

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SEARS CANADA INC., CORBEIL ÉLECTRIQUE
INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT
SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM
COMMERCE LABS INC., INITIUM TRADING AND SOURCING
CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA
INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711
CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD.,
4201531 CANADA INC., 168886 CANADA INC., AND 3339611
CANADA INC.

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

MOTION RECORD
(For an order appointing a Litigation Trustee,
returnable February 15, 2018)

February 9, 2018

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Employees of the Sears Canada Entities

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TAB 1

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

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

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

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

**NOTICE OF MOTION
(For an order appointing a Litigation Trustee,
returnable on February 15, 2018)**

Representative Counsel to the court-appointed Representatives of employees and retirees with respect to pensions and post-retirement benefits of the Applicants will make a motion to a Judge presiding over the Commercial List on February 15, 2018 at 10:00 a.m. at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion shall be heard orally.

THIS MOTION IS FOR AN ORDER:

1. appointing the Honourable Frank Newbould, Q.C. as Litigation Trustee on behalf of the estate of the Applicants on the terms substantially in the form of the draft Order attached hereto as Schedule "A":
2. if necessary, abridging the time for service of this motion and dispensing with service on any person other than those served; and
3. providing such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

1. During their employment years, employees of Sears Canada Inc. ("**Sears Canada**") earned pension benefits that are to be paid to them during their retirement years for their lifetimes from the Sears Canada Inc. Registered Retirement Plan, Registration No. 0360065 (the "**Sears Canada Plan**"). The pension benefits are the deferred wages for work they performed for the company and are critical to pay for their livelihoods in their elderly years. The Sears Canada Plan is underfunded by approximately \$270 million and the retirees are facing losses to their monthly benefits.
2. In 2005, Sears Canada came under the control of a U.S. hedge fund called ESL Investments Inc. ("**ESL**") run by Edward Lampert. Through ESL, Lampert had direct and indirect control of shareholdings of Sears Canada at the material times, and was the main beneficiary of dividend payments.
3. Since that time, Sears Canada's retail business has steadily deteriorated which culminated in its insolvency and liquidation in 2017. In the years prior to applying for CCAA protection in

June, 2017, Sears Canada sold off significant assets, declared substantial dividends paid to shareholders – in particular ESL and Mr. Lampert – and drastically reduced its investment and commitment to the retail business of the company.

4. The actions taken or not taken by various parties in the years prior to the insolvency and commencement of these insolvency proceedings warrant a detailed review by a Litigation Trustee to determine if such actions or inactions caused, contributed to or precipitated the insolvency and the losses suffered by creditors of the Sears Canada Entities such that any causes of action exist.

5. Certain litigation claims have already been issued against the Sears Canada Entities and other defendants, some of which are stayed by the CCAA stay of proceedings. A Litigation Trustee appointed by the Court will be in a position to review and consider the universe of potential litigation paths that currently exist or may be brought, obtain input from affected creditors and other stakeholders, consider and develop a framework for governance of a Committee of interested stakeholders for consultation and, if deemed advisable, for instructions, and make recommendations for proceeding in a manner that is most likely to produce the greatest recovery for creditors.

6. In order to avoid a multiplicity of proceedings or creditors commencing or continuing separate actions against some of the same defendants, the appointment of a Litigation Trustee is appropriate.

7. Since 2008, it has been reported in the company's actuarial reports that the Sears Canada Plan was underfunded on a wind-up basis.

8. On behalf of Sears retirees, the Sears Canada retiree association, SCRG, has been raising its concerns regarding the underfunding of the Sears Canada Plan, the company's failing business strategy, and the continuing decline in the company's financial performance, with Sears Canada, ESL, its directors, and the Ontario Superintendent of Financial Services (the "**Superintendent**").

9. Despite the company's continued financial deterioration, Sears Canada's board of directors approved the payment of dividends to its shareholders as follows:

December 9, 2005	\$1,557 million
May 11, 2006	\$13 million
September 20, 2010	\$753 million
December 20, 2012	\$102 million
December 9, 2013	\$509 million
Total	\$2,934 million

10. ESL and Mr. Lampert were major beneficiaries of the dividend payments paid from Sears Canada.

11. On June 22, 2017, Sears Canada filed for protection from its creditors under the CCAA.

12. Three retirees of the SCRG who are former executives of Sears Canada (Ken Eady, William Turner, and Larry Moore) were appointed by the court as the Representatives of all the 18,000 Sears Canada retirees across Canada.

13. Sears Canada did not restructure. Sears Canada has liquidated all its inventory, sold or is completing a final sale of all of its real estate interests, shut down its business and terminated the vast majority of its employees.

14. There will be significant shortfall in paying creditors' claims.

15. On October 17, 2017, the Superintendent appointed the actuarial firm of Morneau Shepell (“**Morneau**”) as the replacement administrator of the Sears Canada Plan.

16. On December 8, 2017, Morneau wrote to all the Sears Canada Plan members stating that due to the underfunding in the Sears Canada Plan, reductions to monthly pension benefits are expected. The timing of the implementation of the monthly reductions has not yet been confirmed.

17. The Monitor's investigations to date, as set out in its 11th Report to the Court, do not disclose or report on all potential claims by the Sears Canada Entities (or their creditors) against all potential defendants:

50. The Monitor is carrying out a review (the “Review”) of certain material transactions, payments and dividends entered into, made or declared by the Sears Canada Entities in the period prior to their filing for protection under the CCAA. The Review is focused primarily on potential reviewable transactions and transfers at undervalue pursuant to sections 95 and 96 of the Bankruptcy and Insolvency Act (Canada) and section 36.1(1) of the CCAA.

51. To date, the Monitor has identified the following potential transactions of interest (the “Transactions of Interest”):

(a) the dividend paid to certain Sears Canada shareholders on December 31, 2012 in the amount of approximately \$102 million (the “2012 Dividend”);

(b) the dividend paid to certain Sears Canada shareholders on December 6, 2013 in the amount of approximately \$509 million (the “2013 Dividend”); and

(c) the surrender by Sears Canada of its exclusive right to use the Craftsman trademark in Canada in connection with the sale by Sears Holdings Corporation of the Craftsman business to Stanley Black & Decker in March 2017.

...

53. Based on the Monitor's preliminary findings, the Monitor is of the view that further review of the Transactions of Interest is appropriate. The Monitor is undertaking appropriate steps to gather and review additional relevant information, including engaging with certain independent directors and senior Sears Canada management personnel, who had direct involvement in all or some of the Transactions of Interest.

54. The Monitor has not completed its review of material transactions and will report to the Court if other potentially reviewable material transactions are identified.

18. In order to coordinate, organize and, if deemed advisable, prosecute claims for the benefit of the estate and its creditors as a whole, in a comprehensive and efficient manner, and to coordinate with the work done to date by the Monitor effectively and in a cost-effective manner, it is appropriate to appoint a Litigation Trustee for the benefit of all creditors of the estate of Sears Canada.

19. The role of the proposed Litigation Trustee will be to act for the benefit of the estate and its creditors as a whole in respect of actions and claims that may be advanced, in order to increase the amount available for distributions to creditors. It will not include reporting or advising on potential priority claims or disputes among or between creditors, nor on the merits of the claims of creditors to the proceeds available for distribution within the estate.

20. Given the history of Sears Canada, the legal areas and competencies involved in the mandate of the Litigation Trustee include:

- (a) Ability to manage complex and potentially overlapping litigation claims and organize them in a coherent manner for expeditious resolution;
- (b) Familiarity with claims and proceedings having cross-border elements;
- (c) Oppression;

- (d) Fiduciary duty;
- (e) Corporation law;
- (f) Transfers at undervalue and fraudulent preferences;
- (g) CCAA and BIA law;
- (h) Insolvency procedure; and
- (i) Class action law.

21. Representative Counsel has met with a number of counsel to major landlord creditors of Sears Canada to discuss the appointment of a Litigation Trustee and in particular, the appointment of the Honourable Frank Newbould, Q. C.

22. The Monitor has met with Mr. Newbould to discuss the role.

23. The three court-appointed Representatives have also met with Mr. Newbould personally and support his appointment as Litigation Trustee.

24. The moving party and numerous stakeholders who support the motion are of the view that Mr. Newbould is well qualified to undertake the role of Litigation Trustee.

25. Mr. Newbould has confirmed that he is willing to assume the role if appointed by the Court, and is available to undertake the Mandate.

26. Such further and other grounds as counsel may advise and of which this Honourable Court will permit.

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

- a) The Affidavit of William Turner, with exhibits (to be sworn February 12, 2018);
- b) The Affidavit of William Turner, with exhibits, sworn on August 11, 2017;
- c) The Consent of the Honourable Frank Newbould, Q.C. to act as Litigation Trustee dated February 9, 2018 (to be filed); and
- d) Such further and other evidence as counsel may advise and this Honourable Court may permit.

February 9, 2018

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Representative Counsel to the Retirees of
Sears Canada

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

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

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

Proceeding commenced at Toronto

NOTICE OF MOTION

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Toronto, ON M5H 3R3

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Representative Counsel for the Retirees of
Sears Canada

9

TAB 2

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

AFFIDAVIT OF WILLIAM TURNER
(Sworn on February __, 2018)

I, **WILLIAM TURNER**, of the City of Toronto, in the Province of Ontario,

MAKE OATH AND SAY:

1. I am a retiree of Sears Canada Inc. ("**Sears Canada**") and one of the three Pension Representatives appointed by the Court in this proceeding to represent approximately 18,000 retirees and beneficiaries across Canada (collectively, the "**Represented Parties**"). I have personal knowledge of the matters stated in this

Affidavit, except where I have acquired such information from others or from documents attached hereto, in which case I believe such information to be true.

2. This affidavit is sworn in support of a motion seeking to appoint the Honourable Mr. Frank J.C. Newbould Q.C. as Litigation Trustee for the purpose of investigating, considering, and reporting any rights or claims that Sears Canada or any creditors of Sears Canada may have or be entitled to assert as against any parties. The appointment of a Litigation Trustee will ensure that any such claims are pursued efficiently and in a cost-effective manner.

3. In respect of this motion, I also rely on my affidavit sworn on August 11, 2017 and I supplement that affidavit herein.

4. On June 22, 2017, Sears Canada applied for and obtained protection from its creditors under the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36 ("CCAA"). At the same court attendance, the firm of Koskie Minsky LLP ("KM") was appointed Representative Counsel to those retirees and employees of Sears Canada with pension and benefit entitlements, and the firm of Ursel Phillips Fellows Hopkinson LLP was appointed Representative Counsel to the active employees.

5. By order of this Court dated July 13, 2017, I together with retirees and SCRG members Ken Eady and Larry Moore, were appointed by the Court as representatives (the "**Pension Representatives**") to represent the pensioners and other former employees of the Applicants (together with SearsConnect, collectively the "**Sears Canada Entities**") and their beneficiaries for purposes of claims pertaining to pension matters and "other post-employment benefits" such as health benefits and life insurance

benefits (known collectively as "**Other Post-Employment Benefits**"; "**OPEBs**"). A copy of the July 13, 2017 Order is attached hereto as **Exhibit "A"**.

The underfunding of the Sears Canada Plan

6. During our employment years, Sears Canada employees earned pension benefits that are to be paid to them during their retirement years for their lifetimes. The pension benefits are the deferred wages for work they performed from the company and are critical to pay for their livelihoods in their elderly years. The majority of Sears Canada retirees rely on their monthly pension benefits to pay their bills. Many of the retirees, given their age and health statuses, have no ability to make up for losses in their pension benefits.

7. The pension benefits are paid from the Sears Canada Inc. Registered Retirement Plan, Registration No. 0360065 (the "**Sears Canada Plan**"). Since 2008, it has been reported in the company's actuarial reports that the Sears Canada Plan was underfunded on a wind up basis. As set out in my affidavit sworn August 11, 2017, the Sears Canada Plan has an estimated funding shortfall of approximately \$266.8 million on a wind up basis and thus is only 81 percent funded. The wind up deficit will be a claim against the estate of the Sears Canada Entities.

8. On or around December 8, 2017, I and all other retirees received a letter from Morneau Shepell ("**Morneau**"), the actuarial firm that is the replacement administrator for the Sears Canada Plan that was appointed on October 17, 2017 by the Ontario Superintendent of Financial Services (the "**Superintendent**"). In the letter, Morneau advised that on November 10, 2017, the Superintendent issued a Notice of Intended

Decision to formally wind up the Plan effective as of October 1, 2017. Morneau also advised that it is currently preparing a valuation of the funded status of the Sears Canada Plan as at the proposed wind up date of October 1, 2017 and that monthly pension payments will be reduced, where necessary, to reflect the Sears Canada Plan's estimated wind up funded ratio. Attached hereto as **Exhibit "B"** is a copy of the letter I received from Morneau dated December 8, 2017. The pending reduction of pension benefits, coupled with the loss of OPEBs discussed below, have and will continue to cause significant financial hardships for the retirees of Sears Canada and have caused stress and worry among the many retirees I regularly hear from across Canada.

9. I am advised by my counsel and believe that the pension plan members are the beneficiaries of a statutory deemed trust priority under section 57 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8 ("**PBA**") for the amounts owing by Sears Canada to the Sears Canada Plan, which as indicated above, is approximately \$266.8 million on the wind up of the Plan.

10. On behalf of all the beneficiaries of the Sears Canada Plan, our counsel has asserted the statutory deemed trust for the amount owing to the Sears Canada Plan by Sears Canada. Attached hereto as **Exhibit "C"** is a copy of the KM letter dated October 26, 2017 sent to the Company, the Monitor, and to the CCAA Service List.

Retiree Health benefits and life insurance benefits (OPEBs)

11. In addition to pension benefits, Sears Canada retirees also earned entitlements to OPEBs. As of September 31, 2017, Sears Canada terminated all OPEBs. I am advised by the actuarial advisor to the Pension Representatives, Tom Levy of Segal Canada that

the estimated liability for OPEBs is approximately CDN\$400 million. Combined with the pension funding shortfall by Sears Canada, this makes Sears Canada pensioners and other members of the Represented Parties the largest creditor of the Sears Canada Entities, both in terms of number of creditors and the amount of debt owing.

Claims Processes

12. The claims process for general creditor claims was approved by this Court on December 8, 2017. The claims bar date under the general creditor claims process is March 2, 2018.

13. Another claims process for pensioners' and employees' claims is currently being discussed among counsel and is expected to be brought before the Court by the Monitor for approval on February 22, 2018.

Litigation Trustee

14. As set out in my affidavit of August 11, 2017, in paragraphs 20 to 33, since 2005, Sears Canada engaged in declaring dividend payments after the company came under the control of a U.S. hedge fund called ESL Investments Inc. ("**ESL**") who also became the major controlling shareholder of Sears Canada. Edward Lampert, the CEO of ESL, eventually became the Chief Executive Officer of Sears Holdings in the United States. Sears Holdings is a major shareholder of Sears Canada.

15. In the years following the assumption of control by ESL and Edward Lampert, SCRG became very concerned about Sears Canada's financial deterioration and the resulting threat to the security of our earned pension benefits and OPEBs.

16. SCRG, on behalf of Sears Canada retirees, has on a number of occasions raised its concerns regarding the underfunding of the Sears Canada Plan, the company's failing business strategy, and the continuing decline in the company's financial performance, with Sears Canada, ESL, its directors, and the Superintendent.

