Agreement. Incorporated by reference to Exhibit 10.26 to the Annual Report on Form 10-K for the fiscal year ended August 25, 2007.](#)
- \*10.7 [Amended and Restated AutoZone, Inc. 2003 Director Compensation Plan. Incorporated by reference to Exhibit 99.2 to the Current Report on Form 8-K dated January 4, 2008.](#)
- \*10.8 [Amended and Restated AutoZone, Inc. 2003 Director Stock Option Plan. Incorporated by reference to Exhibit 99.3 to the Current Report on Form 8-K dated January 4, 2008.](#)
- \*10.9 [AutoZone, Inc. Enhanced Severance Pay Plan. Incorporated by reference to Exhibit 99.1 to the Current Report on Form 8-K dated February 15, 2008.](#)
- \*10.10 [Form of non-compete and non-solicitation agreement for Section 16 executive officers and by AutoZone, Inc. Incorporated by reference to Exhibit 99.2 to the Current Report on Form 8-K dated February 15, 2008.](#)
- \*10.11 [Form of non-compete and non-solicitation agreement approved by AutoZone's Compensation Committee for execution by non-executive officers. Incorporated by reference to Exhibit 99.3 to the Current Report on Form 8-K dated February 15, 2008.](#)
- \*10.12 [Agreement dated February 14, 2008, between AutoZone, Inc. and William C. Rhodes, III. Incorporated by reference to Exhibit 99.4 to the Current Report on Form 8-K dated February 15, 2008.](#)
- \*10.13 [Form of non-compete and non-solicitation agreement for Non-Section 16 officers and by AutoZone, Inc. Incorporated by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q for the quarter ended May 3, 2008.](#)
- \*10.14 [AutoZone, Inc. 2010 Executive Incentive Compensation Plan, incorporated by reference to Exhibit A to the definitive proxy statement dated October 26, 2009, for the Annual Meeting of Stockholders held December 16, 2009.](#)
- \*10.15 [AutoZone, Inc. 2011 Equity Incentive Award Plan, incorporated by reference to Exhibit A to the definitive proxy statement dated October 25, 2010, for the Annual Meeting of Stockholders held December 15, 2010.](#)
- \*10.16 [Form of Stock Option Agreement under the 2006 Stock Option Plan, effective September 2010. Incorporated by reference to Exhibit 10.2 to the Quarterly Report on Form 10-Q dated December 16, 2010.](#)
- \*10.17 [Form of Stock Option Agreement under the 2006 Stock Option Plan for certain executive officers, effective September 2010. Incorporated by reference to Exhibit 10.3 to the Quarterly Report on Form 10-Q dated December 16, 2010.](#)

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- \*10.18 [Form of Letter Agreement dated as of December 14, 2010, amending certain Stock Option Agreements of executive officers. Incorporated by reference to Exhibit 10.4 to the Quarterly Report on Form 10-Q dated December 16, 2010.](#)
- \*10.19 [AutoZone, Inc. 2011 Director Compensation Program. Incorporated by reference to Exhibit 10.5 to the Quarterly Report on Form 10-Q dated December 16, 2010.](#)
- \*10.20 [Form of Stock Option Agreement under the 2011 Equity Incentive Award Plan. Incorporated by reference to Exhibit 10.2 to the Quarterly Report on Form 10-Q dated March 17, 2011.](#)
- \*10.21 [Form of Stock Option Agreement under the 2011 Equity Incentive Award Plan for officers effective September 27, 2011. Incorporated by reference to Exhibit 10.37 to the Annual Report on Form 10-K for the fiscal year ended August 27, 2011.](#)
- \*10.22 [First Amended and Restated AutoZone, Inc. Enhanced Severance Pay Plan. Incorporated by reference to Exhibit 10.4 to the Quarterly Report on Form 10-Q dated March 17, 2011.](#)
- \*10.23 [Form of Stock Option Agreement under the 2011 Equity Incentive Award Plan for officers effective September 27, 2011. Incorporated by reference to Exhibit 10.37 to the Annual Report on Form 10-K for the fiscal year ended August 27, 2011.](#)
- \*10.24 [Form of Stock Option Agreement under the 2011 Equity Incentive Award Plan for certain executive officers effective September 27, 2011. Incorporated by reference to Exhibit 10.38 to the Annual Report on Form 10-K for the fiscal year ended August 27, 2011.](#)
- \*10.25 [Sixth Amended and Restated AutoZone, Inc. Employee Stock Purchase Plan. Incorporated by reference to Exhibit 10.40 to the Annual Report on Form 10-K for the fiscal year ended August 27, 2011.](#)
- \*10.26 [Second Amended AutoZone, Inc. Executive Deferred Compensation Plan. Incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K dated December 14, 2011.](#)
- \*10.27 [Offer letter dated April 26, 2012, to Ronald B. Griffin. Incorporated by reference to Exhibit 10.39 of Annual Report on Form 10-K dated October 22, 2012.](#)
- \*10.28 [Offer letter dated February 7, 2013, to Albert Saltiel. Incorporated by reference to Exhibit 10.2 of the Quarterly Report on Form 10-Q dated June 12, 2013.](#)
- \*10.29 [Third Amendment to the AutoZone, Inc. Executive Deferred Compensation Plan incorporated by reference to Exhibit 10.1 to the Form 8-K dated December 12, 2012.](#)
- \*10.30 [Amended and Restated AutoZone, Inc. AutoZone, Inc. Executive Deferred Compensation Plan dated December 17, 2013. Incorporated by reference to Exhibit 10.2 to the Quarterly Report on Form 10-Q dated March 25, 2014.](#)
- \*10.31 [AutoZone, Inc. Director Compensation Program effective January 1, 2014. Incorporated by reference to Exhibit 10.3 to the Quarterly Report on Form 10-Q dated March 25, 2014.](#)
- \*10.32 [Amended and Restated AutoZone, Inc. 2011 Equity Incentive Award Plan dated December 16, 2015. Incorporated by reference to Exhibit A to the definitive proxy statement dated October 26, 2015, for the Annual Meeting of Stockholders held December 16, 2015.](#)
- \*10.33 [Third Amended and Restated Credit Agreement dated as of November 18, 2016, among AutoZone, Inc., as Borrower, the lenders party thereto and Bank of America, N.A. as Administrative Agent, incorporated by reference to Exhibit 10.1 of the Current Report on Form 8-K dated November 21, 2016.](#)

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*10.34	<a href="#"><u>364-Day Credit Agreement Dated as of November 18, 2016, among AutoZone, Inc. as Borrower, the lenders party thereto and Wells Fargo Bank National Association as Administrative Agent, incorporated by reference to Exhibit 10.2 of the Current Report on Form 8-K dated November 21, 2016.</u></a>
*10.35	<a href="#"><u>AutoZone, Inc. Sixth Amended and Restated Executive Stock Purchase Plan. Incorporated by reference to Exhibit A to the definitive proxy statement dated October 24, 2016, for the Annual Meeting of Stockholders held December 14, 2016.</u></a>
12.1	<a href="#"><u>Computation of Ratio of Earnings to Fixed Charges.</u></a>
21.1	<a href="#"><u>Subsidiaries of the Registrant.</u></a>
23.1	<a href="#"><u>Consent of Ernst &amp; Young LLP.</u></a>
31.1	<a href="#"><u>Certification of Principal Executive Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</u></a>
31.2	<a href="#"><u>Certification of Principal Financial Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</u></a>
32.1	<a href="#"><u>Certification of Principal Executive Officer Pursuant to 18 U.S.C. Section 1350 as adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</u></a>
32.2	<a href="#"><u>Certification of Principal Financial Officer Pursuant to 18 U.S.C. Section 1350 as adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</u></a>
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Taxonomy Extension Calculation Document
101.LAB	XBRL Taxonomy Extension Labels Document
101.PRE	XBRL Taxonomy Extension Presentation Document
101.DEF	XBRL Taxonomy Extension Definition Document

\* Management contract or compensatory plan or arrangement.

**(c) Financial Statement Schedules**

Schedules are omitted because the information is not required or because the information required is included in the financial statements or notes thereto.

[Table of Contents](#)**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

AUTOZONE, INC.

By: /s/ WILLIAM C. RHODES, III

William C. Rhodes, III  
Chairman, President and  
Chief Executive Officer  
(Principal Executive Officer)

Dated: October 25, 2017

[Table of Contents](#)

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated:

<u>SIGNATURE</u>	<u>TITLE</u>	<u>DATE</u>
<u>/s/ WILLIAM C. RHODES, III</u> William C. Rhodes, III	Chairman, President and Chief Executive Officer (Principal Executive Officer)	October 25, 2017
<u>/s/ WILLIAM T. GILES</u> William T. Giles	Chief Financial Officer and Executive Vice President – Finance and Information Technology (Principal Financial Officer)	October 25, 2017
<u>/s/ CHARLIE PLEAS, III</u> Charlie Pleas, III	Senior Vice President and Controller (Principal Accounting Officer)	October 25, 2017
<u>/s/ DOUGLAS H. BROOKS</u> Douglas H. Brooks	Director	October 25, 2017
<u>/s/ LINDA A. GOODSPEED</u> Linda A. Goodspeed	Director	October 25, 2017
<u>/s/ SUE E. GOVE</u> Sue E. Gove	Director	October 25, 2017
<u>/s/ EARL G. GRAVES, JR.</u> Earl G. Graves, Jr.	Director	October 25, 2017
<u>/s/ ENDERSON GUIMARAES</u> Enderson Guimaraes	Director	October 25, 2017
<u>/s/ J.R. HYDE, III</u> J.R. Hyde, III	Director	October 25, 2017
<u>/s/ D. BRYAN JORDAN</u> D. Bryan Jordan	Director	October 25, 2017
<u>/s/ W. ANDREW MCKENNA</u> W. Andrew McKenna	Director	October 25, 2017
<u>/s/ GEORGE R. MRKONIC, JR.</u> George R. Mrkonic, Jr.	Director	October 25, 2017
<u>/s/ LUIS P. NIETO</u> Luis P. Nieto	Director	October 25, 2017





**Secretary of State**  
**Statement of Information**  
(Limited Liability Company)

**354**  
**LLC-12**

18-D85704

**FILED**

In the office of the Secretary of State  
of the State of California

NOV 26, 2018

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**IMPORTANT** — Read instructions before completing this form.

