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BY FAX

January 17, 2018

Justice Geoffrey B. Morawetz

Regional coordinator judge

SUPERIOR COURT OF JUSTICE (TORONTO AREA)

Commercial department

393, avenue University, 10th floor

Toronto (Ontario) M5G 1E6

Re: Request to postpone the Motion Record from the Monitor (FTI Consulting Canada Inc.) in the Court File CV-17-11846-00CL

Mr. Justice Morawetz,

The undersigned represents the plaintiff in the following Quebec “Extended Warranty” Class Action: *Karine Tremblay v. Centre Hi-Fi Chicoutimi et als* (Superior Court of Quebec File Number: 150-06-000010-173). Our firm also represents other plaintiffs in the Province of Quebec in the following “Extended Warranty” Class Actions, also identified in the Notice of Motion dated January 10, 2017 in the court file CV-17-11846-00CL:

- (i) *Luc Cantin and Francois Routhier v. Ameublements Tanguay Inc. et al.* (Superior Court of Quebec File No: 500-06-000709-143)
- (ii) *Lise Ostiguy v. Sears Canada Inc.* (Superior Court of Quebec File No: 500-06-000537-106)
- (iii) *Jacques Fillion v. Corbeil Électrique Inc.* (Superior Court of Quebec File No: 500-06-000535-100)

All of the above-mentioned cases were filed in the Province of Quebec and are known collectively as the “Quebec Warranty Class Actions”. Furthermore, Sears Canada and/or Corbeil are currently respondents in one or many of these proceeding.

On June 22, 2017, Sears Canada Inc. (“Sears”) sought and obtained an initial order to stay the proceedings notably against the Sears Entities and their current and former directors and officers. The initial Stay Order has been extended by various Orders of the Court, and will expire on January 22, 2018.

On November 29, 2017, the undersigned lawyer served a Motion to Amend plaintiff Karine Tremblay’s application for authorization to institute a class action (the “Motion to Amend”) in order to, among other things, add both the Monitor and certain current and former directors of Sears as respondents in that file. Your colleague Justice Martin Dallaire from the Superior Court of Quebec is in charge of the case management in this file.

Essentially, we allege that both the directors and the Monitor committed a fault between the Stay Order and the liquidation by deliberately letting the vendors sell extended warranties without informing the consumers that there was a high risk that these warranties would not be honoured due to Sears insolvency, which effectively happens on October 19, 2017. We consider that this type of fault is not covered by any immunity or by the Stay Order.

On January 11, 2018, FTI Consulting Canada Inc.(FTI), in its capacity of Court-appointed monitor (the “Monitor”) served the undersigned a motion to restrain all the Quebec Plaintiffs to continue any legal proceedings against the Monitor, the Directors, Sears and Corbeil, with respect to the four “Quebec Extended Warranty” Class Actions (“The Motion”).

In the undersigned’s opinion, the core of this Motion is to provide an Injunction against Quebec Plaintiffs to restrain all of their judicial proceedings in Quebec the regards of the of sale of extended warranties under Sears and Corbeil’s names, and this, beyond the limitation of the initial Stay Order.

The Motion is scheduled to be presented to a judge of the Superior Court in Toronto on Monday, January 22, 2018, at 10:00 am at the Toronto Court house.

Under the following grounds, the undersigned respectfully request that the Monitor’s Motion be postponed until the judgment of Justice Dallaire on our Motion to Amend:

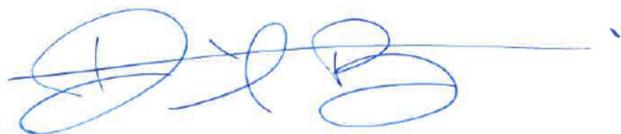
- 1- It is almost impossible for the Quebec plaintiff’s lawyers to hire and be represented by a law firm authorized to practice in Ontario for next Monday.
- 2- The Quebec plaintiffs and their lawyers require additional time to oppose the Motion.
- 3- The hearing of the Monitor’s Motion would be *prima facie* premature for the following reasons:

- a. In a case management hearing held on December 21, 2017, where the Monitor, the Directors and Sears were duly represented, your colleague Justice Martin Dallaire from the Quebec Superior Court scheduled the hearing on the Motion to Amend Tremblay's Class Action on February 16, 2018. The Monitor, the Directors and Sears raised the same arguments with respect to the Stay Order and the immunity, but Justice Dallaire decided to fix the hearing on the Motion to Amend and this management ruling was not appealed.
- b. Essentially, the same grounds as described in the Motion will be raised by the Monitor, the Directors and Sears to contest the Motion to Amend Tremblay's Class Action.
- c. Justice Dallaire is entitled, within his conferred jurisdiction to decide if the Motion to Amend shall be granted and by doing so, the Monitor's Motion for a restraining order will then become a non issue.

The undersigned respectfully submit that the following grounds supports the inappropriate character of the Monitor's Motion:

- a. Both *Ostiguy* and *Fillion Inc.* cases are currently inactive and no further action and/or step are scheduled to be done involving Sears and Corbeil.
- b. Article 513 of the *Quebec Code of civil procedure* forbid that an injunction be granted to restrain judicial proceedings. A serious jurisdiction question could legitimately be raised if an Order issued from the Ontario Superior Court would seek to restrain the Quebec Superior Court to exercise its jurisdiction and hear the Motion to Amend the Quebec Class action.
- c. On June 22, 2017, the Ontario Superior Court has already ordered a stay (with it's own limitations) to avoid further step and/or action scheduled against the defendant "Sears", notably in the Tremblay Case.

The present correspondence establishes our preliminary position. We trust the above to be satisfactory and we remain available at any time to discuss the foregoing by the end of the week in conference call. With respect to our request to postpone the Monitor's Motion, we will be waiting for a decision on this matter from the case management judge in the file CV-17-11846-00CL before planning our presence on January 22, 2018.



David Bourgoin

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DB/st

Encl : Article 513, *Code of Civil Procedure*

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