17. Despite the company's continued financial deterioration, the Sears Canada board of directors approved the payment of significant dividends to shareholders based on publicly available records as follows:

December 9, 2005	\$1,557 million
May 11, 2006	\$13 million
September 20, 2010	\$753 million
December 20, 2012	\$102 million
December 9, 2013	\$509 million
Total	\$2,934 million

18. This means that, in total, Sears Canada has paid over \$2.9 billion to shareholders since 2005.

19. On January 20, 2014, SCRG demanded that Sears Canada cease paying dividends (Exhibit "C" to my Affidavit of August 11, 2017). After receipt of that letter, Sears Canada appears to have ceased declaring any further dividends. Nevertheless, the financial deterioration of Sears Canada's business continued and the wind up deficit in the Sears Canada Plan worsened. The actuarial reports indicate that the wind up deficit amounts were:

WIND UP DEFICIT

December 31, 2007	\$36 million
December 31, 2010	\$307 million
December 31, 2013	\$133 million
December 31, 2015	\$267 million

20. As early as November 2014, SCRG made repeated requests to both Sears Canada and the Superintendent to wind up the Sears Canada Plan. The wind up at that time would have required the company to fund the wind up deficit. The wind up of the plan would have also severed the retirees and their earned pension benefits from the failing Sears Canada business.

21. The company refused to wind up the plan. The Superintendent did not order the wind up of the plan.

22. On June 22, 2017, the Sears Canada Entities sought and obtained protection from its creditors under the CCAA.

23. At the time my earlier affidavit of August 11, 2017 was sworn, Sears Canada was engaged in discussions regarding a possible going concern transaction that may have saved some jobs for Sears Canada employees. The Pension Representatives and Representative Counsel participated and encouraged those discussions with the bidder, Sears Canada and the Monitor with the hope that a going concern transaction could be achieved. Unfortunately, no executable transaction was brought forward. Since then, Sears Canada has substantially liquidated all its inventory, sold or is in the process of a

final sale of all of its real estate assets, and has shut down all operations. The next major step in the CCAA proceeding is to distribute the available proceeds to creditors.

24. Based on the cash available as reported by the Monitor, there will be significant shortfall in paying creditors' claims.

25. In the fall of 2017, in addition to the correspondences appended to my affidavit of August 11, 2017, SCRG through KM provided to the Monitor copies of certain of SCRG's prior correspondence that had been sent to Sears Canada, its directors and ESL to the Monitor and other parties for their consideration. The Monitor has since been investigating certain past transactions.

26. On January 15, 2018, the Monitor issued its 11th Report. In paragraphs 50-54, it identified certain "Transactions of Interest".

27. The Monitor's 11th Report does not disclose or identify all potential claims by the Sears Canada Entities or any creditors against all potential defendants. In order to coordinate and organize all potential claims in a comprehensive and efficient manner, and to coordinate with the work done to date by the Monitor effectively and in a cost-effective manner, I and the other Pension Representatives believe it is appropriate to appoint a Litigation Trustee for the benefit of all creditors of the estate of Sears Canada.

28. Since December, 2017, discussions commenced among major creditor groups of Sears Canada for the appointment of a Litigation Trustee to examine and, if deemed advisable, pursue claims for the benefit of the estate of Sears Canada and its creditors. I am advised by my counsel that a number of candidates were considered for the role and

it was decided by the major creditor groups in attendance that Hon. Frank Newbould, Q.C., a respected former Justice of the Ontario Superior Court and the former Team Leader of the Toronto Commercial List, would be the most appropriate person for this role.

29. The mandate of the Litigation Trustee is set out in the draft court order included in the motion materials as follows:

The Litigation Trustee shall be an officer of this Court, and is appointed for the purpose of investigating, considering, and reporting to the Court and the Committee (defined below) regarding any rights or claims (whether legal, equitable, statutory or otherwise) that the Sears Canada Entities, or any Litigation Trustee acting on behalf of creditors of any of the Sears Canada Entities, may have as against any parties, including but not limited to, current and former directors, officers, shareholders and advisors of any of the Sears Canada Entities (the “**Mandate**”). For greater certainty, the Mandate shall not include, and the Litigation Trustee shall have no role in determining, advising on, opposing, supporting, or articulating any claim of any creditor or stakeholder filed in this proceeding as part of any claims process or for distribution purposes from the estates of the Sears Canada Entities.

Qualifications of Hon. Frank Newbould, Q.C.

30. I am advised by our counsel and believe that The Hon. Mr. Newbould has an exemplary reputation as a Commercial List Judge and prior to that, as a commercial litigation lawyer. In addition to acting for clients (as a lawyer) and presiding (as a judge) over many commercial cases, he successfully presided over aspects of the Nortel CCAA proceeding, which was one of the most complex commercial insolvency cases in Canada. He also wrote an important decision on the law of oppression in a recent case (Essar Algoma CCAA) that was upheld by the Ontario Court of Appeal.

Our meeting with the Proposed Litigation Trustee

31. On January 24, 2018, I and the two other Pension Representatives, personally met with the Hon. Mr. Newbould to discuss his proposed appointment as a Litigation Trustee in these CCAA proceedings for the benefit of the creditors of the Sears Canada Entities. Based on our meeting, we found him to be highly qualified to act in the role of the Litigation Trustee.

32. For purposes of efficiency and to ensure that no potential claims and/or potential defendant(s) are overlooked or not pursued in a global and effective manner for the best outcome for all of the creditors of the estate, I and the other court appointed Pension Representatives strongly support the appointment of the Hon. Mr. Newbould as the Litigation Trustee.

33. I swear this Affidavit in support of a motion for the appointment of Mr. Newbould as Litigation Trustee and for no improper purpose.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario on February __, 2018.

A Commissioner for taking Affidavits, etc.

WILLIAM TURNER

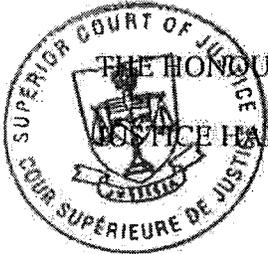
This is **Exhibit "A"** referred to in the
affidavit of William Turner
sworn before me, this 7th day of
February, 2018

.....

A Commissioner for taking affidavits,
etc.

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

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



THE HONOURABLE MR.)

THURSDAY, THE 13TH

JUSTICE HAINEY)

DAY OF JULY, 2017

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., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

(each, an “Applicant”, and collectively, the “Applicants”)

**REPRESENTATIVE COUNSEL ORDER FOR PENSIONS
AND POST-RETIREMENT BENEFITS**

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Billy Wong sworn June 22, 2017, and the Exhibits attached thereto (collectively, the “**Wong Affidavit**”), and the pre-filing report dated June 22, 2017 of FTI Consulting Canada Inc., in its capacity as the proposed Monitor of the Applicants, and on hearing the submissions of counsel for the Applicants and SearsConnect (the “**Partnership**”, and

collectively with the Applicants, the “**Sears Canada Entities**”), counsel to the Board of Directors of Sears Canada Inc. (“**SCI**”) and the Special Committee of the Board of Directors of SCI, counsel to the proposed Monitor, and on hearing from Representative Counsel (as defined below), and those other parties present:

APPOINTMENT OF REPRESENTATIVE COUNSEL

1. **THIS COURT ORDERS** that Koskie Minsky LLP (the “**Representative Counsel**”) is hereby appointed as representative counsel to represent the interests of the non-unionized retirees and non-unionized active and former employees of the Sears Canada Entities (collectively, the “**Represented Parties**”) in these CCAA proceedings, solely with respect to (a) entitlements of the Represented Parties under the Sears Pension Plan and the Supplemental Plan (each as defined in the Wong Affidavit), and any other pension or retirement plan of the Sears Canada Entities; and (b) Represented Parties’ other post-employment benefits entitlements (the “**Purpose**”). As used herein, “Represented Parties” shall (x) exclude the senior management of the Sears Canada Entities; and (y) include any person claiming an interest under or on behalf of a Represented Party.
2. **THIS COURT ORDERS** that Bill Turner, Ken Eady and Larry Moore (collectively, the “**Representatives**”) are hereby appointed as representatives of all Represented Parties (excluding the Opt-Out Individuals (as defined below), if any) in these CCAA proceedings, to act in the overall best interests of the Represented Parties, and to advise and where appropriate instruct the Representative Counsel, in every case, solely for the Purpose. The Representative Counsel may rely upon the advice, information and instructions received from the Representatives in carrying out the mandate of the Representative Counsel without further communications with or instructions from the Represented Parties, except as may be recommended by the Representative Counsel or ordered by this Court.

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

4. **THIS COURT ORDERS** that the Sears Canada Entities shall provide to the Representative Counsel, subject to confidentiality arrangements satisfactory to the Sears Canada Entities and the Monitor, without charge, the following information, documents and data (the “**Information**”) to only be used for the Purpose in the context of these CCAA proceedings,

- (a) the names, last known addresses and last known telephone numbers and e-mail addresses (if any) of the Represented Parties (excluding Opt-Out Individuals, if any, who have opted out prior to delivery of the Information); and
- (b) upon request of the Representative Counsel, such documents and data as may be reasonably relevant to matters relating to the issues affecting the Represented Parties in these CCAA proceedings provided that such Information is to be only used for the Purpose;

and that, in so doing, the Sears Canada Entities are not required to obtain express consent from such Represented Parties authorizing disclosure of the Information to the Representative Counsel for the Purpose and, further, in accordance with section 7(3) of the *Personal Information Protection and Electronic Documents Act*, this Order shall be

sufficient to authorize the disclosure of the Information for the Purpose without the knowledge or consent of the individual Represented Parties.

5. **THIS COURT ORDERS** that notice of the granting of this Order shall be provided by:
- (a) the Sears Canada Entities, with the assistance of the Monitor, delivering a letter from the Representative Counsel explaining the terms of this Order, which shall include the Monitor's website address where a full copy of this Order can be reviewed, to be delivered forthwith to the Represented Parties by ordinary mail to the physical address of each Represented Party as last shown in the books and records of the Sears Canada Entities, or by such other electronic means as is maintained by the Sears Canada Entities for the purposes of communicating directly with its non-unionized retirees and non-unionized active and former employees, and further that a copy of this Order be posted on the Monitor's website; and
 - (b) the Sears Canada Entities, with the assistance of the Monitor, publishing (i) in The Globe & Mail (National Edition), an English notice substantially in the form attached as Schedule "A" hereto (the "**English Notice**") within 14 days of the date of this Order; and (ii) in La Presse, the English Notice and a French notice substantially in the form attached as Schedule "B" hereto within 14 days of the date of this Order.
6. **THIS COURT ORDERS** that any individual Represented Party who does not wish to be represented by the Representatives and the Representative Counsel in these CCAA proceedings shall, within 30 days of the date of the letter pursuant to paragraph 5 above, notify the Monitor, in writing, that he or she is opting out of representation by the Representatives and the Representative Counsel by delivering to the Monitor an English or French opt-out notice in the form attached as

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Schedule "C" hereto (each an "**Opt-Out Notice**"), and shall thereafter not be bound by the actions of the Representatives or the Representative Counsel and shall represent himself or herself or be represented by any counsel that he or she may retain exclusively at his or her own expense in these CCAA proceedings (any such persons who deliver an Opt-Out Notice in compliance with the terms of this paragraph, "**Opt-Out Individuals**"). The Monitor shall deliver copies of all Opt-Out Notices received to the Sears Canada Entities and the Representative Counsel as soon as reasonably practicable.

7. **THIS COURT ORDERS** that the Representative Counsel shall be given notice of all motions to which the Represented Parties are entitled to receive notice in these CCAA proceedings and that it shall be entitled to represent those on whose behalf it is hereby appointed in all such proceedings.

8. **THIS COURT ORDERS** that Representative Counsel may retain such actuarial, financial and other advisors and assistants (collectively, the "**Advisors**") as may be reasonably necessary in connection with its duties as Representative Counsel in relation to the Purpose.

9. **THIS COURT ORDERS** that, subject to the terms of the letter agreement between SCI and the Representative Counsel dated as of June 22, 2017 (the "**Representative Counsel Letter**"), which Representative Counsel Letter has been approved by the Monitor, the Representative Counsel shall be paid its reasonable fees and disbursements (including disbursements relating to Advisors retained by the Representative Counsel) by the Sears Canada Entities on a monthly basis, forthwith upon rendering its accounts to the Sears Canada Entities for fulfilling its mandate in accordance with this Order, and subject to such redactions to the invoices as are necessary to maintain solicitor-client privilege between the Representative Counsel and the Represented

Parties. In the event of any disagreement with respect to such fees and disbursements, such disagreement may be remitted to this Court for determination.

10. **THIS COURT ORDERS** that the Representative Counsel shall be entitled to benefit of the Administration Charge (as defined in the Initial Order in these CCAA proceedings issued by the Court on June 22, 2017, as amended), as security for its professional fees and disbursements incurred at its standard rates and charges, up to an aggregate maximum amount of \$125,000.

11. **THIS COURT ORDERS** that the payments made by the Sears Canada Entities pursuant to this Order do not and will not constitute preferences, fraudulent conveyances, transfers of undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable laws.

12. **THIS COURT ORDERS** that the Representative Counsel is hereby authorized to take all steps and do all acts necessary or desirable to carry out the terms of this Order.

13. **THIS COURT ORDERS** that the Representative Counsel shall be at liberty, and is hereby authorized, at any time, to apply to this Court for advice and directions in respect of its appointment or the fulfillment of its duties in carrying out the provisions of this Order or any variation of the powers and duties of the Representative Counsel, which shall be brought on notice to the Sears Canada Entities, the Monitor, Wells Fargo Capital Finance Corporation Canada as administrative agent under the DIP Revolving Credit Agreement (as defined in the Wong Affidavit), GACP Finance Co., LLC as administrative agent under the DIP Term Credit Agreement (as defined in the Wong Affidavit), and other interested parties, unless this Court orders otherwise.

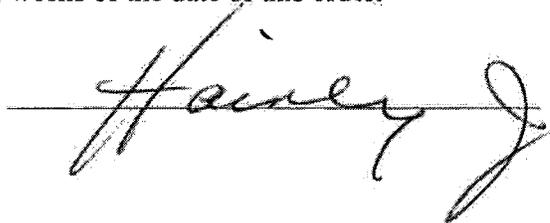
14. **THIS COURT ORDERS** that the Representative Counsel and the Representatives shall have no personal liability or obligations as a result of the performance of their duties in carrying

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out the provisions of this Order or any subsequent Orders in these CCAA proceedings, save and except for liability arising out of gross negligence or wilful misconduct.

15. **THIS COURT ORDERS** that no action or other proceeding may be commenced against the Representative Counsel or the Representatives in respect of the performance of their duties under this Order without leave of this Court on seven (7) days' notice to the Representative Counsel or the Representatives, as the case may be.

16. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order and in case, any which motion to be served within three (3) weeks of the date of this order.



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

JUL 13 2017

PER / PAR:



SCHEDULE "A"

ENGLISH NEWSPAPER NOTICE

SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT 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. (collectively referred to as the "Sears Canada Entities")

NOTICE TO RETIREES, FORMER EMPLOYEES and CERTAIN ACTIVE EMPLOYEES

On June 22, 2017, the Sears Canada Entities commenced court-supervised restructuring proceedings under the *Companies' Creditors Arrangement Act* ("CCAA") pursuant to an Order (the "Initial Order") of the Ontario Superior Court of Justice (Commercial List) (the "Court"). FTI Consulting Canada Inc. has been appointed by the Court as monitor in the Applicants' CCAA proceedings (the "Monitor").