**Filing Fee – \$20.00**

**Copy Fees** – First page \$1.00; each attachment page \$0.50;  
Certification Fee - \$5.00 plus copy fees

**1. Limited Liability Company Name** (Enter the exact name of the LLC. If you registered in California using an alternate name, see instructions.)  
**ASHE CAPITAL MANAGEMENT, LLC**

<b>2. 12-Digit Secretary of State File Number</b> 201326710066	<b>3. State, Foreign Country or Place of Organization</b> (only if formed outside of California) DELAWARE
---	--

**4. Business Addresses**

a. Street Address of Principal Office - Do not list a P.O. Box <b>530 Sylvan Avenue, First Floor</b>	City (no abbreviations) <b>Englewood Cliffs</b>	State <b>NJ</b>	Zip Code <b>07632</b>
b. Mailing Address of LLC, if different than item 4a <b>530 Sylvan Avenue, First Floor</b>	City (no abbreviations) <b>Englewood Cliffs</b>	State <b>NJ</b>	Zip Code <b>07632</b>
c. Street Address of California Office, if Item 4a is not in California - Do not list a P.O. Box	City (no abbreviations)	State <b>CA</b>	Zip Code

**5. Manager(s) or Member(s)**

If no **managers** have been appointed or elected, provide the name and address of each **member**. At least one name **and** address must be listed. If the manager/member is an individual, complete Items 5a and 5c (leave Item 5b blank). If the manager/member is an entity, complete Items 5b and 5c (leave Item 5a blank). Note: The LLC cannot serve as its own manager or member. If the LLC has additional managers/members, enter the name(s) and addresses on Form LLC-12A (see instructions).

a. First Name, if an individual - Do not complete Item 5b <b>William</b>	Middle Name <b>C</b>	Last Name <b>Crowley</b>	Suffix
b. Entity Name - Do not complete Item 5a			
c. Address <b>146 Central Park West, Apt 10E</b>	City (no abbreviations) <b>New York</b>	State <b>NY</b>	Zip Code <b>10023</b>

**6. Service of Process** (Must provide either Individual OR Corporation.)

**INDIVIDUAL** – Complete Items 6a and 6b only. Must include agent's full name and California street address.

a. California Agent's First Name (if agent is not a corporation) <b>Stephen</b>	Middle Name <b>M</b>	Last Name <b>Blass</b>	Suffix
b. Street Address (if agent is not a corporation) - Do not enter a P.O. Box <b>2305 Edgewater Way</b>	City (no abbreviations) <b>Santa Barbara</b>	State <b>CA</b>	Zip Code <b>93109</b>

**CORPORATION** – Complete Item 6c only. Only include the name of the registered agent Corporation.

c. California Registered Corporate Agent's Name (if agent is a corporation) – Do not complete Item 6a or 6b

**7. Type of Business**

a. Describe the type of business or services of the Limited Liability Company  
**Investments**

**8. Chief Executive Officer, if elected or appointed**

a. First Name	Middle Name	Last Name	Suffix
b. Address			
City (no abbreviations)		State	Zip Code

**9. The Information contained herein, including any attachments, is true and correct.**

11/26/2018

William R Harker

Member

Date

Type or Print Name of Person Completing the Form

Title

Signature

**Return Address (Optional)** (For communication from the Secretary of State related to this document, or if purchasing a copy of the filed document enter the name of a person or company and the mailing address. This information will become public when filed. SEE INSTRUCTIONS BEFORE COMPLETING.)

Name: [ ]

Company:

Address:

City/State/Zip: [ ]



**Attachment to  
Statement of Information  
(Limited Liability Company)**

**355**

**LLC-12A  
Attachment**

18-D85704

**A. Limited Liability Company Name**  
ASHE CAPITAL MANAGEMENT, LLC

This Space For Office Use Only

**B. 12-Digit Secretary of State File Number**  
201326710066

**C. State or Place of Organization** (only if formed outside of California)  
DELAWARE

**D. List of Additional Manager(s) or Member(s)** - If the manager/member is an individual, enter the individual's name and address. If the manager/member is an entity, enter the entity's name and address. Note: The LLC cannot serve as its own manager or member.

First Name William	Middle Name R	Last Name Harker	Suffix
Entity Name			
Address 15 Fred Street	City (no abbreviations) Old Tappan	State NJ	Zip Code 07675
First Name Stephen	Middle Name M	Last Name Blass	Suffix
Entity Name			
Address 2305 Edgewater Way	City (no abbreviations) Santa Barbara	State CA	Zip Code 93109
First Name	Middle Name	Last Name	Suffix
Entity Name Ashe GP, LLC			
Address 530 Sylvan Avenue, First Floor	City (no abbreviations) Englewood Cliffs	State NJ	Zip Code 07632
First Name	Middle Name	Last Name	Suffix
Entity Name			
Address	City (no abbreviations)	State	Zip Code
First Name	Middle Name	Last Name	Suffix
Entity Name			
Address	City (no abbreviations)	State	Zip Code
First Name	Middle Name	Last Name	Suffix
Entity Name			
Address	City (no abbreviations)	State	Zip Code
First Name	Middle Name	Last Name	Suffix
Entity Name			
Address	City (no abbreviations)	State	Zip Code
First Name	Middle Name	Last Name	Suffix
Entity Name			
Address	City (no abbreviations)	State	Zip Code

356



<Back

Correct home facts Save Share More

New York · New York · 10023 · Manhattan · Central Park · 146 Central Park W · Apartment 10e

Public View Owner View

Public View Owner View

Street View

# 146 Central Park W APT 10E

## New York, NY 10023

-- beds -- baths -- sqft

● Off Market  
Zestimate®:  
\$15,411,542  
Rent Zestimate®:  
\$20,000 /mo

EST. REFI PAYMENT  
Est. Refi Payment:  
\$58,422/mo

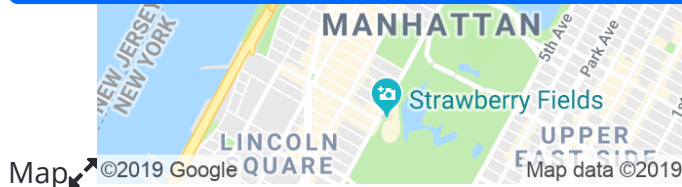


See current rate

See current rates

Save Share More

Contact Agent



## Home Shoppers are Waiting

9 shoppers are looking in your neighborhood and price range.

I own this home and would like to ask an agent about selling 146 Central Park W APT 10E, New York, NY 10023.

Contact Agent

Or call 833-952-1271 for more info

### Nearby Similar Sales

**SOLD: \$8,900,000**  
Sold on 11/27/18  
-- bds, -- ba, -- sqft  
6-16 W 77th St # 16b, New York, NY 10024

**SOLD: \$14,500,000**

357

146 Central Park W APT 10E, New York, NY is a cooperative home that was built in 1930. This home last sold for \$12,500,000 in September 2006.

The Zestimate for this house is \$15,411,542, which has increased by \$779,116 in the last 30 days. The Rent Zestimate for this home is \$20,000/mo, which has increased by \$2,407/mo in the last 30 days.

Facts and Features



Type

Cooperative



Cooling

No Data



Year Built

1930



Heating

No Data



Parking

No Data

Construction

Type and Style

Cooperative

Dates

Built in 1930

Exterior Features

Other Exterior Features

Parcel #:

011270029102871410E

Other

Last sold:

Sep 2006 for \$12,500,000

Activity On Zillow

Views in the past 30 days:

3 [See More Facts and Features](#) ✓

0 shoppers saved this home

Utilities

# Home Value

Green Energy

Great solar potential

It looks like this property has **missing facts**, which can affect the accuracy of home value estimates.

Sun Number™: 92.58

Is this your home? [Claim it](#) and update home facts!

## Zestimate <sup>?</sup>

\$15,411,542

Sold on 07/01/19

4 bds, 4 ba, -- sqft

[145 Central Park # 3c, New York, NY 10023](#)

● **SOLD: \$10,800,000**

Sold on 09/21/18

-- bds, -- ba, -- sqft

[44 W 77th St # 14e, New York, NY 10024](#)

● **SOLD: \$10,800,000**

Sold on 09/21/18

-- bds, -- ba, -- sqft

[44 W 77th St # 15e, New York, NY 10024](#)

● **SOLD: \$15,000,000**

Sold on 09/04/18

-- bds, -- ba, -- sqft

[211 Central Park W # Mr15, New York, NY 10024](#)

[See sales similar to 146 Central Park W APT 10E](#)

**358**

ZESTIMATE  
RANGE <sup>?</sup>  
\$10.33M -  
\$22.19M



LAST 30 DAY  
CHANGE  
+\$779,116  
(+5.3%)

[Zestimate history & details](#) ▾

## Price / Tax History

[Price History](#)

Tax History

DATE	EVENT	PRICE	\$/SQFT	SOURCE
9/28/2006	Sold	\$12,500,000		Public Record

[Report issue with price history](#)

## Neighborhood: Central Park

MEDIAN MED.  
ZESTIMATE <sup>?</sup>

MARKET TEMP <sup>?</sup>

**\$442,800**

**Cold**

**3.2%**  
Past 12  
months

Buyers' Market   Sellers' Market

Zillow predicts [New York home values](#) will increase 0.1% next year, compared to a 3.2% increase for New York-Newark-Jersey City Metro as a whole.

**Walk Score** <sup>®</sup> **88** (Very Walkable)

**Transit Score** <sup>™</sup> **100** (Rider's Paradise)

+  
-

This is Exhibit "C" referred to in the Affidavit of Eun Ji Yoon sworn September 3, 2019.