TAKE NOTICE THAT pursuant to an Order of the Court:

1. Koskie Minsky LLP ("Representative Counsel") was appointed as representative counsel for the purpose of representing the interests of the non-unionized retirees and non-unionized active and former employees of the Sears Canada Entities, solely with respect to their entitlements under the Sears Canada Inc. Registered Retirement Plan or any other pension or retirement plan (collectively, the "Retirement Plans") provided by the Sears Canada Entities and of any individual with an entitlement to other post-employment benefits (including retiree health and dental benefits and retiree life insurance benefits) (collectively, the "Retiree Benefits") and of any person claiming an interest under or on behalf of such persons (collectively, the "Represented Parties") and to advise the Representatives with respect to Retirement Plans and Retiree Benefits in relation to the CCAA proceedings or any other forum related to this purpose.
2. Bill Turner, Ken Eady and Larry Moore (collectively, the "Representatives") were appointed to represent the overall best interests of the Represented Parties and to advise and instruct the Representative Counsel.
3. For more information visit Representative Counsel's website at www.kmlaw.ca/searsrepcounsel.

IF YOU DO NOT WISH TO BE REPRESENTED by the Representatives and the Representative Counsel, you must, before ●, 2017, complete the Opt-Out Notice (a copy of which can be obtained from the Representative Counsel's website) indicating that you wish to opt-out of such representation and send the completed Opt-Out Notice to:

FTI Consulting Canada Inc., in its capacity as Court-appointed Monitor of the Sears Canada Entities
 TD Waterhouse Tower
 79 Wellington Street West

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Suite 2010, P.O. Box 104
Toronto, ON, M4K 1G8
Fax: 416-649-8101

Attention: Jim Robinson

Persons requiring further information should review the website established by the Monitor
<http://cfcanada.fticonsulting.com/searscanada> or call the Monitor's Hotline at 1-855-649-8113.

SCHEDULE "B"

AVIS DANS LES JOURNAUX FRANÇAIS

SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., TRANSPORTS S.L.H. INC., THE CUT INC., SERVICES CLIENTÈLE SEARS INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., CENTRE DE REVÊTEMENTS DE SOL SEARS 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. ET 3339611 CANADA INC. (collectivement appelées les « entités Sears Canada »)

AVIS AUX RETRAITÉS, AUX ANCIENS EMPLOYÉS et À CERTAINS EMPLOYÉS ACTIFS

Le 22 juin 2017, les entités Sears Canada ont amorcé un processus de restructuration supervisé par un tribunal en vertu de la *Loi sur les arrangements avec les créanciers des compagnies* (la « LACC ») aux termes d'une ordonnance (l'« ordonnance initiale ») de la Cour supérieure de justice de l'Ontario (rôle commercial) (la « Cour »). La Cour a nommé FTI Consulting Canada Inc. à titre de contrôleur aux fins de l'instance en vertu de la LACC intentée par les requérants (le « contrôleur »).

AVIS EST PAR LES PRÉSENTES DONNÉ qu'aux termes d'une ordonnance de la Cour :

1. Le cabinet Koskie Minsky LLP (les « conseillers juridiques des représentants ») a été nommé à titre de conseiller juridique dans le but de défendre les intérêts des retraités non syndiqués et des anciens employés et des employés actifs non syndiqués des entités Sears Canada, uniquement en ce qui a trait à leurs droits aux termes du régime de retraite agréé de Sears Canada Inc. ou des autres régimes de retraite (collectivement, les « régimes de retraite ») offerts par les entités Sears Canada, des personnes physiques qui ont droit à d'autres avantages postérieurs à la retraite (dont l'assurance santé et dentaire et l'assurance-vie pour les retraités) (collectivement, les « avantages des retraités ») et des personnes physiques qui revendique un droit par l'intermédiaire de ces personnes physiques ou au nom de celles-ci (collectivement, les « parties représentées »), ainsi que pour conseiller les représentants à l'égard des régimes de retraite et des avantages des retraités en lien avec l'instance en vertu de la LACC ou toute autre procédure portant sur cette question.

2. Bill Turner, Ken Eady et Larry Moore (collectivement, les « représentants ») ont été nommés pour défendre les intérêts fondamentaux des parties représentées et pour donner des conseils et des directives aux conseillers juridiques des représentants.

3. Pour de plus amples renseignements, veuillez consulter le site Web des conseillers juridiques des représentants à <https://kmlaw.ca/cases/sears-canada/?lang=fr>.

SI VOUS NE SOUHAITEZ PAS ÊTRE REPRÉSENTÉ par les représentants et les conseillers juridiques des représentants, vous devez, avant le ● 2017, remplir l'Avis de retrait (dont vous trouverez copie sur le site Web des conseillers juridiques des représentants) sur lequel vous aurez indiqué que vous ne souhaitez pas être représenté, et faire parvenir cet Avis de retrait rempli à :

FTI Consulting Canada Inc., en sa qualité de contrôleur des entités Sears Canada nommé par la Cour
 TD Waterhouse Tower
 79 Wellington Street West
 Suite 2010, P.O. Box 104
 Toronto (Ontario) M4K 1G8
 Téléc. : 416 649-8101

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À l'attention de Jim Robinson

Les personnes qui souhaitent obtenir de plus amples renseignements devraient consulter le site Web que le contrôleur a créé à <http://cfcanada.fticonsulting.com/scarscanada>, ou composer le 1 855 649-8113 pour obtenir la ligne d'aide du contrôleur.

SCHEDULE "C"

FORM OF OPT-OUT NOTICE

To: **FTI CONSULTING CANADA INC.**, in its capacity as Court-appointed Monitor of the Sears Canada Entities
 TD Waterhouse Tower
 79 Wellington Street West
 Suite 2010, P.O. Box 104
 Toronto, ON, M4K 1G8
 Fax: 416-649-8101

Attention: Jim Robinson

I hereby provide written notice that I do not wish to be represented by Koskie Minsky LLP, representative counsel (the "Representative Counsel") for the non-unionized employees and retirees of Sears Canada Inc. and certain of its subsidiaries (collectively, the "Sears Canada Entities") in their proceedings under the *Companies' Creditors Arrangement Act* (Court File No. CV-17-11846-00CL) (the "CCAA Proceedings"). I understand that by opting out of representation if I wish to take part in the CCAA Proceedings I would need to do so as an independent party. I am responsible for retaining my own legal counsel should I choose to do so, and that I would be personally liable for the costs of my own legal representation.

I understand that a copy of this Opt-Out Form will be provided to the Representative Counsel and to the Sears Canada Entities.

 Witness

 Signature

Name [please print]: _____

Address: _____

Telephone: _____

Note: To opt out, this form must be completed and received at the above address on or before _____, 2017.

ANNEXE "C"

AVIS DE RETRAIT

À : FTI CONSULTING CANADA INC., en sa qualité de contrôleur des entités Sears Canada
 nommé par la Cour
 TD Waterhouse Tower
 79 Wellington Street West
 Suite 2010, P.O. Box 104
 Toronto (Ontario) M4K 1G8
 Téléc. : 416 649-8101

À l'attention de Jim Robinson

Par les présentes, je vous avise que je ne souhaite pas être représenté par le cabinet Koskie Minsky LLP, conseillers juridiques des représentants (les « conseillers juridiques des représentants ») qui représentent les employés et les retraités non syndiqués de Sears Canada Inc. et de certaines de ses filiales (collectivement, les « entités Sears Canada ») dans le cadre l'instance intentée en vertu de la *Loi sur les arrangements avec les créanciers des compagnies* (n° de dossier de la Cour : CV-17-11846-00CL) (l'« instance en vertu de la LACC »). Je comprends que si je refuse d'être ainsi représenté et que je souhaite prendre part à l'instance en vertu de la LACC, je devrai le faire à titre indépendant. Je devrai alors, le cas échéant, retenir les services de mes propres conseillers juridiques, et je serai personnellement responsable des frais de ma propre représentation juridique.

Je comprends qu'une copie du présent avis de retrait sera remise aux conseillers juridiques des représentants et aux entités Sears Canada.

Témoïn

Signature

Nom [en caractères d'imprimerie] : _____

Adresse : _____

Téléphone : _____

Note : Pour refuser les services représentation, le présent formulaire doit être rempli et reçu à l'adresse qui précède au plus tard le _____ 2017.

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., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT 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., INITIUM 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. (collectively, the "Applicants")

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

REPRESENTATIVE COUNSEL ORDER

OSLER, HOSKIN & HARCOURT LLP
Box 50, 1 First Canadian Place
Toronto, Canada M5X 1B8

Marc Wasserman (LSUC #: 44066M)
Tel: 416.862.4908

Jeremy Dacks (LSUC #: 41851R)
Tel: 416.862.4923

Michael De Lellis (LSUC #: 48038U)
Tel: 416.862.5997

Lawyers for the Applicants

This is **Exhibit "B"** referred to in the
affidavit of William Turner
sworn before me, this 7th day of
February, 2018

.....

A Commissioner for taking affidavits,
etc.

December 8, 2017

«First_checked» «Last_checked»
 «Street_checked»
 «City_checked» «Prov_checked» «Postal_checked»
 «Country_checked»

Dear Member/Former Member:

**Re: Sears Canada Inc. Registered Retirement Plan (the "Plan") Registration No. 0360065
 Defined Benefit Component**

Morneau Shepell was appointed as the Administrator of the above Plan by Ontario's Superintendent of Financial Services ("the Superintendent") effective October 16, 2017, to administer the wind up of the Plan. The Superintendent made this appointment in accordance with the provisions of subsection 8(1.1) of the *Pension Benefits Act*, R.S.O. 1990, c.P.8 (the "Act").

Role of Administrator

The appointment of Morneau Shepell as Administrator places the operation of all aspects of the Plan under the control of Morneau Shepell. The Administrator is responsible for administering the Plan and processing the wind up of the Plan, as ordered by the Superintendent, as well as ensuring that all Plan members are treated fairly in accordance with the Plan documents, applicable pension legislation and regulations.

Wind Up Date

On November 10, 2017, the Superintendent of Financial Services issued a Notice of Intended Decision ("NOID") to formally wind up the Plan effective October 1, 2017. The NOID provides that:

- all members of the Plan who terminate employment on or after June 13, 2017 have their pension benefit entitlement determined under the wind up of the Plan; and
- contributions to the Defined Contribution ("DC") component of the Plan be allowed to continue after October 1, 2017 for members still employed with Sears in accordance with the Plan terms until all or substantially all of the members of the DC component terminate employment with Sears Canada Inc.

The Wind Up Process

We are in the early stages of our administration, which includes gathering documentation and records, informing members and interested parties of our appointment, and assuming responsibilities for the administration of the Plan.

Due to legislative requirements, the wind up of a pension plan and the distribution of benefits to plan members can be a lengthy process.

In our capacity as the Administrator, we will correspond with you from time to time and provide you with updates on the wind up process. We may also be collecting some personal information about you to determine your benefit entitlement for the purposes of administering the wind up of the Plan. We request that you please keep us informed of any changes in your mailing address or marital status, by contacting us as shown near the end of this letter.

Active/Suspended Plan Members

Date of Termination of Employment Before Issuance of NOID

If your date of termination of employment with Sears was prior to November 10, 2017, the date the Superintendent issued the NOID to formally wind up the Plan, you will receive a Statement of Benefits outlining your pension benefit entitlements and the options available to you from the DB component of the Plan. If you elect to transfer your pension benefit entitlement out of the Plan on a lump-sum basis, the lump-sum transfer will be limited to 81% of your commuted value. If you elect a monthly pension payment, your monthly pension amount will be limited to 81% of your accrued monthly pension. Once the wind up report is approved by the Superintendent and the final wind up funded ratio of the Plan is known, we will notify you if any amounts are owing to you from the Plan in addition to any payments you may have already received.

Date of Termination of Employment After Issuance of NOID

If your date of termination of employment with Sears was on or after November 10, 2017, the date the Superintendent issued the NOID to formally wind up the Plan, you may request to receive a termination/retirement statement by contacting us, or submitting a "Request for Interim Termination/Retirement Form" (or "Request for Interim Termination/Temporary Monthly Pension Form" for Plan members employed in Quebec) that is available on our website www.pensionwindups.morneaushepell.com.

The Superintendent has approved the payment of commuted value lump-sum transfers and accrued monthly pensions from the DB component of the Plan prior to the approval of the wind up report for Plan members terminating employment on or after November 10, 2017. The payments will be made at a reduced funded level, based on conservative assumptions. Once the wind up report for the DB component is approved by the Superintendent and the final wind up funded ratio of the Plan is known, we will notify you if any amounts are owing to you from the Plan in addition the any payments you may have already received.

Members with a Deferred Vested Pension Entitlement

Immediate Retirement – Non-Québec Members

If you are a former Plan member with a deferred vested pension entitlement from the DB component, you can commence interim monthly pension payments at a reduced funded level, based on conservative assumptions, if you are eligible and wish to elect to receive an immediate pension. For non-Québec members, if you are eligible for an early or normal retirement pension and are interested in commencing your pension, please contact us or submit a "Request for Retirement Quote Form" that is available on our website www.pensionwindups.morneaushepell.com. We have received the necessary approval from the Superintendent to commence interim monthly pension payments at a level of benefits that can be

supported by the Plan's assets. You can apply at a later date to commence your monthly pension, but you will only be allowed to elect a pension commencing after the date of your written request.

Please note: if you elect to start receiving a monthly retirement pension at this time, you will not be offered the option to transfer your entitlement into a locked-in retirement account from the DB component of the Plan upon approval of the Wind Up Report.

Immediate Retirement – Québec Members

Québec legislation does not allow a non-retired member to commence monthly pension payments from a pension plan that is being wound up. However, we will offer to Québec members who are eligible for retirement the option of receiving temporary monthly payments from the Plan during the wind up process. Québec rules provide that any such advance payments, plus interest on advance payments, be deducted from any remaining lump sum payment at the end of the wind up process. Québec members who are retirement eligible and are interested in receiving temporary monthly payments, may apply to receive payments from the Plan by contacting us or submitting a "Request for Temporary Monthly Payments Form" that is available on our website www.pensionwindups.morneaushepell.com.

Retired Plan Members Receiving a Monthly Pension

Payments to Retirees

Upon completion of a preliminary valuation of the Plans' s funded status and a determination of the Plan's estimated wind up funded ratio, we will review records for all retired members who were put into pay prior to our appointment. Monthly pension payments will then be reduced, where necessary, to reflect the Plan's estimated wind up funded ratio. We will notify pensioners in writing, prior to any cut-backs to their monthly pensions.

Post-retirement Inflation Adjustment

The Plan provides an annual inflation adjustment made to pensions in pay for certain retired Plan members in the amount of 0.5% of the pension benefit of the immediately preceding year. The annual inflation adjustment is made on the first of January.

In light of the issuance of the NOID by the Superintendent to wind up the Plan effective October 1, 2017, we have determined that the January 1, 2018 annual inflation adjustment will not be provided.

The basis of this decision is as follows:

- The Plan is not fully funded as the estimated liabilities exceed the assets at the recommended wind up date.
- With respect to members who were employed in Ontario - the Administrator will submit a request to the Superintendent for an allocation from the Pension Benefits Guarantee Fund (PBGF). We anticipate the Superintendent will order the PBGF to apply to the Plan. Section 85 of the *Pension Benefits Act* excludes inflation adjustments occurring after the wind up date from benefits payable to Ontario members which are covered by the PBGF.
- With respect to members who were employed in Nova Scotia - inflation adjustments occurring after the wind up date are not payable as these benefits are not required to be pre-funded on a solvency basis.

- All other jurisdictions - in the coming months pension benefits will be reduced to reflect the Plan's estimated wind up funded ratio. Any entitlement to inflation increases will be taken into account when Plan liabilities are settled after the Wind Up Report is approved.

Rules for Retirees in Québec

Québec's pension legislation includes provisions that allow Québec retirees whose benefits have been reduced following the termination of their pension plan due to their employer's insolvency to request that their pension be administered by the Retraite Québec for a maximum period of ten years. After approval of the Wind Up Report, Québec retirees will be given the opportunity to elect to transfer their pension entitlement to the Retraite Québec.

Upcoming Change in Monthly Pension Payer

The monthly payroll for the retiree pension payments is currently prepared by Sears and the payments are processed by RBC. CIBC Mellon is the custodian of the Plan assets. In light of the Plan wind up, we have initiated the transition of the monthly pension payroll from Sears to CIBC Mellon with an anticipated effective date of March 1, 2018. We will write to you in advance of the retiree payroll transition to provide you with more information on the transition.

Pension Benefits Guarantee Fund (the "PBGF") (applicable only to members under Ontario jurisdiction)

As part of the wind up process, we will review Plan and membership documentation and file an application requesting that the Superintendent declare the Plan are eligible for coverage under the Pension Benefits Guarantee Fund.

The PBGF is an insurance-type compensation fund that provides limited protection for pension benefits of Ontario members in under-funded pension plans in circumstances set out in the Act and the Regulations made thereunder.

Defined Contribution ("DC") Component

If you also have an entitlement under the DC component of the Plan, we will be sending you a separate communication with additional information that is specific to your DC pension.

For more information

If you have any questions regarding the administration of your Plan, please call us at **1-888-841-8956**, from Monday to Friday, between 9:00 a.m. and 5:00 p.m. (Eastern time). You can also email us at searspension@morneaushepell.com. For more information regarding the wind up process, please visit our website at www.pensionwindups.morneaushepell.com.

Yours truly,

Morneau Shepell Ltd.

In its capacity as Administrator for the
Sears Canada Inc. Registered Retirement Plan
and not in its personal capacity.

This is **Exhibit "C"** referred to in the
affidavit of William Turner
sworn before me, this 7th day of
February, 2018

.....

A Commissioner for taking affidavits,
etc.



October 26, 2017

Via E-mail

Andrew J. Hatnay
 Direct Dial: 416-595-2083
 Direct Fax: 416-204-2872
 ahatnay@kmlaw.ca

FTI Consulting
 TD South Tower, 79 Wellington Street West
 Toronto Dominion Centre, Suite 2010 P.O. Box 104
 Toronto ON M5K 1G8

ATTENTION: Paul Bishop and Greg Watson

AND TO: The Service List

Dear Sirs/Mesdames:

Re: Sears Canada Inc. - CCAA proceedings
The Sears Canada Inc. Registered Retirement Plan, Registration Number 0360065
("Sears Canada Plan")
Our File No. 17/1312

We are Representative Counsel to the non-union active and retired employees of Sears Canada who have earned pension entitlements to be paid to them from the Sears Canada Plan.

It is now confirmed that the company is liquidating and not restructuring. The Ontario Superintendent of Financial Services has appointed the firm of Morneau Shepell to take over as administrator of the Sears Canada Plan. The wind up of the Sears Canada Plan is inevitable.

As set out in the company's materials filed in the CCAA proceedings, the Sears Canada Plan is underfunded by approximately \$270 million on its wind up. If the Plan is wound up in its current underfunded state, it will result in reductions to the monthly pension benefits of retirees. Such reductions will cause financial hardship for many Sears retirees across Canada, who as you know, have already lost their earned health and life insurance benefits.

In order to avoid reductions to monthly pension benefits, and although no claims process has yet commenced in the CCAA proceedings, we are writing to advise that under sections 57(3) and (4) of the Ontario *Pension Benefits Act*, R.S.O. 1990, c. P.-8 ("PBA"), section 30(7) of the Ontario *Personal Property Security Act*, R.S.O. 1990, c. P.10 ("PPSA") and as confirmed by the

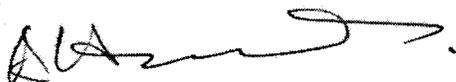
Supreme Court of Canada in *Indalex*, our clients are the beneficiaries of statutory deemed trusts for the amounts owing by Sears Canada to the Sears Canada Plan, including unpaid special payments and the wind up deficit. As such, they are entitled to first priority recovery for those amounts ahead of the claims of all other creditors immediately after the CCAA- court ordered changes.

Please consider this letter as a claim by the pension plan beneficiaries against Sears Canada for the amount of the unpaid special payments and wind up deficit, and all other amounts owing to the plan by Sears Canada. Please make interim distributions for the benefit of the Sears Canada Plan as funds become available, allowing for the appropriate reserves for the CCAA-court ordered charges.

If you or any other party intends to object to the priority position of the pension plan beneficiaries, please let us know and we will schedule an appointment before the CCAA Judge for a motion for the appropriate determinations.

Yours truly,

KOSKIE MINSKY LLP



Andrew J. Hatnay
AJH:hh/encl

- c. Client Committee
Gus Tertigas, *Ernst & Young Inc.*
Orestes Pasparakis, Alan Merskey, Evan Cobb, *Norton Rose LLP*
Mark Zigler, *Koskie Minsky LLP*

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

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

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**AFFIDAVIT OF WILLIAM TURNER
(SWORN ON FEBRUARY , 2018)**

KOSKIE MINSKY LLP

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

Andrew J. Hatnay – LSUC No. 31885W

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

Email: ahatnay@kmlaw.ca

Mark Zigler – LSUC No. 19757B

Tel: 416-595-2090 / Fax: 416-204-2877

Email: mzigler@kmlaw.ca

Representative Counsel for the Non-Unionized
Retirees and Non-Unionized Active and Former
Employees of the Sears Canada Entities

TAB 3

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

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

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SEARS CANADA INC.,
CORBEIL ÉLECTRIQUE 9370-2751 QUEBEC INC., S.L.H. TRANSPORT 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.**

CONSENT

Frank Newbould, Q.C., hereby agrees to act as Litigation Trustee in accordance with an Order of this Court issued in this proceeding.

Dated at Toronto this 9th day of February, 2018.

Per:

Name:



Frank Newbould, Q.C.

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., CORBEIL ÉLECTRIQUE9370-2751
QUEBEC INC., S.L.H. TRANSPORT191020 CANADA INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS
SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES
INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041
ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceedings commenced at Toronto

CONSENT
(LITIGATION TRUSTEE)

KOSKIE MINSKY LLP

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

Andrew J. Hatnay (LSUC# 31885W)

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

Email: ahatnay@kmlaw.ca

Mark Zigler (LSUC# 19757B)

Tel: 416-595-2090 / Fax: 416-204-2877

Email: mzigler@kmlaw.ca

Representative Counsel for the Retirees of Sears Canada

TAB 4

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

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

AFFIDAVIT OF WILLIAM TURNER
(Sworn on August 11, 2017)

I, **WILLIAM TURNER**, of the City of Toronto, in the Province of Ontario,

MAKE OATH AND SAY:

My Background

1. I am a retiree of Sears Canada and one of the Former Employee Representatives in this proceeding. I started working at Simpsons-Sears Limited, the predecessor company of Sears Canada, in May 1966 as a Trainee in the Ottawa Carlingwood store and was transferred shortly thereafter to the company headquarters in Toronto, where I spent the balance of my 36 year career in merchandising. From 1992 to 1997, I served

on the Board of Director of Sears Canada. I retired from Sears Canada in 2002 as the President of Merchandising, Marketing, and Logistics.

2. After 36 years of service with Sears Canada, I am very familiar with the business of Sears Canada and the retail industry in general.

3. In 2009, I joined the original Sears Canada retiree group, SRG, which merged with another retiree group called ASCR in 2012 to collectively form the Store and Catalogue Retiree Group (“**SCRG**”). SCRG is the organization of Sears Canada retirees with currently over 6,000 Sears retirees as members. The total Sears retiree population is over 18,000 individuals.

4. SCRG was formed to protect pension benefits and health benefits of retired employees of Sears Canada. I have been actively involved with SCRG since its formation, and I am currently the organization's President. Since inception, SCRG has been working with Koskie Minsky LLP, who on June 22, 2017 was appointed by the court as the Representative Counsel for all retirees in the Sears Canada CCAA proceeding.

5. As a result of my employment experience and my involvement as the President of SCRG, I have knowledge of the matters herein deposed. Where I make statements in this affidavit which are not within my personal knowledge, I have indicated the source of that information and I believe such information to be true. Where reference is made herein to the "company" it applies to my former employer Sears Canada.

The pensions and benefits are the deferred wages of Sears employees

6. In consideration for my 36 years of service with Sears Canada, I earned a pension benefit to be paid to me on my retirement that is currently payable from the Sears Canada Inc. Registered Retirement Plan (Registration No. 0360065) (the "**Sears Canada Plan**"). I also earned a supplemental pension benefit paid to me from a Retirement Compensation Arrangement trust fund established by Sears Canada in 2006 for certain senior management employees.

7. Joining the Sears Canada Plan was a mandatory condition of employment and employees were required to make regular contributions from their pay to the pension plan. This requirement had the effect of reducing the RRSP contribution room of employees, leaving us highly dependent on the Sears Canada Plan for our retirement income.

8. The Sears Canada Plan was commenced in January 1976 for the purpose of providing *defined benefit* pensions to employees on their retirement (the "**DB Component**"). The DB Component operates by establishing a formula pursuant to which a monthly pension benefit is calculated at the time of the retirement of an employee. During the operation of the plan, an actuary is required to perform regular valuations and to advise the company on the amount that it must contribute to the plan so that the plan can pay the monthly benefits. In addition, employees were also required to regularly contribute a portion of their pay to the Sears Canada Plan.

9. In June 2008, Sears Canada amended the Sears Canada Plan to add a *defined contribution* component (the "**DC Component**"). The DC Component operates akin to a

collection of RRSP-type accounts for the employees, with the company making fixed contributions as a percentage of employees' pay to a DC account for each employee. The employees in turn invest their funds in investment vehicles in an effort to grow a lump sum to be used on retirement. The company's contributions are fixed and no actuarial valuation reports are required for the funding of the DC Component.

10. After June 30, 2008, all Sears Canada employees could only accrue future benefits under the DC Component. Pension benefit accruals for employees who had been accruing a benefit under the DB Component were frozen as of June 30, 2008. These employees retained their defined benefit pension that they earned up to June 30, 2008, which would be paid to them as a monthly defined benefit pension when they retired from Sears Canada (in addition to any amount they earned under the DC Component, if also applicable to them).

11. The most recent actuarial valuation report for the Sears Pension Plan as at December 31, 2015 reports that the plan is underfunded by \$266.8 million on its wind up. This means that Sears Canada is required to pay that amount into the plan so that the DB Component can pay the full amount of benefits earned by the pension plan members. If that amount is not paid on wind up, the retirees' monthly pension benefits will have to be reduced, and financial hardship to many, if not all, the Sears Canada retirees will result.

12. The retirees of Sears Canada are both a very significant and vulnerable creditor and stakeholder group.

The vital importance of pension benefits for retirees

13. Pension benefits are critical to the livelihoods of retirees in their elderly years. A large proportion of Sears retirees have low monthly pension benefits and rely on each monthly payment to pay their bills each month.

14. The Sears Canada Pension Plan is currently underfunded by \$266 million on a wind-up basis.

Importance of a Wind-Up

15. I am advised by our counsel and believe that under s. 57(4) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, and s. 30(7) of the *Personal Property Security Act*, R.S.O. 1990, c. P. 10, a deemed trust exists in favour of the pension plan beneficiaries for the amount owing and not paid by the employer to the pension plan on its wind up. The PBA deemed trust operates as a priority over other creditors, including secured creditors, over certain assets of the company. It is crucial that the wind up occur as soon as possible to secure the deemed trust priority in favour of the pension plan beneficiaries.

The Sears Canada CCAA Proceedings

16. On June 22, 2017 at 8:00 a.m., Sears Canada applied for protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C 1985. C. C-36 ("CCAA") by order of Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List). The application materials were not provided to the retirees' counsel until the morning of the Application.

17. On July 13, 2017, at 9:00 a.m., the Comeback Motion was heard by Justice Hainey. An order was issued to amend the Initial Order to allow the DIP Lenders to make priority payments on pre-CCAA filing loans using cash on hand and post-filing receipts. An order was also issued approving the sale and investor solicitation process.

18. On July 18, 2017, at 10:00 a.m. the liquidation sale approval order was issued by Justice Conway. This gives the company the authority to engage agents to liquidate inventory and fixtures, furniture, and equipment at stores designated for closure. The company also identified 59 stores across Canada, and liquidation procedures are set to begin on July 21, 2017 for 54 of those stores. This is set to further deplete the remaining Sears assets, to the benefit of the creditors currently in a priority position.

19. As a result of these proceedings, all payments and contributions to the pension plan are set to cease on October 1, 2017.

The rise and fall of Sears Canada

20. Simpsons-Sears Limited, the predecessor company of Sears Canada, was formed in 1953 as a partnership between Sears Roebuck, Co. of Chicago and The Robert Simpson Company of Toronto.

21. The pension, profit sharing, reward and health benefits plans were developed for our employees during those years for two (2) main reasons:

- (a) To make Sears Canada competitive in attracting and keeping good employees.

The philosophy was that an employee may make more money elsewhere but Sears Canada offered the guarantee of a secure future with a guaranteed retirement income, benefits, and employee discount after retirement, plus family protection through spousal continuance of your pension after you pass.

- (b) To succeed financially with opportunities for continued growth.

The philosophy was that happy, satisfied customers will become loyal customers. Satisfied customers plus secure, well-trained employees equals financial success and the ingredients for growth.

22. Historically, Sears Canada had a culture that not only brought the company success but enriched the lives of its employees. Its philosophy was also “to care about and take care of your employees and they will care about the company and take excellent care of your customers”. Our corporate vision was to "make Sears a great place to shop and a great place to work."

23. All that changed in 2005 when U.S. hedge fund manager Edward Lampert became the major shareholder of Sears Canada and eventually the Chief Executive Officer of its ultimate U.S. corporate parent, Sears Holdings. Since then, Sears Canada has steadily deteriorated and engaged in significant asset sales, declared substantial dividends to shareholders, and drastically reduced its investment in the company. This left the company insolvent with very few remaining assets.

The collapse of Sears Canada

24. In the years following the change in control to Edward Lampert, SCRG has been very concerned about Sears Canada's steady financial deterioration. Attached hereto as **Exhibit "A"** is a timeline setting out the efforts that SCRG has taken to protect the pension and benefits of Sears retirees over the past several years.

25. In extensive discussions and correspondences with the Federal and Ontario governments, the Financial Services Commission of Ontario (FSCO), and with Sears Canada, SCRG raised its serious concerns regarding the underfunding of the Sears Canada Pension Plan, the company's business strategy, the continuing decline in the company's performance, and the inevitable financial collapse of Sears Canada.