---

*Commissioner for Taking Affidavits (or as may be)*

**Andrew Winton**

## EX-10.39 5 dex1039.htm LETTER FROM REGISTRANT TO WILLIAM R. HARKER RELATING TO EMPLOYMENT

Exhibit 10.39

## SEARS HOLDINGS

## J. DAVID WORKS

Senior Vice President, Talent and Human Capital Services

March 17, 2010

Mr. William R. Harker

Dear Bill,

I am pleased to tell you that the Compensation Committee of Sears Holdings Board of Directors has approved the following compensation package for you as you continue in the role of Senior Vice President, General Counsel and Corporate Secretary. Your new compensation package was approved retroactive to January 31, 2010, the first day of SHC's 2010 fiscal year.

The key elements of your new compensation package are as follows:

- Annual base salary at a rate of \$700,000.
- Participation in the Sears Holdings Corporation Annual Incentive Plan. Your annual incentive opportunity will increase to ninety percent (90%) of your base salary. Your incentive under the 2010 Annual Incentive Plan ("2010 AIP") will be prorated based on the amount of time at each compensation level (base salary and annual incentive target) through January 29, 2011, the last day of SHC's 2010 fiscal year. Any annual incentive payable with respect to a fiscal year will be paid by April 15 of the following fiscal year, provided that you are actively employed at the payment date.

The table below summarizes the changes in your compensation

	<u>Title</u>	<u>Base Salary</u>	<u>Target Incentive</u>	<u>Total Target Cash</u>
Current	SVP, General Counsel and Corporate Secretary	\$ 500,000	75%	\$ 875,000
New	SVP, General Counsel and Corporate Secretary	\$ 700,000	90%	\$1,330,000
<b>Increase</b>		<b>40.0%</b>		<b>52.0%</b>

In addition to the above, you also received a grant of restricted stock valued at \$500,000 under the Sears Holdings Corporation 2006 Stock Plan. The number of restricted shares granted (4,950) was determined using the market closing price (\$101.01 per share) of Sears Holdings shares on March 9, 2010, the grant date. The restricted shares granted will be scheduled to vest in full on the third anniversary of the grant date, subject to the restrictions set forth under the 2006 Stock Plan and the Restricted Stock Award Agreement.

If you need additional information or clarification, please call. Please sign below and return this letter.

Sincerely,

/s/ J. David Works

J. David Works

Accepted:

/s/ William R. Harker

William R. Harker

4/13/10

Date

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## RECENTLY VIEWED COMPANIES

**ASHE CAPITAL  
MANAGEMENT  
LP**

Private Company

**APPLE INC**

208.74

▼ -0.27

**AMAZON.COM  
INC**

1,776.29

▼ -10.11

**HON HAI**

74.20

▲ +2.30

**GENERAL  
ELECTRIC**

8.25

▲ +0.14

**BOEING CO/THE**

364.09

▲ +1.35



# William Richard Harker

President/Limited Partner/CCO, Ashe Capital Management LLC

## CURRENT POSITION

President/Limited Partner/CCO, Ashe Capital Management LLC

## TENURE AT CURRENT POSITION

01/2013–PRESENT

## PREVIOUS POSITION

Founder, Harker Group LLC

## EDUCATION

University of Pennsylvania Law School  
West Virginia University

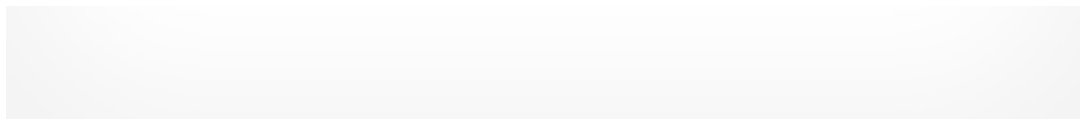
## BOARD MEMBERSHIPS

Allison Transmission Holding  
Sears Hometown & Outlet Stores

## INDUSTRY

Asset Management





## Board Memberships

TITLE	COMPANY	TENURE
<b>Board Member</b>	Allison Transmission Holding	05/2017-05/2019
<b>Chairman</b>	Sears Hometown & Outlet Stores	08/2012-05/2015
<b>Vice Chairman</b>	Sears Canada Inc	FORMER

[VIEW MORE](#) ▾

## Other Memberships

TITLE	COMPANY
<b>BOARD MEMBER</b>	American Benefits Council
<b>BOARD MEMBER</b>	Sears Roebuck Foundation
<b>MEMBER</b>	New York State Bar

[VIEW MORE](#) ▾

## Career History

TITLE	COMPANY	TENURE
<b>President/Limited Partner/CCO</b>	Ashe Capital Management LLC	01/2013-PRESENT

**GRADUATED**

West Virginia University

**About Ashe Capital Management LP**

Ashe Capital Management, LP operates as an investment firm. The Company offers investment advisory and portfolio management services.

SECTOR	INDUSTRY	SUB-INDUSTRY	FOUNDED
Financials	Asset Management	Wealth Management	04/15/2013

ADDRESS	PHONE	WEBSITE
530 Sylvan Avenue Suite 101 Englewood Cliffs, NJ 07632 United States	1-201-464-0962	--

NO. OF EMPLOYEES

--

[MORE INFO >](#)**Most Popular**

AAPL:US

**APPLE INC**

208.74 USD ▼ -0.27 -0.13%

AMZN:US

**AMAZON.COM INC**

1,776.29 USD ▼ -10.11 -0.57%

2317:TT

**HON HAI**

74.20 TWD ▲ +2.30 +3.20%

GE:US

**GENERAL ELECTRIC**

This is Exhibit "D" referred to in the Affidavit of Eun Ji Yoon  
sworn September 3, 2019.



---

*Commissioner for Taking Affidavits (or as may be)*

**Andrew Winton**

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Raja Khanna



## Raja Khanna

Board Member, Advisor and Investor. Media, Technology & Cultural Entrepreneur.  
Toronto, Ontario, Canada · 500+ connections



Dark Slope



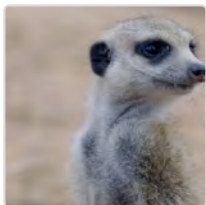
York University - Osgoode Hall Law School

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## About

Experienced Board Member and CEO with a demonstrated history of creating, building, advising and leading global technology and content companies. Active investor and co-founder in media, culture, arts, f&b, technology, AI and cleantech.

## Activity



Thrilled to announce the launch of Love Nature on Sky on a pan-European scale! Here at Love Nature we are making more original natural history...

Liked by Raja Khanna

The XR industry working together continues to fuel growth at a rapid pace. #htcvive is proud to be part of the OpenXR initiatives laying

[Join now](#)[Sign in](#)

Raja Khanna

you in. I m THRILLED to share the news my KOOKY TOOTH BOOK landed with Maria...

Liked by Raja Khanna

[Join now to see all activity](#)

## Experience

### Executive Chair & Co-Founder

Dark Slope

Jan 2018 – Present · 1 year 8 months

Toronto, Canada Area

Dark Slope is a AR/VR studio focusing on building large-scale location-based entertainment experiences. The company has been in stealth mode since its launch in January, but is now preparing for the launch of its first properties this fall. Watch this space.

### Co-Founder

Mondo Forma

Jan 2018 – Present · 1 year 8 months

Toronto, Ontario, Canada

We create extraordinary, interactive, multi-sensory art worlds. Our aim is to spark imagination and push boundaries by producing immersive experiences that are out of the norm.

### Board Member

Artscape

May 2017 – Present · 2 years 4 months

Toronto, Canada Area

[Join now](#)[Sign in](#)

Raja Khanna

## CEO Television & Digital and Member, Board of Directors

Blue Ant Media

Aug 2012 – Jan 2018 · 5 years 6 months

Toronto, Canada Area

Blue Ant is an integrated media company that owns and operates specialty television networks, AVOD and SVOD services in 40+ global markets, 7 production houses across Asia, in LA, London and Toronto, magazines, and a YouTube gaming network with 2B+ monthly views.

## Co-Founder

QuickPlay Media Inc.

Apr 2004 – 2016 · 12 years

QuickPlay was a mobile audio and video technology platform for wireless carriers and major media companies worldwide. The company was sold to AT&T.

## Co-Chair

National Screen Institute - Canada (NSI)

2008 – 2015 · 7 years

Canada's premier national training institute for creative media professionals.

## CEO / Co-CEO

GlassBOX Television Inc.

Feb 2008 – Aug 2012 · 4 years 7 months

Toronto

GlassBOX Television owned and operated AUX TV, Bite TV and Travel + Escape and their related online and mobile properties before joining HiFidelity HDTV under Blue Ant Media Inc. in August 2012.

## Founder & CEO

Join now

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Raja Khanna

## Education

**York University - Osgoode Hall Law School**

LLB · Law

1994 – 1997

**University of Toronto**

BSC · Genetics/Philosophy

1990 – 1994

## Groups

**Academy of Canadian Cinema & Television (ACCT)**

**nextMEDIA**

**Media & Marketing Professionals Worldwide**

**National Screen Institute - Canada (NSI)**

View Raja Khanna's full profile to

See who you know in common

Join now

Sign in

Raja Khanna

\_\_\_\_\_

## People also viewed

**Sara Diamond**



**CJ Hervey**



**Maria Hale**

Gardener at Westgate

**Norm Lem**

SVP Revenue, DAZN Canada



**Jamie Schouela**

President, Canadian Media at Blue Ant Media

**Steven DeNure**

Owner, DECODE/DHX Media

**Andrea Gorfolova**

President at Sonar Entertainment



**Anne Walker**

Retail Advisor



**Ben Cowan-Dewar**

**Dan Fill**



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Raja Khanna

**Raja Khanna**

Vice President, Partner, Avise Properties  
Greater Boston Area

**Raja Khanna**

Technical Writer at ANR Software Pvt. Ltd.  
New Delhi Area, India

**Raja Khanna**

Sr. project Manager at HDFC Bank  
New Delhi Area, India

13 others named Raja Khanna are on LinkedIn

[See others named Raja Khanna](#)

## Learn the skills Raja has

Creating Online Video with Android Phones

Final Cut Pro X v10.1.x: Effective Storytelling

Introduction to Documentary Video Storytelling

[See all courses](#)

## Raja's public profile badge

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Join now

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Raja Khanna

York University - Osgoode Hall Law School

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**Shabnam Karimi**

Co-Founder at Self-Employed

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Cookie Policy

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Language 



---

## Raja Khanna

🏠 > TAI Board > Raja Khanna

---

Raja Khanna, CEO, Television & Digital, Blue Ant Media Inc. oversees the company's global specialty and SVOD channels, international distribution group, its global production studios and its LA-based YouTube network. In his role, Khanna leads the development of the company's content, television and digital strategies and plays a key role in Blue Ant's M&A strategy.