26. Sears Canada has deteriorated dramatically due to significant asset stripping without capitalizing on any investment opportunities. Despite the company's financial deterioration, the board of directors continued to approve payment of substantial dividends and capital distributions to its shareholders. Sears Canada has paid over \$3.4 billion to shareholders since 2004, and in so doing, placed the security of retirees' pension and health benefits at risk. On January 30, 2013, I wrote to Calvin McDonald, the President and Chief Executive Officer of Sears Canada at the time, expressing SCRG's growing concern for the financial health of Sears Canada. Attached hereto as **Exhibit "B"** is a copy of the correspondence dated January 30, 2013.

27. On January 20, 2014, through our legal counsel, we demanded that dividend payments cease. Attached hereto as **Exhibit "C"** is a copy of said letter. After that letter, I believe that Sears Canada stopped issuing any further dividends.

28. As early as November 2014, SCRG, through our legal counsel, has been requesting both the company and the Superintendent of Financial Services to wind up the Sears Canada Plan. Attached hereto as **Exhibit "D"** and **Exhibit "E"** are copies of the correspondence to Torys LLP dated November 6, 2014, and the response from Torys LLP dated November 21, 2014, respectively. When SCRG was met with a dismissive response from counsel for Sears Canada, we then wrote to FSCO requesting that it orders the wind up of the Sears Canada Plan. For the past 2.5 years, we have been in discussions with the company and FSCO on many occasions requesting the wind up of the plan. Attached hereto as **Exhibits "F", "G", "H", "I", "J", "K", "L", "M", "N", "O", "P", "Q", "R", "S", "T", "U", "V", "W"**, are copies of the correspondences between Koskie Minsky LLP and Sears Canada counsel and FSCO requesting a wind up of the Sears Canada Plan.

29. Most recently, on May 19, 2017, our legal counsel wrote to counsel for Sears Canada and requested that the company wind up the Sears Canada Plan prior to it applying for CCAA protection or becoming involved in any other insolvency proceeding. Attached hereto as **Exhibit "X"** is a copy of the correspondence dated May 19, 2017 from Andrew Hatnay of Koskie Minsky LLP to Marc Wasserman of Osler, Hoskin & Harcourt LLP, and attached hereto as **Exhibit "Y"**, is a copy of the reply letter dated June 5, 2017 from Marc Wasserman to Andrew Hatnay.

30. Sears has already sought to suspend its required special payments to the Sears Canada Plan but has not sought to wind it up and trigger an obligation to fund the shortfall. If there is any possibility for restructuring the business in these CCAA

proceedings, it is inconceivable that any purchaser will take over the administration and liabilities of the pension plan or continue to pay pension benefits.

31. Over the past decade, Sears Canada has struggled in the face of stiff competition from other retail businesses. As a result, store sales at Sears Canada have been consistently falling. It began selling assets, closing stores, and cutting jobs across Canada in an effort to turn around its struggling business. Sears Canada's total revenue has drastically declined from \$6.2 billion in 2004 to \$2.6 billion in 2016. Sears Canada has reported six consecutive operating losses from 2011 to 2016.

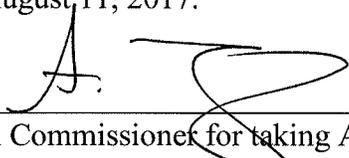
32. Prior to Sears Canada's CCAA filing, the company had already sold its most valuable properties and assets. Further, after June 22, 2017, I am aware that the company has announced the closing of 20 full-line locations, plus 15 "Sears Home" Stores, 10 "Sears outlet" and 14 "Sears Hometown" locations.

33. Sears has not attracted new customers, and its customer base is shrinking. Given the financial deterioration of the company over the past several years, I do not believe that it is possible for Sears Canada to restructure and operate as a going-concern business in a manner that is similar to the existing business. In my opinion, I have no confidence that current management, without significant change, can reverse the situation. Indeed, there is a high likelihood that it may not survive at all. In such circumstances, the wind up of the Sears Canada Plan is inevitable.

34. I am advised and have spoken with Ken Eady and Larry Moore, the Vice-President and Director of SCRG, that they are in agreement with the statements contained in this affidavit.

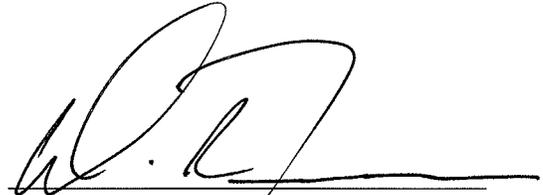
35. I swear this affidavit in support of the motion by Representative Counsel to wind up the Sears Canada Plan.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario on August 11, 2017.



A Commissioner for taking Affidavits, etc.

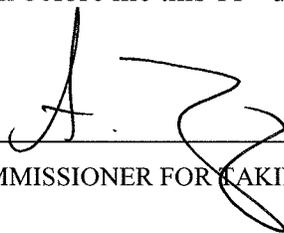
AMY TANG



WILLIAM TURNER

This is **Exhibit "A"**

referred to in the Affidavit of William Turner
sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a series of loops and a long horizontal stroke.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

THE STEPS TAKEN BY SCRG TO PROTECT SEARS RETIREES PENSION AND BENEFITS

1. For many years our SCRG Board has worked with Sears Canada in an attempt to protect retiree Pension and Benefits.
2. SCRG has supported Sears, in their business endeavors by encouraging our members to shop at Sears and to be positive when speaking about Sears.
3. **2012 and 2014:** SCRG has written to or met with Sears on numerous occasions to express our concerns regarding the security of our pensions and health and dental plans. Sears position is that they will meet their "legal obligations." Sears has failed to agree to our repeated requests or to change the strategy that threatens our pension and benefits.
4. **May 14, 2013:** SCRG wrote to FSCO expressing our concern about Sears business strategy and our underfunded pension plan.
5. **September 24, 2013:** SCRG met with a number of FSCO's management. SCRG expressed our concerns regarding Sears business strategy and our underfunded pension plan. (FSCO, while interested and concerned, informed us that these issues were outside their mandate).
6. **October 2, 2013:** SCRG emailed the Director of Policy in the Premier's office our concerns regarding Sears business strategy and our underfunded pension plan.
7. **January 7, 2014:** SCRG wrote to Premier Wynne with our concerns regarding Sears business strategy and our underfunded pension plan.
8. **January 15, 2014:** SCRG wrote to all Ontario MPP's informing them of our concerns regarding Sears business strategy and our underfunded pension plan.
9. **February 18th 2014:** SCRG received a letter from Minister Sousa. This letter opened the door to a meeting with the Minister's Director of Policy.
10. **February 2014:** Sears significantly reduced the value of the retiree health and dental plan and made changes to defined benefit pension plan (inflation protection) without discussion or consultation.
11. **July 16, 2014:** SCRG met with The Director of Policy for the Minister of Finance in Ontario.
12. **Nov 6th 2014:** SCRG requests that Sears windup SRRP.
13. **Nov 21st 2014:** Sears replies with a dismissive response.
14. **Feb 27th 2015:** - SCRG requests FSCO to windup SRRP.
15. **Mar 24th 2015:** SCRG makes presentation to FSCO to support plan windup.
16. **May 4th 2015:** SCRG made further submission to FSCO re windup.

THE STEPS TAKEN BY SCRG TO PROTECT SEARS RETIREES PENSION AND BENEFITS

17. **May 5th 2015:** Meeting with SCRG, Sears and FSCO to discuss windup.
18. **June 5th 2015:** SCRG made further submission to FSCO re windup.
19. **June 22th 2015:** Sears reply to our submission on windup.
20. **July 7th 2015:** SCRG makes further submission to FSCO in support windup.
21. **Sept 11th 2015:** Meeting with Sears and FSCO.
22. **Nov 6th 2015:** Letter to Sears from FSCO with request of documents.
23. **Nov 27th 2015:** Letter to Sears from SCRG with request not to pay dividends.
24. **Dec 8th 2015:** Letter to SCRG from Sears, they do not plan to pay dividends.
25. **Dec 9th 2015:** Letter to FSCO from Sears, only some of requested documents included and request for meeting.
26. **Jan 15th 2016:** Letter to Sears – Tory's reasserting their position and request for documents.
27. **Feb 16th 2016:** Letter to FSCO from Sears with majority of documents. Request for meeting without SCRG.
28. **March 1st 2016:** Letter to FSCO from SCRG Requesting document and stating we wish to be part of all meetings.
29. **March 10th 2016:** Email to FSCO from KM / SCRG agreeing to sit out the meeting with Sears re partial plan windup with provisions.
30. **March 29th 2016:** Meeting FSCO and Sears to share their preliminary findings on the partial wind up issue.
31. **May 6th 2016:** Sears give an in adequate response.
32. **June 8th 2016:** Sears Chairman to meet with FSCO,
33. **June 14th 2016:** SCRG meets with Sears Chairman for lunch. He asked that SCRG back off asking for wind up for a year.
34. **Sept 12th 2016:** SCRG letter to FSCO further request for plan windup.
35. **Sept 27th 2016:** Meeting between Sears and FSCO took placed.
36. **Oct 20th 2016:** Further letter to FSCO requesting wind up.

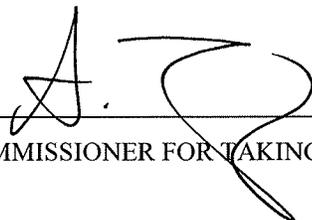
Monday, July-10-17

THE STEPS TAKEN BY SCRG TO PROTECT SEARS RETIREES PENSION AND BENEFITS

37. **Nov 7th 2016:** Sears and FSCO share draft Term sheet.
38. **Nov 21st 2016:** Sears to make improvements to the draft term sheet.
39. **Dec 29th 2016:** Letter sent to FSCO setting out our dissatisfaction with Sears offer.
40. **Feb 15th 2017:** Sears opens direct confidential talks with SCRG. NDA signed by certain SCRG members and continues in place. The talks continued until June 13, 2017.
41. **June 13th 2017:** Sears seek Court Protection from its creditor as predicted by SCRG in 2014.

This is **Exhibit "B"**

referred to in the Affidavit of William Turner
sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a flourish that loops around and ends in a tail.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.



January 30, 2013

Sears. Canada Inc.
Calvin McDonald
President and Chief Executive Officer
290 Yonge Street, Suite 700
Toronto, Ontario
M5B 2C3

Dear Mr. McDonald:

Re: Sears Canada Dividends, Investment in the Business and the Pension Plan

Thank you again for your assistance with our inquiries about the Health & Dental Benefits Buyout Program. We appreciate the effort you made to help clarify a number of issues about that program for our retirees.

The purpose of this letter is to express our growing concern for the financial health of Sears Canada Inc. (SCI) and the relationship that it has to our pension plan. The last several months have seen a number of media reports and events that have created an increasing sense of anxiety for our over 5000 retiree members. SCRG has a responsibility to its members to identify and address issues and concerns that could impact their retirement and in light of SCI's deteriorating financial performance we feel compelled to express our concerns to you.

Recently, on December 12, 2012, SCI announced that it would pay an extraordinary cash dividend of \$102 million to its shareholders. That payment has concerned many SCRG members. It motivated us to conduct an analysis of SCI key financial indicators and their potential impact on the pensions and benefits that the Company is obligated to provide to its retirees. The following analysis is based on information taken from annual reports and other documents that are available to the public.

Background

In 2005, the U.S. hedge fund ESL Investments acquired majority ownership of Sears, Roebuck and Company, and consequently became the controlling shareholder of SCI. This has resulted in many changes in SCI which have significant impact on the interests of retirees, especially the obligations that SCI owes to the Sears Registered Retirement Plan (SRRP) and the Health & Welfare Trust. As of January 28, 2012, SRRP had a funding deficit of \$198.8 million and the Health & Welfare Trust a deficit of \$252.7 million.

a) Sears Registered Retirement Plan

At the end of 2004, SRRP had surplus assets of \$65 million; by the end of 2011, it had a deficit of \$199 million. During this period, despite paying out \$2.8 billion in dividends and capital distributions to its shareholders, SCI did not make any contributions to the defined benefit component of SRRP. In fact, SCI withdrew a total of \$27.6 million from the defined benefit component of the fund to pay for current administrative expenses.

b) Health & Welfare Trust

At the end of 2004, the Health & Welfare Trust had assets of \$90 million to help pay SCI's legal obligations to provide health care benefits for its retirees. By the end of 2011, these assets had been reduced to \$69 million. In 2009, SCI announced that it would stop funding the Trust and that it would use funds from it to pay current operating expenses related to active employees.

c) Sales of Assets

Over the past seven years (2005-11 inclusive), SCI sold off several major revenue generating assets including the credit business, and some retail stores and shopping centre interests for net pre-tax cash proceeds in excess of \$2.5 billion.

d) Dividends and Capital Distributions

Over the past seven years, SCI paid out cash dividends and capital distributions of \$2.8 billion dollars to shareholders. At the beginning of 2005, SCI's market capitalization was \$1.8 billion (106 million shares multiplied by the share price of \$16.99). Therefore, the average dividend yield (dividends and capital distributions paid as a percentage of the beginning market capitalization of the company) for those years was 17.8%. In contrast, the average dividend yield for companies listed on the TSX is significantly lower, at approximately 3%. The amount of dividends and capital distributions paid since 2005 has exceeded SCI's market capitalization by \$1 billion. These dividends and capital distributions appear to us to be unjustified and imprudent given that they totaled \$1.2 billion more than the total cash generated from operations during this time.

e) Share Buybacks

In 2010, SCI began a program of buying back shares from shareholders. To the end of October 2012, it paid out \$94.5 million to repurchase shares under this program.

f) Capital Expenditures

While SCI has been paying out considerable amounts of cash to shareholders, it has invested little in maintaining, improving or expanding its existing operations in Canada. In the past seven years, depreciation expense has totaled \$930 million, whereas total capital expenditures have been only \$500 million. Assets are being replaced at barely half the rate of depreciation. This lack of necessary spending appears to have affected



sales. Same-store sales have decreased by 22.4% from 2004 to 2011, even before accounting for inflation. Same-store sales for the first 39 weeks of 2012 are down a further 6.4%.

g) Revenues

Total revenues for SCI have decreased 25.9% from 2004 to 2011 (before adding inflation). Revenues for the first 39 weeks of 2012 are down a further 7.7%.

h) Cash Flow from Operations

Cash flow from operations is also down significantly – from \$338.6 million in 2004 to \$85.0 million in 2011. This pattern continued in 2012. During the first 39 weeks of 2012 cash flow from operations was \$132.9 million worse than the comparable period in 2011. It appears that cash generated from operations will actually be negative for 2012. A continuation of this trend could eventually render SCI insolvent.

i) December 2012 Dividend

Despite this continued deterioration of key financial measures, on December 12, 2012 SCI declared an extraordinary cash dividend of \$102 million. This action is in the context of management having knowledge that key financial performance measures for SCI are declining rapidly, and that the Company's competitive position in the Canadian marketplace is seriously threatened by the pending arrival of Target in Canada in March 2013, among other new competitive entrants from the U.S., as well as the continued expansion of Walmart. The significant capital expenditures announced by these companies stands in stark contrast to those committed by SCI over the past seven years.

When taken in isolation, each of the events described above could possibly be explained. However, when taken in totality they show an unsettling pattern: the sale of company assets, the lack of investment in the maintenance or expansion of the business, the decline of key business indicators and the growing unfunded obligations of post-retirement pension and health benefits. At the same time the Company has paid cash dividends to its shareholders far in excess of what would be reasonable and prudent, given its financial performance. It is difficult for us to understand SCI's long term business strategy. If this pattern continues, it is difficult for us to see how the Company can remain solvent and meet its obligations to retirees who are creditors of the Company.

Our Position

As employees of SCI we were required to participate in the Sears Registered Retirement Plan as a condition of employment. This was a contributory plan, requiring that all members pay a portion of their earnings. The Company made a commitment to provide lifelong pension benefits to retirees from SRRP. The intent of these employment arrangements was to provide a secure retirement for SCI employees and to encourage long service and single-company careers.



Employees were told that although their income may not be as high as in other industries, they were being looked after by the provision of the pension and health benefits.

These employee contributions and the Company commitment were not based on regulation or law, but rather by mutual agreement. It is important to note that between 1998 and 2011, SCI's financial contribution to the defined benefit component of SRRP was minus \$22.4 million. As well, in 2011 SCI opted to use a legal exception to defer paying its \$29.0 million pension plan obligation until 2012.

On numerous occasions SCI has indicated that it has no debt. There is however a \$450 million obligation to retirees by way of amounts owing to SRRP and the Health & Welfare Trust. As the administrator of the Sears Registered Retirement Plan, SCI owes a fiduciary duty to the members of that plan and must act in their best interest. SCI made commitments to its retirees and employees that they would be looked after in return for their loyalty and long service. This obligation is both legal and ethical.

With that in mind, we request the following:

1. That SCI shows good faith and abides by its promises to the employees and retirees by making its contributions to the defined benefit component of the Sears Registered Retirement Plan:
 - a) as a minimum in both 2013 and 2014 increase the annual contribution by 50% each year to equal the deferred 2011 contribution of \$29 million; and
 - b) pay back to the defined benefit component of SRRP, the \$27.6 million that it transferred from the plan in 2008 and 2009.
2. That SCI establishes a Pension Advisory Committee. The purpose of the Committee would be to monitor SRRP and make recommendations on its administration to the plan administrator. The Committee would also promote awareness and understanding of SRRP. In order to do this, it would have the right to examine the records of the administrator relating to the pension plan and pension fund, but not to any personal information contained in those records. As you are aware, the Ontario Government has recently passed legislation and is writing regulations that will require such committees to be formed in the future.

The retirees need their company to continue its long history of responsible behaviour to their pension plan. In the recent past SCI has told SCRG that it would live up to its legal obligations; it is equally important for SCI to live up to its agreement with employees and its promise to retirees.

I hope that you will accept this letter in the way it is intended, not as a challenge but rather as our desire to communicate our views and to state our requests. It is sent on behalf of the directors and the members of SCRG.



If we can provide clarification or any additional information from our perspective, please do not hesitate to contact me. Thank you for your time and consideration. I look forward to your response.

Yours truly

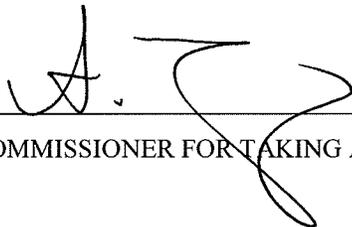
Bill Turner
President, SCRG.

cc: SCRG Board of Directors



This is **Exhibit "C"**

referred to in the Affidavit of William Turner
sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, consisting of a stylized 'A' followed by a large, sweeping flourish that loops back under the signature line.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

January 20, 2014

Via Email and Regular Mail

Andrew J. Hatnay
Direct Dial: 416-595-2083
Direct Fax: 416-204-2872
ahatnay@kmlaw.ca

Torys LLP
79 Wellington St. West, 30th Floor
Box 270, TD South Tower
Toronto, ON M5K 1N2

Attention: Mitch Frazer, counsel to Sears Canada Inc.

Dear Mr. Frazer:

**Re: Store and Catalogue Retiree Group (“SCRG”)
The Sears Canada Inc. Registered Retirement Plan, Registration Number 0360065
 (“Sears Canada Plan”)**

We acknowledge receipt of your letter dated December 19, 2013 that you sent on behalf of your client, Sears Canada Inc.

We have not heard from any counsel in respect of the individual directors of Sears Canada to whom we sent our prior letter. We are sending this letter to the directors as well. Please let us know the names of counsel to the directors.

Your letter does not allay our clients’ concerns about Sears Canada’s corporate conduct and its deteriorating financial situation which point to the looming failure of Sears Canada and its corresponding inability to fund the deficit in the Sears Canada Plan and to secure retiree benefits. As you are aware, Sears Canada has a wind up liability to the Sears Canada Plan in the amount of approximately \$307 million and an unfunded liability for retiree health benefits of approximately \$250 million.

Sears Canada is steadily losing money, selling assets and closing major stores across Canada. It does not have an effective business plan to turn its business around.

Despite the deteriorating financial situation at Sears Canada and dismal future, over the past year the board of directors has approved the payment of \$611 million to shareholders. We understand that ESL Investments, a company owned by the CEO of Sears Holdings Inc. in the United States, owns 48% of the shares of Sears Holdings, which in turn is the majority (51%) shareholder of Sears Canada. In addition, ESL directly owns 27% of the shares of Sears Canada. ESL obviously benefits significantly from dividends paid to it by Sears Canada.

As recently as January 9, 2014, the company stated that it intends to extract even more cash from Sears Canada to pay to its shareholders. The press release of Sears Holdings dated January 9, 2014 states: *“Finally, as previously announced in October, we also are continuing to work with the board and management of Sears Canada with a goal of increasing the value of our 51% interest and realizing significant cash proceeds to support our transformation and to create value for our shareholders.”*

Sears Canada appears to have adopted a plan to sell the valuable assets of the company and distribute the proceeds to shareholders. The substance of Sears Canada’s management conduct is asset stripping, and has resulted in a company with negative operating earnings and cash flow and deteriorating key performance measures. Sears is on a path where it will not have sufficient cash to meet its funding obligations under the Sears Canada Plan and retiree benefit plans. Sears Canada’s conduct will therefore result in the members of those plans ultimately bearing the brunt of the wind up of the Sears Canada Plan in an underfunded state, with losses to our clients’ pension and health benefits.

The actions of Sears Canada’s directors and management are inexorably leading Sears Canada into insolvency, and will be the direct cause of the resulting losses to Sears retirees.

The payment of dividends is unlawful and inappropriate

In Sears’ financial circumstances, our clients object to the payment of any dividends, both to dividends declared in the past and any further future dividends.

Sears Canada’s financial results and key performance measures have been steadily deteriorating for years. Sears reported Operating Losses for both 2011 and 2012, and has been generating negative Free Cash Flow over the same time period. Based on results so far this year, Sears Canada will almost certainly suffer negative operating income and cash flow for 2013. Sears Canada is not taking adequate steps to address the wind up deficit in the Sears Canada Plan and its liability for retiree benefits. It is entirely unreasonable and reckless for the company and its directors to pay dividends in Sears’ financial circumstances. Given their years of employment service and their contractual and equitable entitlements, the retirees have a reasonable expectation that Sears Canada will properly fund their pension and retiree health benefits, and not pay excessive dividends to its shareholders while simultaneously dismantling the company and leading it into insolvency.

Sears Canada is failing and not turning around

Over the past several years, Sears Canada has sold a substantial portion of its key income producing assets:

- a) In 2005, Sears Credit and Financial Services operations were sold to JP Morgan Chase for \$2.4 billion. This business was profitable and contributed a large portion of Sears Canada's total earnings.
- b) Since 2005, Sears Canada sold ten leased stores (in 2012 and 2013) and two owned stores (in 2007 and 2008) for total proceeds of \$806 million. Sears Canada is closing all of these stores, several of which are in some of the most prominent malls in Canada.
- c) Since 2005, ten joint venture interests in various shopping centres were sold for \$330 million. These interests had consistently contributed positive earnings and cash flow to Sears Canada.

Based on our review of Sears activities, since ESL Investments acquired control of Sears Canada in 2005, Sears Canada has, in total, sold assets for pre-tax proceeds of \$3.8 billion dollars and distributed \$3.5 billion to shareholders. See the enclosed chart for a breakdown of those figures.

While Sears Canada has paid \$3.5 billion to shareholders, it has not invested in its business. Capital Expenditures over the past 8 years (2005-2012 inclusive) totaled \$599 million. This represents only 57% of depreciation expense. Assets are being replaced at barely half the rate that they are being used up. Sears Canada's capital expenditures per square foot are considerably less than what is typical and required in the retail industry. This issue is now even more problematic for Sears Canada given the entry of Target, Nordstrom's, and Saks and other U.S. retailers into the Canadian market, and the spending by Walmart, Canadian Tire, Loblaws and other Canadian retailers to retain and expand their market share and increase their revenues.

Sears Canada's lack of necessary investment, along with continuous cost cutting, has harmed the on-going operations of Sears Canada. Key performance measures have deteriorated to an alarming extent:

- Same store sales, which Sears Canada defines to include catalogue and on-line sales, have decreased in each of the past eight years for a cumulative decrease of 27%, excluding inflation. This sales decline cannot be attributed to a weak Canadian economy. During this same period, consumer spending in Canada increased by 25%. Sears Canada's sales per square foot in 2012 were approximately \$230, including catalogue and on-line sales. This number is less than half that of many of its competitors, making it very difficult for Sears Canada to compete effectively.
- Operating income has decreased in each of the past 4 years. In 2011 and 2012, Sears Canada reported operating losses of \$51 million and \$83 million respectively.
- Free Cash Flow has decreased in each of the past three years. In 2011, Sears Canada's Free Cash Flow was basically nil, and was minus \$178 million in 2012.

- Based on Sears Canada's reporting for the first 9 months of 2013, key performance measures for the company continue to decline at an alarming rate. In addition, Sears recently reported that same-store sales over the all-important 2013 Christmas season declined 4.4%.

In totality, this shows a course of conduct that cash assets of Sears Canada are being stripped and that the company will fail:

- Key income-producing assets have been sold off;
- Under- investment in the business;
- Significant decline in key performance measures;
- Negative earnings and cash flow; and
- Cash distributions to shareholders in amounts far in excess of what is reasonable and prudent, thus reducing available cash.

After eight years of under-investment and continuous cost cutting, we cannot see how Sears Canada can stabilize or improve its results without a major turnaround and significant investment in the business. There is no indication of any such turnaround nor does it appear that the significant investment that is necessary to sustain Sears Canada as a viable business will be made by its American parent.

Requests for annual Sears Canada Plan valuation reports

We note that you provided us with a copy of the actuarial valuation report for the Sears Canada Plan as of December 31, 2010. We have a copy of that report as we referred to it in our letter of December 10, 2013. We expressly requested copies of the annual valuations that Sears Canada is required to prepare and provide to its lenders each year. We enclose a copy of the First Amending Agreement between Sears Canada and its lenders dated August, 2012. Pursuant to section 5.2(c) of that agreement, Sears agrees that it "shall deliver to the [Lenders'] agent an Actuarial Report in respect of each Canadian Pension Plan with a defined benefit provision *at the end of each calendar year* by no later than...90 days following....year end." These are the reports that we requested in our letter of December 10, 2013 and which have not been provided.

There should be at least one such report prepared as of December 31, 2012 and another due as of December 31, 2013. These reports are relevant and important for our clients who are members of the pension plan and have a direct interest in current information regarding the funded status of their pension plan. Please provide copies of those reports as soon as possible.

Furthermore, you have not responded to our request for a copy of the Health Benefit Trust documents. Again, please provide those documents as soon as possible.

Meeting Request

As we indicated in our letter, our clients have met in the past with various individuals with Sears Canada and raised their concerns without any resolution by Sears. They met with Sears Canada management on three occasions over the last 18 months, wrote to the President of Sears Canada in January, 2013 and received only a non-responsive reply from the Vice-President of Human Resources. On November 1, 2013 the President of SCRG wrote to the new CEO of Sears Canada requesting a meeting. The CEO has not responded to that letter.

To date, Sears has failed to provide SCRG with meaningful answers to their questions concerning the deficit in the Sears Canada Plan and failed to provide SCRG with copy of the Benefit Trust documents, despite repeated requests.

Our clients request a meeting with Sears Canada directors with legal counsel to discuss a plan to adequately fund the deficit in Sears Canada Plan and to secure retiree benefits. Please advise if you are willing to facilitate such a meeting.

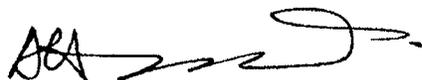
As set out in our prior letter, the failure of Sears Canada to fund the Sears Canada Plan and to secure retiree benefits in its current financial circumstances is a breach of fiduciary duty by the company and the directors to the pension plan members, is oppressive under the CBCA and in addition, is a breach of the directors' duty of care under section 122(1) of the CBCA.

We hope that Sears Canada and its directors will act in a responsible and prudent manner and commit to meaningful arrangements to secure the payment of pension benefits and retiree health benefits that the company owes to its employees, and which the employees earned through their years of service to Sears Canada.

We look forward to hearing from you.

Yours truly,

KOSKIE MINSKY LLP



Andrew J. Hatnay
AJH/vdl
Encl.

cc. Sears Canada Inc., Board of Directors
William C. Crowley, Chairman of the Board

Donald Ross, Director
William R. Harker, Director
R. Raja Khanna, Director
James McBurney, Director
Deborah E. Rosati, Director
H. Ronald Weissman, Director

- cc. Sears Holdings Corporation, Board of Directors
Edward Lampert, Chief Executive Officer
Paul G. DePodesta, Director
William C. Kunkler III, Director
Steven T. Mnuchin, Director
Ann N. Reese, Director
Thomas J. Tisch, Director
- cc SCRG
Philip Howell, CEO and Superintendent of Financial Services of Ontario
Deborah McPhail, Senior Counsel, FSCO
Penny McIlraith, Pension Officer, FSCO
Mark Zigler, *Koskie Minsky LLP*

20-Jan-14

Sears Canada Inc.
Pre-tax proceeds from sale of assets
2005 - 2013

(\$ millions)

2005	Sears Credit business Joint Venture interest - Victoriaville, Quebec Real estate in Levis, Barrie and Sarnia	2,446 27 2,473
2006	Unspecified	5
2007	Headquarters building - Toronto Hamilton Centre store Joint venture interest - unspecified Airplane and other unspecified	82 7 5 13 107
2008	Calgary downtown store	33
2009	Joint venture interest - unspecified	6
2010	Property in Burnaby, B.C. Joint venture land in Lachennaie, Quebec	14 4 18
2011		0
2012	Joint venture in Medicine Hat Stores leases: Vancouver Pacific Centre Ottawa Rideau Centre Calgary Chinook Cantrex Other unspecified	38 175 4 2 219
2013	Store Leases: Toronto Yorkdale Mississauga Square One Scarborough Town Centre (option) Store Leases: Toronto Eaton Centre (4 floors) Sherway Gardens Markville London Maisonville Richmond Centre, B.C. Shopping Centre Joint Ventures: (Jan 8/2014) Carrefour Angrignon Place Angrignon Promenades de Drummondville Carrefour Richelieu Carrefour de Nord Place Pierre Caisse Mega-Centre Drummondville Drummondville strip mall	191 400 315 906

Total pre-tax proceeds from sale of assets 3,767

Sears Canada Inc.
Payments to Shareholders
2005 - 2013

(\$ millions)

Dividend	1,557
Capital distribution	470
Share buyback	-18
	2,009
Dividend	13
	0
	0
Dividend	753
Share buyback	43
	796
Share buyback	42
Dividend	102
Share buyback	10
	112
Dividend (Dec. 6)	509
	509

Total payments to Shareholders 3,481

EXECUTION COPY

THIS FIRST AMENDING AGREEMENT made as of the ___ day of August, 2012

BETWEEN:

SEARS CANADA INC., as Borrower

and

THE LENDERS NAMED HEREIN

and

THE L/C ISSUING BANK NAMED HEREIN

and

WELLS FARGO CAPITAL FINANCE CORPORATION CANADA
as Administrative Agent, Co-Collateral Agent and Swingline Lender

and

GE CANADA FINANCE HOLDING COMPANY
as Co-Collateral Agent and Documentation Agent

WHEREAS Sears Canada Inc., as borrower (the "Borrower"), the banks, financial institutions and other institutional lenders listed on the signature pages hereto (the "Lenders"), the L/C Issuing Bank party hereto, Wells Fargo Capital Finance Corporation Canada, as administrative agent (the "Agent"), co-collateral agent and Swingline Lender, GE Canada Finance Holding Company, as co-collateral agent, CIBC Asset-Based Lending Inc. and Bank of Montreal, as co-syndication agents, GE Canada Finance Holding Company, as documentation agent, and Wells Fargo Capital Finance Corporation Canada, GE Capital Markets (Canada) Limited, GE Capital Markets, Inc., CIBC Asset-Based lending Inc. and BMO Capital Markets, as joint lead arrangers and bookrunners, entered into that certain credit agreement dated as of September 10, 2010 (the "Credit Agreement") pursuant to which certain credit facilities were established in favour of the Borrower;

AND WHEREAS the Borrower has advised the Co-Collateral Agents that its defined benefit Canadian Pension Plans have an estimated wind-up deficit of approximately \$2.5 billion as at December 31, 2010, but that the Borrower has made all of the contributions that was obligated to make to Pension Plans under applicable law to the date hereof and that it has no intention to wind-up such Canadian Pension Plans. [Note: Deficit amount deleted]

AND WHEREAS certain of the Co-Collateral Agents advised the Borrower of their intent to impose an Availability Reserve with respect to the Pension Wind-up Deficit;

- 2 -

AND WHEREAS, the Borrower has requested an accommodation from the Co-Collateral Agents and the Lenders by way of amendments to the Credit Agreement on the terms and conditions set forth herein.