Formerly, Khanna was CEO of GlassBOX Television where he oversaw growth from one to three specialty channels, managed and financed the acquisition of T+E from CTV and helped orchestrate the merger of GlassBOX and Blue Ant Media.

Khanna is the Co-founder of QuickPlay Media Inc., a global leader in mobile content delivery platforms where he played a key role in introducing the first mobile video services to the North American market. QuickPlay was sold to AT&T.

Khanna is the founder and former CEO of Snap Media Corp., a leading interactive digital media producer and global award-winning developer of early social networking technologies, community web platforms and interactive content. The company was sold in 2003.

Khanna is a member of the Board of Governors of OCAD University and sits on the Boards of Blue Ant Media, Polaris Music Prize, IIC Canada, Sears Canada (where he is lead director) and the Program Advisory Committee for Ryerson University's RTA School of Media. He is also the Chair of the Canadian Association of Content Exporters (CACE), which focuses on enhancing the international export of Canadian TV and digital content.

Khanna holds a law degree from Osgoode Hall Law School and a B.Sc. (Honours) Genetics and Philosophy from University of Toronto.

## Related Staff

---



### **Sonia Baxendale**

Sonia was named one of the "Top 100 Most Powerful Women in Canada" for three years in a row and...



### **Jascha Jabes**

Jascha Jabes is Head of Deposits at ScotiaMocatta. Over the last ten years Jascha has worked in several divisions of...



### **Joe Cressy**

City Councillor, Ward 10, Spadina-Fort York  
A City Councillor since 2014, Joe has been a champion for building a better...

Canada's Premier School of Media Production, Media Art, and Broadcasting



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## RAJA KHANNA



CEO, Television and Digital, Blue Ant Media

A seasoned digital media entrepreneur, Raja Khanna is the CEO of Blue Ant Media; an integrated media company that owns and operates Canadian specialty television networks, magazines, consumer shows and digital properties. Khanna was an early stage investor in, and former CEO of GlassBOX Television Inc., where he founded AUX TV, managed and financed the acquisition of Travel & Escape from CTV, and helped orchestrate the merger of GlassBOX and Blue Ant Media. A leading interactive digital media producer and global award-winning developer of early social networking technologies, community web platforms and interactive content, Khanna is also the co-founder of QuickPlay Media Inc. and Snap Media Corp. He also co-chairs the Board of Directors for the National Screen Institute and serves on the Board of Directors of Sears Canada and the International Institute of Communications.



# PLAYBACK

## A+OMMIC

ADVERTISING + TECH + MEDIA + CONTENT

PROGRAMS THAT BREAK BOUNDARIES

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## QuickPlay, Snap Media tie the knot

Coming to a pocket or briefcase near you: QuickPlay Media, which delivers interactive media to mobile devices, has merged with Snap Media, producer of award-winning websites for Degraasi: The Next Generation and CHUM.

By [Patrick McManus](#)

November 7, 2005

Coming to a pocket or briefcase near you: QuickPlay Media, which delivers interactive media to mobile devices, has merged with Snap Media, producer of award-winning websites for Degraasi: The Next Generation and CHUM.

The deal, announced last month, brings together two companies led by Raja Khanna. Snap's operations have been rolled into those of QuickPlay, with Khanna staying in place as president.

Bringing in a multimedia packager like Snap makes good business sense, says QuickPlay spokesperson Mark Farmer.

'The merger really is about bringing the incredible creative talent of Snap into QuickPlay to drive the creative innovation of our interactive mobile business,' he says, adding that the 'commonality

of skills and focus' between the two companies makes them a natural fit.

Farmer says there will be no layoffs from the merger. In fact, over the next few months, QuickPlay plans to add 15 new staff to the current combined total of 45.

Khanna launched Snap in 1995 to produce interactive content for the then-nascent new media sector. In the intervening decade, the Toronto company not only racked up a string of awards but also an impressive roster of clients, including CTV, TVOntario, CBC and Discovery Channel Canada.

Two years ago, he teamed up with former telcom executive Wayne Purboo to create QuickPlay. The company packages, distributes and manages media applications for mobile devices and has enjoyed explosive growth since 2003 – partnering with Rogers Wireless, Telus Mobility, Bell Mobility, CHUM, CBC and others.

The companies have never formally worked together, although they shared office space for a short time.

QuickPlay has successfully tapped the burgeoning mobile market, clocking 100,000 video downloads in August, beating its first-year projections. At the same time, the company has created entertainment applications that pull content – sports scores, news, music – to mobile devices.

A wireless media boom appears in the offing. According to the Print Measurement Bureau, by 2008, over 16 million Canadians will subscribe to video-enabled cell phones.

[www.quickplaymedia.com](http://www.quickplaymedia.com)






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# PE Firm Madison Dearborn Pays \$100M For A Majority Stake In Cloud Video Company QuickPlay Media

Ryan Lawler @ryanlawler / 9:00 am EDT • July 9, 2012

 Comment



Cloud video services company [QuickPlay Media](#) is announcing today that Chicago-based private equity firm Madison Dearborn Partners will be paying about \$100 million to take a majority stake in the company. With the deal, Madison Dearborn has essentially bought out QuickPlay Media's previous investors, which include General Catalyst, Ventures West, J.L. Albright, and Up Capital.

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QuickPlay Media had raised a total of \$43 million, CEO Wayne Purboo told me.

The deal goes beyond just creating liquidity for investors in the eight-year old company. Madison Dearborn has also committed to continue investing in QuickPlay Media's growth, particularly as it looks to expand internationally. The Toronto-based company has built a cloud platform for distribution of video content online, as well as to mobile devices and connected TVs, that's already being used by some major distributors in North America.

"We're still growing at an accelerating clip, and we needed additional working capital to fuel that growth," Purboo said.

It claims more than 300 different devices that its customers can publish to from the platform, and manages more than 1.5 million media assets from 3,000 different content providers. Clients include AT&T U-verse and Verizon in the U.S., as well as Bell and Rogers Communications in Canada. RIM and Samsung also count as customers.

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Everywhere services well underway, QuickPlay Media sees more of a greenfield opportunity for multiplatform video services overseas.

The company now has a total of 200 employees, with offices in Toronto and San Diego. But it's got aggressive international expansion plans ahead, according to Purboo. That likely means a European headquarters and sales offices throughout the region. It's already got one customer in Hong Kong and is also looking at Singapore as a potential headquarters for Asia/Pac.

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## PE Firm Madison Dearborn Pays \$100M For A Majority Stake In Cloud Video Company QuickPlay Media

Ryan Lawler

9:00 am EDT • July 9, 2012



Sources say China used iPhone hacks to



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## Raja Khanna to exit Blue Ant Media

After more than 10 years with the Toronto-based company, Khanna will leave his position as CEO of television and digital by the end of the year.

By [Daniele Alcini](#)

November 20, 2017



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## Angel investors stay put with Michael MacMillan-era GlassBox TV

Michael MacMillan has pulled in new angel investors as he takes takes control of GlassBOX Television. And he's convinced key existing angel investors to stick around for a bigger payout down the road.

By Etan Vlesing

April 13, 2011



***Pictured: GlassBOX Television's Michael MacMillan- (left) and Raja Khanna (right)***

Michael MacMillan, who led Alliance Atlantis Communications and cashed out in 2007, has pulled in new angel investors as he takes takes control of GlassBOX Television.

And he's convinced key existing angel investors to stick around for a bigger payout down the road.

Slaight Communications, led by Gary Slaight, is staying invested in GlassBOX by converting up to stock in Blue Ant Media, which MacMillan leads as CEO.

So is JLA Ventures, which made an initial investment in GlassBOX Television in May 2008.

Former AAC executive Ted Riley remains an investor in the cross-platform broadcaster, as does former Chum Television topper Jay Switzer, who has stepped down as boardroom chair to make way for MacMillan as executive chairman.

Elsewhere, John Albright, who manages JLA Ventures, will remain in the GlassBOX board room, and be joined by new company directors Peter Sussman and Seaton McLean, both former AAC execs alongside Riley and MacMillan.

MacMillan told *Playback Daily* that most of GlassBOX Television's angel investors, who like him cashed out of former ventures and are busily investing in riskier start-ups with growth potential, will remain invested in the company, while institutional investors are more likely to take up the Blue Ant Media offer for an eventual controlling 75% stake.

GlassBOX Television, led by CEO Raja Khanna and president and chief strategy officer Jeffrey Elliot, runs cross-platform broadcast and VOD channels, aiming to use new technologies to find new audiences and distribution revenues.

**TAGS:**

**Blue Ant Media, Gary Slaight, Glassbox Television, Jay Switzer, JLA Ventures, John Albright, Michael MacMillan, Peter Sussman, Raja Khanna, Seaton McLean, Slaight Communications, Ted Riley**

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PLAYBACK



## Broadcasting Decision CRTC 2011-585

PDF version

Route reference: 2011-408

Ottawa, 14 September 2011

### **Glassbox Television Inc., on behalf of itself and of its wholly owned subsidiary 7506465 Canada Inc.**

Across Canada

*Application 2011-0797-0, received 6 May 2011*

### **AUX TV, BITE Television and travel + escape – Change of effective control**

*The Commission **approves**, subject to certain conditions, an application by Glassbox Television Inc. (Glassbox), on behalf of itself and of its wholly owned subsidiary 7506465 Canada Inc. for authority to effect a change in the effective control. As a result of the transaction, Blue Ant Media Inc. will exercise effective control of both Glassbox and 7506465 Canada Inc.*

#### **The application**

1. The Commission received an application by Glassbox Television Inc. (Glassbox), on behalf of itself and of its wholly owned subsidiary 7506465 Canada Inc., for authority to effect a change in the effective control through a multi-step transaction. As a result of the proposed transaction, Blue Ant Media Inc. (Blue Ant) would acquire all of the issued and outstanding shares of Glassbox from its various shareholders.
2. Glassbox is the licensee of the national, English-language specialty Category B services known as AUX TV and BITE Television (BITE). It is also authorized to operate two other Category B services that are not yet in operation: CURV TV and TREK TV. In addition, Glassbox is the parent company of 7506465 Canada Inc., licensee of the national, English-language specialty Category A service known as travel + escape.
3. Glassbox is owned by a large number of shareholders and controlled by its board of directors. Effective control of Blue Ant is exercised by Mr. Michael MacMillan by way of the special shares he holds and the powers attached to these shares in accordance with Blue Ant's unanimous shareholders' agreement.
4. The proposed transaction would be effected through the following steps:

Step 1: Blue Ant acquired, on 8 April 2011, 28.9% of the voting shares in Glassbox.