NOW THEREFORE THIS AMENDING AGREEMENT WITNESSES THAT in consideration of the covenants and agreements contained herein and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto agree as follows:

Section 1 General

In this Amending Agreement (including the recitals) unless otherwise defined or the context otherwise requires, all capitalized terms shall have the respective meanings specified in the Credit Agreement, as amended hereby.

Section 2 To be Read with Credit Agreement

This Amending Agreement is an amendment to the Credit Agreement. Unless the context of this Amending Agreement otherwise requires, the Credit Agreement and this Amending Agreement shall be read together and shall have effect as if the provisions of the Credit Agreement and this Amending Agreement were contained in one agreement. The term “**Agreement**” when used in the Credit Agreement means the Credit Agreement and the schedules thereto, as previously amended and as amended by this Amending Agreement and as may be further amended, revised, replaced, supplemented or restated from time to time.

Section 3 Headings

The division of this Amending Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Amending Agreement. The terms “**this Amending Agreement**”, “**hereof**”, “**hereunder**” and similar expressions refer to this Amending Agreement and not to any particular Article, Section or other portion hereof and include any agreement supplemental hereto. Unless otherwise specified, references herein to Articles and Sections are to Articles and Sections of this Amending Agreement.

Section 4 Number

Words importing the singular number only shall include the plural and *vice versa*, words importing the masculine gender shall include the feminine and neuter genders and *vice versa*.

Section 5 Amendments

5.1 Definitions.

Section 1.01 of the Credit Agreement is amended by adding the following definitions to thereto in alphabetical order.

“Actuarial Report” means the actuarial report required to be filed by the Borrower under the Pension Benefits Act (Ontario), or such other pension standards laws as may from time to time

- 3 -

apply, with respect to the defined benefit provisions of its Canadian Pension Plans or such other report of the Borrower's actuaries as may be approved by the Co-Collateral Agents.

"First Amending Agreement" means the first amending agreement dated as of ____, 2012 between the Borrower, the Agent, the Co-Collateral Agents, the Lenders and the LC Issuing Bank, providing for certain amendments to the Credit Agreement as set out therein.

"Mortgage" means any deed of trust, mortgage, fixed charge, debenture, immoveable hypothec or other document creating a Lien on real property or any interest in real property.

"Net Real Estate Value" means the (i) value of the Qualifying Real Estate as set out in the most recent appraisal delivered to the Co-Collateral Agents, less (ii) the amount of any Debt secured by a Lien on such Qualifying Real Estate ranking in priority to the Liens granted to the Agent therein.

"Pension Wind-up Deficit" means the deficit that would arise upon the termination and wind-up of all of the defined benefit provisions of all Canadian Pension Plans of the Group Members.

"Qualifying Real Estate" means real property to which a Loan Party has good and marketable title, acceptable to each of the Co-Collateral Agents, with respect to which (a) the Agent has been granted a legal, valid, binding and perfected Mortgage securing the Obligations on terms reasonably satisfactory to the Co-Collateral Agents, (b) the Agent has been issued a lender's title insurance policy reasonably satisfactory to it and the Co-Collateral Agents, (c) the Borrower maintains the insurance and has otherwise complied with Section 6.01(c) of the Credit Agreement (d) ALTA-equivalent surveys, appraisals and environmental reports in each case reasonably satisfactory to Co-Collateral Agents have been delivered to the Co-Collateral Agents, and (d) reasonably satisfactory property condition assessments have been delivered to the Co-Collateral Agents.

"Wind-up Reserve" means a reserve in an amount equal to (i) the Pension Wind-up Deficit, less (ii) the lesser of (a) [●] % of the Net Real Estate Value and (b) CAN\$[●]. [Note: Percentage and amount deleted]

"Wind-up Reserve Period" means the period (i) commencing on the date on which Excess Availability is or, after giving effect to an Extension of Credit requested by the Borrower as on such date, would be less than the sum of (a) the Pension Wind-up Deficit plus (b) CAN\$[●] and (ii) ending on the date on which Excess Availability has been more than the sum of (a) the Pension Wind-up Deficit plus (b) CAN\$[●] for 30 consecutive days." [Note: Amounts deleted]

5.2 Wind-up Reserve.

Article II of the Credit Agreement is amended by adding the following section to the end thereof:

"SECTION 2.20 Wind-up Reserve

(a) Unless otherwise agreed in writing by each Co-Collateral Agent in its sole discretion, during the Wind-up Reserve Period, the Wind-up Reserve will be included as an Availability Reserve without any prior notice, grace period or other condition or formality, in addition to any other Availability Reserves then in effect or thereafter imposed by the Agent or a Co-Collateral Agent from time to time in accordance with the terms of this Agreement, it being understood that the

- 4 -

Wind-up Reserve does not limit the rights of the Co-Collateral Agents to impose Availability Reserves in respect of the Qualifying Real Estate in the exercise of their Permitted Discretion if at any time the Co-Collateral Agents determine that there is any increase in the risk to the effectiveness, validity or enforceability of the security over the Qualifying Real Estate. Without limitation to the foregoing, no Reserve Notice Period shall be required prior to the Wind-up Reserve being effective.

(b) For the avoidance of doubt, neither the Wind-up Reserve, nor the termination thereof upon termination in accordance with Section 2.20(g) below shall limit the rights of the Agent to impose any Availability Reserves in accordance with terms hereof or of either Co-Collateral Agents to impose any Availability Reserves in accordance with terms of the Co-Collateral Agents Rights Letter, including, but not limited to, Availability Reserves in respect of current service pension payments or other pension payments to the extent permitted hereunder.

(c) The Borrower shall deliver to the Agent an Actuarial Report in respect of each Canadian Pension Plan with a defined benefit provision as at the end of each calendar year by no later than the date which is 90 days following such year end or such longer period as the Co-Collateral Agents may agree in their sole discretion. For the purposes of determining the Wind-up Reserve, the amount of the Pension Wind-up Deficit will be equal to the Pension Wind-up Deficit reflected in the most recent Actuarial Report delivered to the Co-Collateral Agents pursuant to this Section 2.20, provided that until delivery of the first Actuarial Report for the calendar year ending December 31, 2012, the amount of the Pension Wind-up Deficit will be C\$150. The Borrower shall also deliver to the Co-Collateral Agents such other reports as the Borrower may receive from time to time from its actuaries with respect to the calculation of the Pension Wind-up Deficit. [Note: Deficit amount deleted]

(d) Notwithstanding Section 2.20(a), if it is made clear by an act of the legislature in Ontario that pension wind-up deficit liabilities pursuant to section 75(1)(b) of the *Pension Benefits Act* (Ontario) do not benefit from a deemed trust over, or otherwise do not generally rank in priority to secured claims (regardless of any insolvency proceedings) in respect of, any of the Collateral of the applicable Loan Party or the proceeds thereof, then the amount of the Pension Wind-up Deficit for the purposes of determining the Wind-up Reserve shall be reduced by a proportionate amount thereof attributable to the Ontario participants in the defined benefit provisions of the Canadian Pension Plans governed by the laws of Ontario determined in the Agent's Permitted Discretion.

(e) Qualifying Real Estate will be subject to updated additional appraisals at the Borrower's expense at the request of the Agent or a Co-Collateral Agent; provided that such appraisals shall be limited to one per year so long as no Event of Default has occurred and is continuing.

(f) In connection with a Disposition of Qualifying Real Estate otherwise permitted hereunder, the Agent shall, as soon as reasonably practicable and in any event within 10 Business Days following receipt of written notice from request of the Borrower, release from the Mortgages granted to the Agent, one or more parcels of Qualifying Real Estate, provided that after giving effect to such release the Total Extensions of Credit shall not exceed the Borrowing Base (giving effect to the Wind-up Reserve determined after the release of such Qualifying Real Estate and any other

- 5 -

applicable Availability Reserve). The Agent shall, at the Borrower's expense, execute such release, discharges or other documentation as may be requested by the borrower to effect the forgoing.

(g) If it is determined by the Supreme Court of Canada in the *Indalex* case (or otherwise) that pension wind-up deficit liabilities pursuant to section 75(1)(b) of the *Pension Benefits Act* (Ontario) do not benefit from a deemed trust over, or otherwise do not generally rank in priority to secured claims (regardless of any insolvency proceedings) in respect of, any of the Collateral of the applicable Credit Party or the proceeds thereof, then (i) the Wind-up Reserve shall be terminated, (ii) all Mortgages on Qualifying Real Estate will be released and (iii) all amendments to this Agreement provided for in the First Amending Agreement will cease to be in effect and the original terms of this Agreement as in effect immediately prior to the First Amending Agreement (but as this Agreement may have otherwise been amended to such date) will govern.

(h) Each Co-Collateral Agent, may, at the Borrower's expense, request that its counsel provide it with legal advice as to whether the conditions in Sections 2.20 (d or (g) have been satisfied."

5.3 Covenants

(1) Section 6.01(j) is amended by inserting the following after clause after clause (vi) thereof and renumbering the remaining clauses in such section accordingly:

"(vii) with written notice promptly following the occurrence of any of the following, (A) any Environmental Action with respect to Qualifying Real Estate, (B) any breach of Environmental Law occurring on Qualifying Real Estate, (C) any Lien on Qualifying Real Estate by a Governmental Authority, or (D) any release of Hazardous Materials or other condition on Qualifying Real Estate, which in each case which has, or could reasonably be expected to result in, Environmental Liability in excess of \$150,000."

(2) Section 6.01 is amended by inserting the following clause at the at the end thereof:

"(u) Environmental Reports. In addition to the Agent's rights under Sections 6.01(e) and (k), permit the Agent or either Co-Collateral Agent or their respective agents or representatives to have access to any Qualifying Real Estate to conduct environmental assessments (to the satisfaction of the Agent or Co-Collateral Agent, as applicable), at the Borrower's expense following the receipt of a notice under Section 6.01(j)(vii) or following the occurrence of an Event of Default which is continuing."

Section 6 Representations and Warranties

In order to induce the Agent and the Lenders to enter into this Amending Agreement, the Borrower represents and warrants to the Agent and to the Lenders as follows:

- (a) the representations and warranties made by each Loan Party in or pursuant to the Loan Documents are true and correct on and as of the date hereof in all material respects, except to the extent that (A) such representations or warranties are qualified by a materiality standard, in which case they shall be true and correct in all respects, (B) such representations or warranties expressly relate to an earlier date (in which

- 6 -

case such representations and warranties were true and correct in all material respects as of such earlier date), and (C) such representations and warranties relate to Section 5.01(f) of the Credit Agreement, in which case the representation and warranty shall be limited to clause (c) of the definition of "Material Adverse Effect";

- (b) all necessary corporate, company or partnership action has been taken to authorize the execution, delivery and performance of this Amending Agreement by the applicable Loan Parties and each has duly executed and delivered this Amending Agreement;
- (c) this Amending Agreement is a legal, valid and binding obligation of each of the applicable Loan Parties enforceable against them in accordance with its terms (except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally and by principles of equity);
- (d) as of the date hereof and after giving effect to this Amending Agreement, no Event of Default or Default under the Credit Agreement exists.

Section 7 Conditions Precedent

This Amending Agreement shall be subject to and conditional upon the following conditions precedent being satisfied:

- (e) execution and delivery of this Amending Agreement by the Loan Parties, the Agent, the Co-Collateral Agents and the Required Lenders; and
- (f) payment of fees and expenses incurred and due under Section 8 as at the date hereof.

Section 8 Expenses

The Borrower agrees to pay all reasonable, documented out-of-pocket expenses of each Co-Collateral Agent incurred in connection with this amendment, including but not limited to, diligence, preparation, negotiation, execution, documentation and enforcement of the amendment and the Credit Agreement and all legal fees related thereto and the cost of appraisals, surveys, property condition assessments in respect of Qualifying Real Estate.

Section 9 Continuance of Credit Agreement and Security

The Credit Agreement and Loan Documents, except as expressly amended by this Amending Agreement, shall be and continue in full force and effect and are hereby confirmed and the rights and obligations of all parties thereunder shall not be affected or prejudiced in any manner except as specifically provided for herein.

Section 10 No Waiver

The Borrower acknowledges and confirms that none of the terms contained in this Amending Agreement shall operate or be construed as a waiver of any of the provisions of the Loan Documents

- 7 -

or any Default or Event of Default existing on or prior to the date hereof or any future Default or Event of Default.

Section 11 Liability and Continuing Security of Guarantors.

Corbeil (the "Guarantor") hereby ratifies and confirms, as applicable, the validity and enforceability of, and its obligations under, each of the Loan Documents to which it is a party (as any such Loan Documents may be amended from time to time) including, without limitation, the Guarantee and Collateral Agreement dated as of September 10, 2010, and that such Guarantee and Collateral Agreement continues to guarantee the Guarantor Obligations (as such term is defined in the Guarantee and Collateral Agreement) and any Lien granted under any Loan Document continues to secure the Obligations (as defined in the Guarantee and Collateral Agreement) of Corbeil. For the avoidance of doubt, the Guarantor is signing this Amending Agreement solely for purposes of this Section 11.

Section 12 Counterparts

This Amending Agreement may be executed in any number of separate counterparts, each of which shall be deemed an original and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

Section 13 Governing Law

This Amending Agreement shall be construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and each of the parties hereto irrevocably attorns to the jurisdiction of the courts of the Province of Ontario.