Step 2: Blue Ant would purchase treasury shares to increase its voting equity to 37.8%.

Step 3: Blue Ant would purchase additional voting shares in Glassbox owned by certain shareholders, which in turn would become shareholders in Blue Ant. Blue Ant's voting equity would increase to 84.3%.

Step 4: Remaining shareholders could convert their shares for shares in Blue Ant.

### **Interventions**

5. The Commission received two interventions in support of the application, an intervention opposing the application and a comment. The interventions and the applicant's reply to the interventions can be found on the Commission's website at [www.crtc.gc.ca](http://www.crtc.gc.ca) under "Public Proceedings."
6. The Canadian Media Production Association, the Writers Guild of Canada and the Alliance of Canadian Cinema, Television and Radio Artists together with the Canadian Federation of Musicians all submitted that they support the application but raised some questions regarding the proposed tangible benefits package.

### **Commission's analysis and determinations**

7. After examining the application in light of applicable regulations and policies and taking into account the interventions received, the Commission considers that the issues to be addressed in its determinations are:
  - the value of the transaction; and
  - the proposed tangible benefits.

### **Value of the transaction**

8. Because the Commission does not solicit competing applications for authorization to change the ownership or control of radio, television and other programming undertakings, the onus is on the applicant to demonstrate that the proposed value of the transaction is acceptable and reasonable.
9. The applicant submitted that the total purchase price for all of the assets to be \$32.5 million, of which \$10 million is assigned to travel + escape and \$5 million is assigned to each of AUX TV and BITE. The remaining value is attributable to unregulated assets.
10. The Commission is of the view that the approach used by the applicant to determine the purchase price to be allocated for each of the broadcasting services is reasonable. In accordance with its practice, the Commission included assumed leases for all assets, including unregulated ones, in the value of the transaction. The value of the leases is \$1.6 million.



11. The Commission determines that the value of the transaction for the purpose of calculating the tangible benefits is \$34.1 million. Of this value, based on the applicant's allocation percentage of the purchase price, \$10.5 million is allocated to travel + escape and \$5.2 million for each of AUX TV and BITE.

### **Proposed tangible benefits**

12. As set out in Public Notice 1999-97, the Commission generally expects applicants to make clear and unequivocal commitments to provide tangible benefits representing 10% of the value of a transaction, as accepted by the Commission. Such benefits should be incremental in nature and be directed to the communities served and to the broadcasting system as a whole. In addition, tangible benefits expenditures for all television assets should be:

- directed to projects and initiatives that would not normally be undertaken or realized in the absence of the transaction; and
- generally flow to third parties, such as independent producers.

### *AUX TV & BITE*

13. Based on the revised value of the services set out above, the Commission determines that the associated tangible benefits for BITE and AUX TV are \$1.04 million: \$520,000 for BITE and \$520,000 for AUX TV. Glassbox proposed to allocate this amount to the Multiscreen Fund initiative. The applicant confirmed that the tangible benefits would be expended over a seven-year period and that no administrative fees would be charged against the benefits. The Commission is satisfied with this proposal.

### *travel + escape*

14. In Public Notice 1999-97, the Commission stated that it considers existing benefit commitments to be part of a licensee's obligations and, as such, they should be implemented regardless of any subsequent ownership change. In this regard, Glassbox acquired travel + escape in 2010 (Broadcasting Decision 2010-792) and committed to allocate a tangible benefits package totalling \$1 million over seven years. In the present application, the applicant confirmed that the commitments it had made with respect to that tangible benefits package will be fulfilled.
15. With respect to the current transaction, based on the revised value of travel + escape of \$10.5 million, the Commission determines that the associated tangible benefits for this service are \$1.05 million. The applicant argued that since the previous transaction involving this service took place only six months from the date of the present transaction, it should not be required to pay new benefits for this service. It noted that the payment of the tangible benefits from the previous transaction has not even started yet, nor has the operation of travel + escape yet exited the Transitional Services Agreement through which it continues to be operated, under contract, by its former owner.

16. As a precedent for its request, the applicant cited the acquisition of CKNU-TV Fraser Valley and CIIT-TV Winnipeg by Christian Channel Inc. (CCI).<sup>1</sup> The applicant argued that the Commission could have ordered CCI to pay additional benefits, but instead recognized the hardship it would cause to an unprofitable independent undertaking and noted that the purchaser already had significant tangible benefits flowing from a previous acquisition. The applicant added that, in the event that the Commission determines that new benefits are payable for travel + escape, it would pay the required benefit amount in a manner similar to that of AUX TV and BITE.
17. The Commission has considered the applicant's argument that no new benefits should be imposed. However, it is the Commission's long-standing approach to impose benefits on each transaction regardless of the length of time elapsed between transactions. Furthermore, the Commission considers that the precedent described by the applicant is not comparable to the current application, as travel + escape is profitable and, as a Category A service, it cannot be considered under the exemption policy for small market conventional television stations, as was the case in the CCI transaction. The Commission therefore finds it appropriate to require the applicant to pay new tangible benefits for travel + escape in the amount of \$1.05 million.

*On-screen programming*

18. The Commission's general approach is to have the majority (approximately 85%) of the tangible benefits package be directed to on-screen programming. In this context, the applicant proposed that all monies would go to on-screen programming initiatives consisting of multiplatform productions in music and comedy genres designed for prime-time exhibition. The Commission is satisfied with this proposal.

*Cap on new media standalone projects*

19. In Broadcasting Decision 2011-163, the Commission approved an application by BCE Inc. (BCE) for authority to change the effective control of CTVglobemedia Inc.'s licensed broadcasting subsidiaries. In that decision, the Commission directed BCE to ensure that no more than 10% of the benefits dedicated to independently produced programs of national interest (PNI) will be spent on online or multiplatform content. With respect to its application, the applicant asked the Commission not to impose a cap on either its new media standalone initiatives or on new media projects linked to a broadcast program.
20. In keeping with the recent determinations regarding BCE's tangible benefits package set out in Broadcasting Decision 2011-163, and the approach taken in Broadcasting Decision 2010-833 with respect to certified independent production funds, as well as the approach taken by the Canadian Media Fund, the Commission considers it appropriate, as a condition of approval, to direct the applicant to revise its tangible benefits package to ensure that no more than 10% of the benefits will be spent on online or multiplatform content.

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<sup>1</sup> See Broadcasting Decision 2008-71.

*Independent production*

21. In its application, the applicant proposed to direct:

- 100% of the benefits funds for AUX TV and BITE to independent production; and
- 50% of the benefits funds for travel + escape to independent production and 50% to its in-house production departments.

22. In its reply to the interventions, the applicant pointed out that the overwhelming proportion of benefits has already been assigned to independent producers, notwithstanding the fact that AUX TV, BITE and travel + escape are not drama- or PNI-oriented services. It added that this breakdown would amount to an overall 75% of the benefits going to independent producers.

23. The Commission accepts the applicant's proposal and notes that this will still ensure that the majority of the benefits flow to third parties, while allowing some flexibility to the licensee. Further, this flexibility is consistent with the Commission's approach in the group-based licence renewals for English-language television groups with respect to PNI.

*Deferral of benefits payments and calculating incrementality*

24. In its application, the applicant originally proposed to defer the payment of all of the benefits described above for one year. However, after considering points raised by interveners, the applicant acknowledged that there was some urgency attached to starting the benefits payments immediately, notwithstanding their relatively small size and agreed to start the payments upon approval of the application.

25. With respect to calculating incrementality, the Commission's policy requires that tangible benefits be over and above the other financial obligations that the licensee would otherwise be required to fulfill under its licence, such as Canadian programming expenditure (CPE) requirements. In the case of Category B services, the Commission's practice has been to use the average of a service's last three years of expenditures on Canadian programming as the baseline for calculating incrementality.

26. In its application, the applicant argued that the Commission should not use its usual method for calculating incrementality since it would result in a baseline that is far too high for the Category B services AUX TV and BITE. Instead, in its reply to the interventions, the applicant made a number of different proposals for calculating the incrementality of benefits. The Commission considers that the proposal consisting of calculating the baseline for the incrementality of benefits based on a benchmark using the CPE of comparable Category B services to be the most appropriate with some adjustments. For AUX TV, the applicant suggested that MuchLoud, MuchMoreRetro, MuchVibe and PunchMuch could be used as comparable services. For BITE, the applicant noted that there are no directly comparable services, and it therefore suggested using the CPE levels of 15 Category B services renewed in the recent

group-based licence renewal. The applicant estimated that the average CPE levels would be 1% for the services comparable to AUX TV and 11% for the services comparable to BITE.

27. In the Commission's view, for the purpose of calculating the incrementality of the benefits, the selection of comparable services is very subjective and in this case would result in CPE levels that are too low in comparison to most other Category B services as well as to the current CPE levels of AUX TV and BITE. The Commission is concerned that approval of such a proposal could significantly reduce or negate the value of the proposed benefits. The Commission notes that the average CPE level for all Category B services in the 2009-2010 year was approximately 15%, a level that is already considerably lower than the past CPE levels of AUX TV and BITE. Accordingly, the Commission considers that using the 2009-2010 average CPE level for all Category B services (15%) to calculate incrementality is appropriate.

## Conclusion

28. In light of the above, the Commission **approves**, subject to the **conditions** set out in paragraph 29, the application by Glassbox Television Inc., on behalf of itself and of its wholly owned subsidiary 7506465 Canada Inc., for authority to effect a change in the effective control through a multi-step transaction that will result in Blue Ant Media Inc. acquiring all of the issued and outstanding shares of Glassbox and exercising effective control.
29. The Commission requires the applicant to file, within 30 days of this decision, a revised tangible benefits package that includes the revisions to the package set out in the appendix to the decision. The Commission also requires the applicant to adhere to the payment schedule set out in the appendix to this decision and to submit annual reports to the Commission by 30 November of each year, detailing its progress in fulfilling its tangible benefits.

Secretary General

## Related documents

- *Change in effective control of CTVglobemedia Inc.'s licensed broadcasting subsidiaries*, Broadcasting Decision CRTC 2011-163, 7 March 2011
- *Contributions to Canadian programming by broadcasting distribution undertakings*, Broadcasting Decision CRTC 2010-833, 9 November 2010
- *travel + escape – Corporate reorganization (acquisition of assets), and transfer of ownership and control*, Broadcasting Decision CRTC 2010-792, 26 October 2010
- *Acquisition of assets*, Broadcasting Decision CRTC 2008-71, 25 February 2008
- *Building on success - A policy framework for Canadian television*,

Public Notice CRTC 1999-97, 11 June 1999

*\*This decision is to be appended to each licence.*

## Appendix to Broadcasting Decision CRTC 2011-585

### Conditions of approval

The applicant must file, within 30 days of this decision, a revised tangible benefits package that includes the revisions set out below.

The applicant is required to adhere to the payment schedule set out below and to submit annual reports to the Commission by 30 November of each year, detailing its progress in fulfilling its tangible benefits.

### Revised tangible benefits package (\$2.09 million)

#### Outstanding benefits

##### travel + escape (2010)

\$1,000,000 allocated as follows:

- \$150,000 (15%) social benefits
- \$850,000 (85%) on-screen benefits

##### AUX TV & BITE Television benefits (2011)

\$1,040,000 [*revised*] allocated as follows:

- \$520,000 for BITE Television (\$74,286 annually over 7 years)
- \$520,000 for AUX TV (\$74,286 annually over 7 years)

##### travel + escape benefits (2011)

\$1,050,000 [*revised*] (\$150,000 annually over 7 years)

#### *Independent Production*

- 100% of the benefits funds for AUX TV and BITE Television shall be directed to independent production.
- A minimum of 50% of the benefits funds for travel + escape shall be directed to independent production and the remainder to its in-house production departments.

#### *On-screen programming*

- All monies would go to on-screen programming initiatives consisting of multiplatform productions in music and comedy genres designed for prime-time exhibition.

#### *Multiplatform content*

- No more than 10% of the funds for the creation of programming may go toward online or multiplatform content.



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## Raja Khanna to exit Blue Ant Media

After more than 10 years with the Toronto-based company, Khanna will leave his position as CEO of television and digital by the end of the year.

By [Daniele Alcini](#)

November 20, 2017



Blue Ant Media's Raja Khanna is leaving his position as CEO of television and digital after more than 10 years with the company, *Playback* has confirmed.

Khanna will exit the global producer, distributor and channel operator by the end of the calendar year as Blue Ant endeavors to place further accountability and decision making authority directly into its various business units.

"In the context of this more decentralized structure, Raja Khanna & Michael MacMillan [Blue Ant co-founder and CEO] decided that the role of CEO, TV & Digital is a layer of executive oversight which is no longer necessary," stated a company-wide email that was shared with *Playback*. "Raja has been on the growth journey at GlassBOX and Blue Ant for more than 10 years and he is looking forward to his next challenge. We thank him for his many contributions to the creation and growth at Blue Ant Media which reflect his entrepreneurial spirit."

In October, Blue Ant began undertaking steps to alter the way its content business operates in order to help further its international expansion. Anchored by the company's May acquisition of New Zealand-based media company **The Racat Group**, previous home of ZooMoo and factual producer NHNZ, Blue Ant currently has a network of prodcos, television channels and content distribution operations pushing its content worldwide.



As CEO of television and digital, Khanna led the development of the company's content, television and digital strategies. In addition, the seasoned exec oversaw Blue Ant's global speciality and SVOD channels, international distribution group, its global production studios and its L.A.-based YouTube network.

Previously, Khanna served as CEO of indie broadcasting and media company GlassBox Television where he helped orchestrate the company's merger with Blue Ant in April 2011. At GlassBox, he was also responsible for growing the company from one to three specialty channels and managing the acquisition of adventure channel T+E from Canadian broadcaster CTV.

Khanna formerly served as co-founder of mobile content delivery platform QuickPlay Media (which sold to AT&T), and as the founder and former CEO of interactive digital media producer Snap Media Corp., which was sold in 2003.

Blue Ant's co-founder and CEO Michael MacMillan will continue to lead the operations and strategic direction of the Canadian media conglomerate.

Now reporting into MacMillan will be former Racat Group consultant Ward Platt, CEO of Kids & Global Networks; Sam Sniderman, global head of commercial affairs and production; Jamie Schouela, EVP of Canadian media; and Solange Attwood, SVP of Blue Ant International.

Robb Chase, chief corporate development officer; CFO Cynthia Schyff; Asha Daniere, EVP of legal and business affairs; and executive director David Haslingden will continue to report to MacMillan.

Khanna's departure from the Toronto-headquartered company comes after Blue Ant's cementing last month of its top line structure; a **restructuring** that will see Vanessa Case and Marcia Martin exiting their respective roles in the coming months.

After 10 years of growth & innovation, I am excited to turn over the reins at Blue Ant Media to the amazing team I built. For me? Time to disrupt. Again.

#myjobisdone  
#theyvegottthis  
#nextchallenge  
#firstashortbreak

— Raja Khanna  
(@rajakhanna)

November 20, 2017

9/1/2019

Raja Khanna to exit Blue Ant Media » Playback

Earlier this month, Blue Ant added Carlyn Staudt and Beatrice Lee to its **Kids & Global Networks division**.

*From Realscreen*

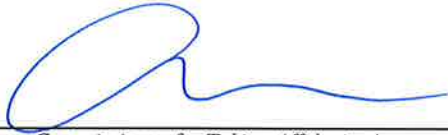
**TAGS:**

**Blue Ant Media, Michael MacMillan, Raja Khanna**



**395**

This is Exhibit "E" referred to in the Affidavit of Eun Ji Yoon sworn September 3, 2019.



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*Commissioner for Taking Affidavits (or as may be)*

**Andrew Winton**

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## Donald Ross

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Don Ross is a corporate and securities lawyer with extensive experience in cross-border mergers and acquisitions, proxy contests and multi-jurisdictional corporate finance. Some transactions have involved acting for or against activist shareholders. In addition to transaction work, Mr. Ross advises senior management and boards of directors on corporate governance matters and on a range of other strategic legal issues.

Mr. Ross has taught at the Ontario Bar Admission Course, presented at various seminars and conferences in Canada, the United States and Europe and published a number of articles and papers within the corporate and securities law fields. He has also co-authored several legal texts on business law and corporate finance.

## Representative Matters

Union Pacific Corporation in its opposition to a proposed merger of the Canadian Pacific and Norfolk Southern railroads.

Sears Holdings Corporation on its spin out to its shareholders of 44 percent of the common shares of Sears Canada Inc.

Icahn Partners LP and Icahn Partners Master Fund LP in its dual compliant multiple take-over bids and tender offers for the common shares of Lions Gate Entertainment Corp. and its proxy contest for the election of directors of Lions Gate.

International Business Machines Corporation in its acquisition by plan of arrangement of Cognos Incorporated, a provider of business intelligence software.

United States Steel Corporation in its acquisition by plan of arrangement of Stelco Inc., an integrated steel company.

Constellation Brands in its \$1.52 billion acquisition by takeover bid of Vincor International.

Icahn Partners LP and Icahn Partners Master Fund LP in its dual compliant take-over bid and tender offer for 51% of Fairmont Hotels & Resorts Inc.

Certain of the Principals of Mass Power in a \$150 million disposition of a power plant in Massachusetts.

Eastman Kodak Company in its successful acquisition by plan of arrangement of Creo Inc.

Maple Leaf Foods Inc. in its successful negotiated acquisition of Schneider Corporation, a food products producer, from Smithfield Foods Inc.

Consortium of Cameco Corporation, TransCanada PipeLines Limited and BPC Generation Infrastructure Trust, in their acquisition from British Energy plc of its direct interest in British Energy (Canada) Ltd. and therefore its indirect interest in Bruce Power L.P., the lessee of two nuclear generating facilities.

The Toronto Stock Exchange in connection with its acquisition by means of a corporate reorganization of the Canadian Venture Exchange Inc.

Psion PLC, a personal computer manufacturer, in connection with its acquisition by a plan of arrangement of Teklogix International Inc., a transaction involving the first use of Canadian exchangeable shares by a U.K. company to acquire a Canadian corporation.

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### Responding to Shareholder Directives to Directors

Article

May 10, 2016, *Harvard Corporate Governance*

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### VC Laster, Fiduciary Duties And The Long-Term Rule

Media Mention

March 11, 2015, *Law360*

Covington's Leonard Chazen, Jack S. Bodner and Donald Ross authored this article for Law360.

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### VC Laster, Fiduciary Duties and The Long-Term Rule

Article

March 11, 2015, *Law360*

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## Vice Chancellor Laster and the Long-Term Rule

Article

March 11, 2015, *Harvard Law School Forum on Corporate Governance and Financial Regulation*

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## Canadian Lawyer Donald Ross Joins Covington

Press Release

September 10, 2013

NEW YORK, September 10, 2013 — Covington & Burling is pleased to announce that Donald Ross has joined the firm as senior of counsel in the firm's New York office. "Don is a strong addition to the firm, serving as a bridge between Canadian clients and the firm's practices in the U.S., Asia and Europe," said Timothy Hester, chair of the firm's management ...

## Accolades

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*Chambers Global*, Corporate/M&A (2012)

*The Best Lawyers in Canada*, Corporate Law; Mergers & Acquisitions Law (2013)

*The Lexpert/American Lawyer Guide to the Leading 500 Lawyers in Canada*, Corporate Commercial Law (2013)

*The Canadian Legal Lexpert Directory*, Corporate/Commercial; Mergers & Acquisitions (2012)

*Expert Guides: The Legal Media Group Guide to the World's Leading Lawyers*, Capital Markets; Mergers & Acquisitions (2011)

*IFLR 1000: The Guide to the World's Leading Financial Law Firms*, Mergers & Acquisition (2009)

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## Canadian Lawyer Donald Ross Joins Covington

September 10, 2013

**NEW YORK, September 10, 2013** — Covington & Burling is pleased to announce that Donald Ross has joined the firm as senior of counsel in the firm's New York office.

"Don is a strong addition to the firm, serving as a bridge between Canadian clients and the firm's practices in the U.S., Asia and Europe," said Timothy Hester, chair of the firm's management committee. "Don brings significant cross border experience to our domestic and international practices as well as a unique perspective from his distinguished career practicing law in Canada."

Mr. Ross' extensive experience involves many years practicing law at Osler, a leading Canadian law firm. Over the course of his career, he has handled both domestic and cross-border mergers and acquisitions, proxy contests and domestic and multi-jurisdictional corporate finance. In addition to transactional work, he has advised senior management and boards of directors on corporate governance matters and on a range of strategic legal issues.

"Covington is an outstanding law firm with expertise in areas that will be invaluable to Canadian and other global clients, including extensive regulatory and government affairs, white collar and broad litigation practices as well as a strong corporate practice. I look forward to working with my new colleagues and with firm clients on a variety of matters spanning the globe," Mr. Ross said.

Mr. Ross has taught at the Ontario Bar Admission Course, presented at seminars and conferences in Canada, the U.S. and Europe, and co-authored several legal texts on business law and corporate finance. He also serves on the board of directors of Sears Canada Inc.

Mr. Ross received a bachelor's degree from the University of Toronto, his master's degree from the London School of Economics, and his law degree from Osgoode Hall Law School. He is a member of the New York bar and the Ontario bar.

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## BigLaw's 10 Biggest Revenue Winners And Losers Of 2017

By Aeбра Coe

*Law360 (April 24, 2018, 9:19 PM EDT)* -- In an otherwise positive year for law firm financials, a few firms stood out in 2017 with more drastic increases and decreases in revenue than the rest of the pack, according to the new Am Law 100 report released Tuesday.

Average revenue among the 100 largest law firms in the U.S. grew by 5.5 percent last year, the industry's biggest uptick since the Great Recession, the report by the American Lawyer found. But a few firms departed from the norm, experiencing far more substantial changes in the income they brought in.

### Firms With The Largest Revenue Gains In 2017

While the Am Law 100 collectively increased revenue by 5.5% last year, these 10 firms broke away from the pack.



Source: Am Law 100

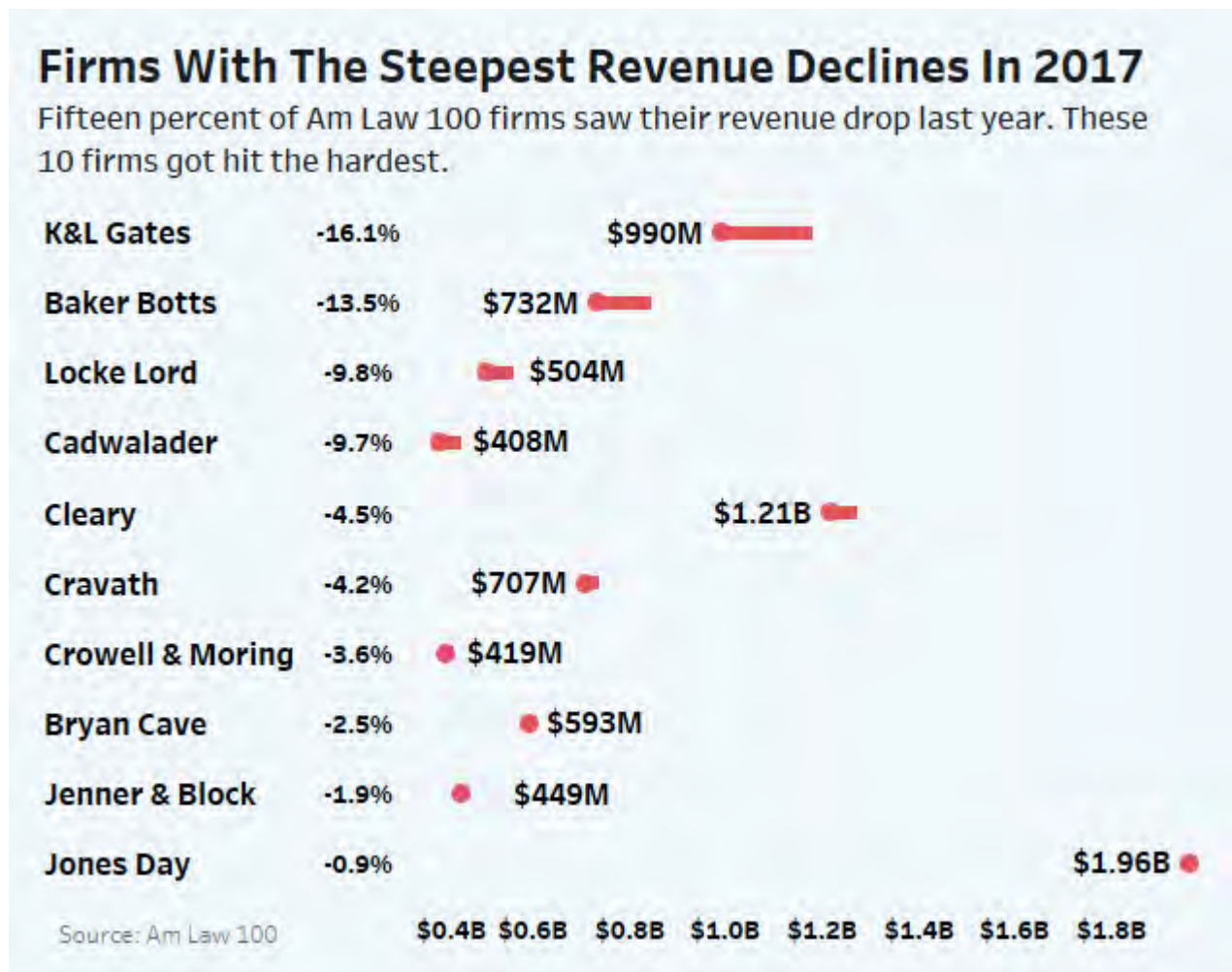
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Those firms’ revenue fluctuations ranged from a decline of 16 percent to an increase of nearly 20 percent.

The 10 biggest revenue winners of 2017, measured by percentage increase from 2016, are, in order: Kirkland & Ellis LLP, Winston & Strawn LLP, Norton Rose Fulbright, Fried Frank Harris Shriver & Jacobson LLP, Goodwin Procter LLP, Covington & Burling LLP, Morrison & Foerster LLP, Debevoise & Plimpton LLP, Willkie Farr & Gallagher LLP and Vinson & Elkins LLP.

And the 10 biggest losers on revenue, measured by percentage decrease from 2016, are: K&L Gates LLP, Baker Botts LLP, Locke Lord LLP, Cadwalader Wickersham & Taft LLP, Cleary Gottlieb Steen & Hamilton LLP, Cravath Swaine & Moore LLP, Crowell & Moring LLP, Bryan Cave Leighton Paisner LLP, Jenner & Block LLP and Jones Day.

In a trend that has been reported widely over the past several years, the largest 50 law firms were among those that grew most, while many of those that saw declining revenue were among the second 50 largest, the report found.



Eight of the 10 revenue winners are among the top 50 and six of the 10 losers rank between 51 and 100.

### **The Winners**

The largest law firm in the U.S. by revenue, Kirkland & Ellis, also grew the most, the report found, leading the pack of revenue winners in 2017 with a 19.4 percent increase over what it achieved in 2016 to nearly \$3.2 billion. The law firm took over the No. 1 spot from Latham & Watkins LLP, which had held it for the past three years.

Kirkland was among just two law firms that made it on the list of the 10 biggest revenue winners in both 2016 and 2017, along with Covington.

Kirkland grew 15 percent in 2016 before this year's substantial increase. The firm declined to comment on the revenue results Tuesday.

Covington's revenue grew by 12.9 percent in 2016 and 12.8 percent last year, bringing its revenue to \$945.5 million and making it the 37th largest law firm in the U.S., the report found.

According to the law firm's chair, Timothy Hester, that growth has been impacted by the law firm's cautious strategy.

"We have followed a very clear strategy for many years that has focused on careful growth that aims to meet the needs of our clients across key practices and geographies," Hester said.

Two law firms saw drastic changes from one year to the next, according to Tuesday's report. Norton Rose, Morrison & Foerster and Debevoise both jumped from the losers list in 2016 to the biggest winners list for last year's revenues.

According to Norton Rose's U.S. managing partner, Daryl Lansdale, his law firm's success in 2017 can be attributed, at least in part, to two combinations the law firm recently completed with 400-attorney Chadbourne & Parke in June and 92-attorney Canadian law firm Bull Housser in September 2016.

"[The combinations] gave us a significant increase in revenue in 2017," Lansdale said. "This expansion enhanced our capabilities on both coasts, which has our client activity reaching new heights so far in 2018."

Morrison & Foerster Chair Darren Nashelsky said his firm's increase in revenues can be attributed to an uptick in demand.

"Our tremendous results in 2017 were driven by the significant demand we saw in both our litigation and transactional practices, and our outstanding work across the firm," Nashelsky said. "A common thread to that success was our banner year working on landmark technology and life sciences matters, as well as our work on high-profile matters in numerous other sectors."

### **The Losers**

The law firm that experienced the biggest percentage decrease in revenue in 2017 compared to the year

before, according to the Am Law 100 report, is K&L Gates. The firm's revenue fell by 16.1 percent to just under \$990 million.

The decline in revenue was a reflection of an extraordinary success fee received by the firm in 2016 that was not repeated in 2017, according to firm spokesman Mike Rick.

"The firm's financial metrics improved in 2017 compared to 2016 on all measures outside of the extraordinary success fee and continue to trend positively," Rick said.

K&L Gates was followed by Baker Botts, Locke Lord and Cadwalader, which saw declines in their revenue of 13.5 percent, 9.8 percent and 9.7 percent, respectively, between 2016 and last year.

Two law firms saw declines in both 2016 and 2017, which landed them on the losers list both years: Locke Lord and Cadwalader.

According to Patrick Quinn, managing partner of Cadwalader, his firm has experienced declines in revenue due to a strategic refocus in which the law firm knew it would grow smaller, noting that while it shrank, other financial metrics showed positive strides.

"Revenue exceeded our own internal projections, with revenue per lawyer up 6 percent and profits per partner up nearly 19 percent to over \$2.5 million," Quinn said. "We were very pleased with our 2017 financials and look forward to another strong year of growth in 2018."

Locke Lord Chair David Taylor was also positive about his firm's financial results.

"We were happy with our overall performance during 2017, and are happy that our budgeted net income and revenue per lawyer were up again. We were able to achieve strong financial results in what continues to be challenging times for law firms," Taylor said.

A few of the law firms on the list saw a decline in 2017, but that dip followed an exceptionally good year for revenue. Baker Botts and Crowell & Moring saw 20.2 percent and 19.7 percent increases in revenue, respectively, between 2015 and 2016, and then experienced a decline last year.

Crowell & Moring Chair Philip T. Inglima said the revenue dip in 2017 reflects fluctuations in the firm's contingency recoveries.

"Unprecedentedly large contingency receipts over the past two years helped drive our recent extraordinary performance, and were understood to be episodic in nature, contributing to fluctuations in profits," Inglima said.

Last year was Crowell & Moring's second most profitable year in history, surpassed only by 2016. 2017's performance outpaced 2015's by 15 percent, Inglima said, and the law firm's overall revenue has grown by 20 percent over the past five years.

# 10 Years Of Law Firm Revenue Ranking



--Editing by Breda Lund.

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# Covington Posts Double-Digit Growth in Revenue, Head Count

The firm boosted its revenue by more than \$100 million, added more than 100 lawyers and grew partner profits last

By **Ryan Lovelace** (https://www.law.com/nationallawjournal/author/profile/Ryan-Lovelace/) | March 06, 2018 at 02:14 PM

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Covington & Burling, Washington, D.C. (Photo: Diego M. Radzinski/ALM)

**Covington & Burling** (https://www.law.com/law-firm-profile?id=69&name=Covington) grew its gross revenue by more than \$100 million last year while opening new offices in United Arab Emirates and South Africa.

According to preliminary ALM data, gross revenue jumped nearly 13 percent in 2017, reaching \$945.5 million. Profits per partner rose 4.5 percent to more than \$1.5 million. Revenue per lawyer increased by less than 1 percent to \$1,005,000 as Covington added more than 100 total lawyers, boosting its head count 12.3 percent over 2016.

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"When I look at the numbers, we don't run the firm on these year-over-year numbers," said Timothy Hester, Covington's chairman. "Our approach has been to be very distinctive."

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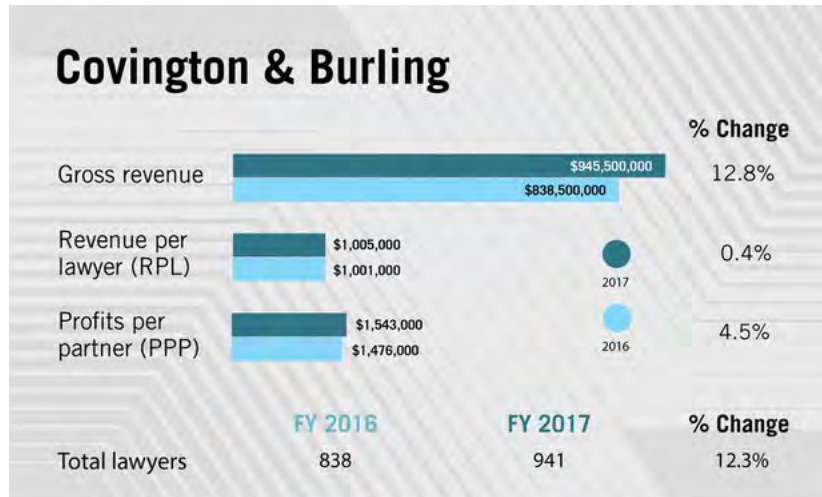


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Hester



attributed the firm's financial growth to its geographical footprint and its practice mix, and he said it's following a long-term growth strategy aimed at addressing clients' global needs.

On the international front, Covington added offices in Dubai and Johannesburg last year after **hiring** (<https://www.law.com/sites/almstaff/2017/04/27/covington-opens-two-new-offices-after-adding-chadbourne-team/>) four partners from Chadbourne & Parke before Chadbourne's merger with Norton Rose Fulbright. The project finance partners—including Jack Greenwald and Richard Keenan in Dubai and Ben Donovan in South Africa—**brought** (<https://www.law.com/sites/almstaff/2017/04/27/covington-opens-two-new-offices-after-adding-chadbourne-team/>) a team of approximately 25 associates and counsel along with them.

Overall, Covington counted nine more equity partners in 2017 than in the previous year. Hester emphasized that the firm is focused on building the younger half of its partnership through internal promotions. The firm has also **increased** (<https://www.law.com/nationallawjournal/almID/1202779771739/>) its associates' starting pay in the last two years.



Among other notable **recruits**

(<https://www.law.com/americanlawyer/almID/1202782645309/>) contributing to Covington's growth last year are two former U.S. Patent Trial and Appeal Board judges. Peter Chen left the PTAB in 2017 for Covington in California, while Scott Kamholz joined from Foley Hoag in Washington, D.C., after departing the PTAB in 2015.

Covington also **added**

(<https://www.law.com/nationallawjournal/sites/nationallawjournal/2018/02/12/sec-enforcer-hodgkins-lands-at-covington-burling/>) in 2018 Gerald Hodgkins, a longtime Securities and Exchange Commission lawyer, to the firm's securities litigation and enforcement and white-collar defense and investigations practices in D.C.

Covington's white-collar practice has handled several prominent cases, and Hester said the practice is at the "top of its game." The firm **guided**

(<https://www.law.com/nationallawjournal/sites/nationallawjournal/2018/02/12/sec-enforcer-hodgkins-lands-at-covington-burling/>) Takata Corp. to its \$1 billion deal with the Justice Department over defective airbags. Covington partner Eric Holder, former U.S. attorney general in the Obama administration, also **investigated** (<https://www.law.com/nationallawjournal/sites/nationallawjournal/2018/02/12/sec-enforcer-hodgkins-lands-at-covington-burling/>) allegations of sexual harassment and workplace hostility at Uber.

Hester touted his firm's work on several high-profile legal challenges to President Donald Trump's agenda, including the administration's stance on transgender troops in the military and so-called sanctuary cities. Covington is also representing the University of California in its **suit** (<https://www.universityofcalifornia.edu/press-room/university-california-sues-trump-administration-unlawful-repeal-daca-program>) against the Trump administration's decision to change the Deferred Action for Childhood Arrivals (DACA) program for the children of immigrants who entered the U.S. illegally.

At the same time, Covington's Robert Kelner **represents**

(<https://www.law.com/nationallawjournal/2018/03/02/wilmer-after-mueller-advice-from-flynn-lawyer-dc-firms-see-green/>) former Trump national security adviser Michael Flynn, who pleaded guilty late last year to lying to the FBI about his conversations with a Russian ambassador in 2016.

Covington also **represented** (<https://sports.yahoo.com/colin-kaepernick-grievance-nfl-state-agitation-10-teams-figures-targeted-214635086.html>) the NFL, a longtime client, in its fight with Colin Kaepernick regarding his collusion grievance with the NFL. Kaepernick, a former San Francisco 49ers quarterback, took legal action against the league after being unable to find a home with any team following his national anthem protests.

"It's a complex and it's a dynamic marketplace for legal services," Hester said. "We like the trajectory we're on. We think we're on the right strategic path as a firm."

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# Covington Surpasses \$1 Billion in Revenue, Capping a Decade of Rapid Growth

Chairman Tim Hester said Covington & Burling has achieved "a real, fundamental shift in the firm's competitive pos in the last 10 to 12 years.

By **Ryan Lovelace** (https://www.law.com/nationallawjournal/author/profile/Ryan-Lovelace/) | February 21, 2019 at 05:30 AM

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Timothy Hester of Covington & Burling. Photo: Diego M. Radzinski/ALM

Covington & Burling crossed the \$1 billion mark in revenue for the first time in 2018, boosting its top line by more than \$170 million and enjoying a second straight year of \$100 million-plus revenue growth.

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SEARS CANADA INC., by its Court-appointed  
Litigation Trustee, J. Douglas Cunningham, Q.C.  
Plaintiff

ESL Investments Inc. *et al*  
Defendants

Court File No.: CV-18-00611214-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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Proceeding commenced at Toronto

**AFFIDAVIT OF EUN JI YOON  
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**419**

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Plaintiff

and ESL INVESTMENTS INC. et al.  
Defendants

Court File No. CV-18-00611214-00CL

FTI CONSULTING CANADA INC.  
Plaintiff

and ESL INVESTMENTS INC. et al.  
Defendants

Court File No. CV-18-00611219-00CL

MORNEAU SHEPELL LTD.  
Plaintiff

and ESL INVESTMENTS INC. et al.  
Defendants

Court File No. CV-18-00611217-00CL

**ONTARIO  
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**PLAINTIFFS' JOINT RESPONDING MOTION  
RECORD  
(RETURNABLE SEPTEMBER 19, 2019)**

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