[Signature Page to Follow]

IN WITNESS WHEREOF the parties hereto have executed this Amending Agreement as of the day and year first above written.

SEARS CANADA INC., as Borrower

By:

Name: SHARON DRISCOLL

Title: SUP & CFO

CORBEL ÉLECTRIQUE INC., as Guarantor

By:

Name: SHARON DRISCOLL

Title: SUP & CFO

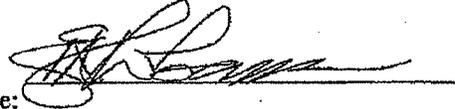
IN WITNESS WHEREOF the parties hereto have executed this Amending Agreement as of the day and year first above written.

**WELLS FARGO CAPITAL FINANCE
CORPORATION CANADA, as Agent, Co-
Collateral Agent, a Lender and Swingline Lender**

By:

Name:

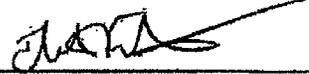
Title:



**Raymond Eghobarnien
Vice President**

IN WITNESS WHEREOF the parties hereto have executed this Amending Agreement as of the day and year first above written.

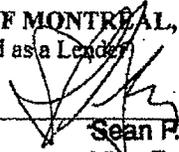
GE CANADA FINANCE HOLDING COMPANY,
as Co-Collateral Agent, Documentation Agent, and as
a Lender

By: 

Name: DAVID FORANO
Title: Its Duly Authorized Signatory

IN WITNESS WHEREOF the parties hereto have executed this Amending Agreement as of the day and year first above written.

BANK OF MONTREAL, as Co-Syndication
Agent and as a Lender

By: 
Name: Sean P. Gallaway
Title: Vice President

IN WITNESS WHEREOF the parties hereto have executed this Amending Agreement as of the day and year first above written.

CIBC ASSET-BASED LENDING INC., as Co-Syndication Agent and as a Lender.

By: _____
Name:
Title:

IN WITNESS WHEREOF the parties hereto have executed this Amending Agreement as of the day and year first above written.

**BANK OF AMERICA, N.A., CANADA
BRANCH, as a Lender**

By: _____
Name:
Title:

IN WITNESS WHEREOF the parties hereto have executed this Amending Agreement as of the day and year first above written.

DEUTSCHE BANK AG, CANADA BRANCH,
as a Lender

By: _____
Name:
Title:

By: _____
Name:
Title:

IN WITNESS WHEREOF the parties hereto have executed this Amending Agreement as of the day and year first above written.

ROYAL BANK OF CANADA, as a Lender

By: _____
Name:
Title:

By: _____
Name:
Title:

IN WITNESS WHEREOF the parties hereto have executed this Amending Agreement as of the day and year first above written.

THE TORONTO-DOMINION BANK, as a Lender

By: _____
Name:
Title:

This is **Exhibit "D"**

referred to in the Affidavit of William Turner
sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a series of loops and a long horizontal stroke extending to the right.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

November 6, 2014

Via Email

Andrew J. Hatnay
Direct Dial: 416-595-2083
Direct Fax: 416-204-2872
ahatnay@kmlaw.ca

Mitch Frazer
Torys LLP
79 Wellington St. West, 30th Floor
Toronto, ON M5K 1N2

Dear Mr. Frazer:

**Re: Store and Catalogue Retiree Group (“SCRG”)
The Sears Canada Inc. Registered Retirement Plan, Registration #0360065 (“SRRP”)**

We are writing further to your letter of October 3, 2014.

As we expect you are aware, it was recently reported in the *New York Post* on September 26, 2014 that Sears Canada has had discussions with insolvency counsel in Canada. The suggestion in that report is that Sears Canada is anticipating applying for insolvency protection or bankruptcy in Canada.

We appreciate that Sears denies having such discussions. Nevertheless, the article, along with the multitude of other negative business and media reports stating that both Sears Canada and Sears Holdings’ retail businesses continue to lose money, cause great concern to Sears retirees and SCRG in respect of the underfunded SRRP and the future continuation of retiree health benefits.

Although we disagree with you over the scope of Sears’ fiduciary duty as administrator of the SRRP with respect to fully funding the SRRP (we say Sears Canada, as part of its fiduciary duty, is required to adequately fund the plan so that it pays the promised pension benefits; you say that Sears Canada is not so required), there is no dispute that Sears Canada owes an overarching fiduciary duty to the members of the SRRP under both section 22(4) of the Ontario *Pension Benefits Act* (PBA) and the common law.

As such, Sears Canada must act in the plan members’ best interests.

As you are aware, the Supreme Court of Canada in *Indalex* confirmed that the deemed trust in section 57(4) of the PBA operates as a priority recovery in respect of the amounts owing by an employer to a pension plan which it has not paid, and that amount is to rank ahead of the claims of other creditors pursuant to section 30(7) of the Ontario *Personal Property Security Act* (PPSA) (except for any court-ordered priorities based on the doctrine of paramountcy). In the subsequent case of *Grant Forest Products*, the court confirmed that if a pension plan is wound up prior to an insolvency filing, the PBA deemed trust applies to generate a first priority

recovery for the pension plan for the amount that is owed by an employer on the wind up of the plan*:

[71] The decision of the Supreme Court of Canada in *Indalex* assists in the execution of this task. The deemed trust that arises upon wind up prevails when the wind up occurs before insolvency as opposed to the position that arises when wind up arises after the granting of an Initial Order.

It must be clear to Sears Canada's board of directors and management that in the company's financial circumstances, the risk of pension losses to the SRRP members is significantly increased. In such an environment, Sears Canada in its role as a fiduciary to the plan members must take positive steps to protect the plan members from those anticipated losses. Those steps include fully funding the SRRP now, and also ensuring that the statutory PBA deemed trust and the priority given to the deemed trust in section 30(7) of the PPSA are clearly applicable so that the pension plan beneficiaries can recover amounts owing to the plan by Sears Canada in accordance with that statutory priority.

Accordingly, we believe it is incumbent on Sears Canada to consider winding up the SRRP now, paying all amounts that are owing to the plan on the wind up, and purchasing annuities that will provide the continued payment of full pension benefits to the retired plan members. A wind up is also important to better secure the PBA deemed trust priority for the plan members in accordance with the statutory scheme in the PBA and PPSA, as noted above.

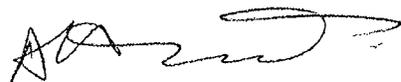
The failure of Sears' board of directors and management, who have full knowledge of the company's poor financial situation and the heightened risk of losses to pension benefits from the underfunded SRRP, to take steps to protect the pension plan members will give rise to claims against the directors and other officers for breach of fiduciary duty, oppression, and other causes of action for any losses imposed on the retirees in the future.

Further, Sears Canada should take steps now to secure the continuation of payment of retiree health benefits such as, for example, by fully funding the Health and Welfare Trust.

We request a reply to the issues in this letter by November 21, 2014.

Yours truly,

KOSKIE MINSKY LLP

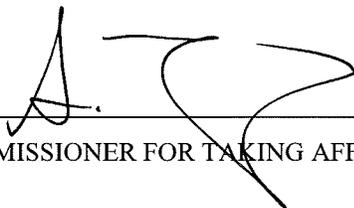


Andrew J. Hatnay
AJH/vdl

cc SCRG
Philip Howell, Deborah McPhail, Penny McIlraith, FSCO
Mark Zigler, James Harnum, *Koskie Minsky LLP*

* It is also our position that the PBA deemed trust priority applies to a plan that is wound up after an insolvency occurs.

This is **Exhibit "E"**
referred to in the Affidavit of William Turner
sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a series of loops and a long horizontal stroke.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

TORYS
LLP

79 Wellington St. W., 30th Floor
Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada
P. 416.865.0040 | F. 416.865.7380
www.torys.com

Mitch Frazer
mfrazer@torys.com
P. 416.865.8220

November 21, 2014

VIA E-MAIL

Koskie Minsky LLP
20 Queen Street West
Suite 900
Toronto, Ontario
M5H 3R3

Attention: Andrew J. Hatnay

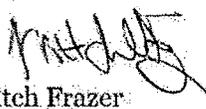
Dear Mr. Hatnay:

**Re: Store and Catalogue Retiree Group
The Sears Canada Inc. Registered Retirement Plan, Registration Number
0360065 (the "Plan")**

Thank you for your letter dated November 6, 2014 regarding the matter involving the above-noted parties.

As you know, Sears Canada Inc. ("Sears") disagrees with your position. Sears is in compliance with its obligations.

Regards,

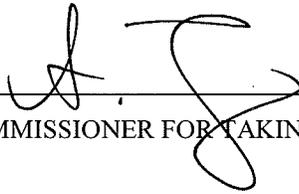

Mitch Frazer

MF/cd

cc. Franco Perugini, General Counsel, Sears Canada Inc.

This is **Exhibit "F"**

referred to in the Affidavit of William Turner
sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, consisting of stylized initials and a surname, positioned above a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

February 27, 2015

Via Regular Mail and Email

Andrew J. Hatnay
Direct Dial: 416-595-2083
Direct Fax: 416-204-2872
ahatnay@kmlaw.ca

Financial Services Commission of Ontario
5160 Yonge Street, P.O. Box 85
Toronto, ON M2N 6L9

**Attention: Brian Mills, Interim CEO and Superintendent
Michael Doi, Director, Legal Services
Deborah McPhail, Senior Counsel
Penny McIlraith, Pension Officer**

Dear Sirs and Mesdames:

**Re: Store and Catalogue Retiree Group ("SCRG")
The Sears Canada Inc. Registered Retirement Plan, Registration Number 360065
("Sears Canada Plan")**

We are writing further to the letter from Penny McIlraith dated March 12, 2014, and with reference to the correspondence we have exchanged with legal counsel to Sears Canada Inc. (Tory's LLP) over the past months (on which FSCO was copied) with respect to the underfunded Sears Canada Plan and Sears Canada Inc.'s continued financial deterioration.

As FSCO is aware, the Sears Canada Plan is underfunded on a wind up basis. If the plan is wound up in an underfunded state, there are insufficient assets to pay full benefits and pension plan members will incur losses to their monthly pension benefits.

On February 25, 2015, Sears Canada released its 2014 Fourth Quarter results. The financial losses are devastating. The results show an operating loss of \$407.3 million for the full year of 2014 (compared to an operating loss of \$187.8 million in 2013). Same store sales fell by 8.3% for the year. These results follow a decade of so-called "cost cutting" by Sears Canada management as well as the sale of valuable revenue-generating assets. We enclose a copy of an article from the *National Post* dated February 26, 2015 which quotes an analyst at Desjardins Securities who states: "It is urgent, in our view, that the board of directors assess immediate, and potentially radical, alternatives for the company... Our view is that a radical restructuring plan is urgently required to capture as much value as possible for all stakeholders, and to minimize further cumulative operating losses".

Given Sears Canada's continued financial losses and its conduct over the past several years, the association of Sears Canada Inc. retirees (SCRG) does not believe that any restructuring of Sears Canada's retail business will succeed. While Sears Canada appears to currently maintain some temporary liquidity by selling real estate assets, the retail business is not turning around and SCRG believes that insolvency will soon result (if the company is not insolvent already).

SCRG has been engaging Sears Canada for over the past year in an effort to have Sears take steps to prevent losses to retirees' pension benefits (and health benefits) given the company's financial deterioration and looming insolvency. Despite SCRG's requests, to date, Sears Canada has not taken any steps to protect the pension plan members. SCRG is concerned that unless positive action is taken very soon, the pension plan members will end up as creditors in Sears Canada's insolvency where the underfunded pension plan will be wound up and the plan members will face pension benefit losses.

As FSCO is aware from being copied on our correspondence with counsel to Sears Canada dated November 6, 2014, one approach that SCRG requested was for Sears Canada to wind up the Sears Canada Plan, contribute the amount owing to the plan on the wind up, and purchase annuities for the retirees. This would disengage the retirees from Sears Canada's unsuccessful efforts to restructure its retail business and protect their pension benefits. Legal counsel to Sears Canada did not respond to SCRG's request to wind up the Sears Canada Plan.

Due to the failure by Sears Canada to take any steps to protect the pension plan members in its dire financial circumstances, we are writing to request that the Ontario Superintendent of Financial Services ("Superintendent") take positive steps to compel Sears Canada to fully fund the pension plan immediately and/or to wind up the plan, fund the deficiency, and purchase annuities for the plan members.

As you are aware, the courts have held that in addition to the plan administrator, the Superintendent of Financial Services also owes a fiduciary duty to pension plan members and, as such, is required to act in plan members' best interests. See, for example, *Hinds v. Ontario (Superintendent of Pensions)*¹ where the Ontario Court of Appeal held:

[42] [T]he Superintendent owes a high duty to employees with Ontario pension plans. Indeed, on that issue I would adopt the particularly eloquent language used by Reid J. in *Collins*, at p. 285 O.R.:

...[T]here appears to be equally no doubt that the commission was established to safeguard the plan members' interests as well . . . [I]t would be artificial to conclude that the commission's obligation to members is lower than the high standard of fiduciary obligation imposed on trustees. [emphasis added]

¹ (2002), 58 O.R. (3d) 367 (C.A.)

Similarly, in *Retirement Income Plan for Salaried Employees of Weavexx Corp. v. Ontario (Superintendent of Pensions)*², the Court of Appeal reiterated:

[28] The implication of these authorities is that the Superintendent owes a high duty to employees with Ontario pension plans. As for the nature and consequences of this duty, I would adopt, as I did in *Hinds*, the eloquent language used by Reid J. in *Re Collins and Pension Commission of Ontario* (1986), 56 O.R. (2d) 274, 31 D.L.R. (4th) 86 (Div. Ct.) ("Collins"), at p. 285 O.R. [excerpt reproduced above]

We disagree with the comment in the March 12, 2014 letter from Ms. McIlraith where she states "Please note that the action that Sears Canada Inc. takes in its corporate activities are outside the jurisdiction of applicable pension legislation and the Financial Services Commission of Ontario (FSCO)".

The Superintendent cannot disregard Sears Canada's "corporate" activities. Sears Canada's retail business is steadily losing money and its restructuring is not succeeding. From 2003-2013, we calculate that Sears Canada paid a total of \$3.481 billion to shareholders in dividends, share buybacks and capital distributions, all while Sears Canada was losing money. "Corporate" activities and the resulting impact on pension plan members in the context of fiduciary duty was addressed by the Supreme Court of Canada in *Re Sun Indalex*³:

[65] ...The solution is not to determine whether a given decision can be classified as being related to either the management of the corporation or the administration of the pension plan. *The employer may well take a sound management decision, and yet do something that harms the interests of the plan's members. An employer acting as a plan administrator is not permitted to disregard its fiduciary obligations to plan members and favour the competing interests of the corporation on the basis that it is wearing a "corporate hat". What is important is to consider the consequences of the decision, not its nature.* [emphasis added]

Given the facts of Sears Canada, SCRG requests that the Superintendent take meaningful steps at this time to protect the Sears Canada Plan members, in keeping the Superintendent's fiduciary duty to the plan members.

SCRG wishes to meet with you to discuss next steps. We are available March 3-4, 2015 or in the week of March 23, 2015. Please let us know which date is convenient.

² (2002), 58 O.R. (3d) 380 (C.A.)

³ (2013) SCC 6

**KOSKIE
MINSKY** LLP
BARRISTERS & SOLICITORS

Page 4

Thank you for your consideration of this matter. We look forward to hearing from you.

Yours truly,

KOSKIE MINSKY LLP

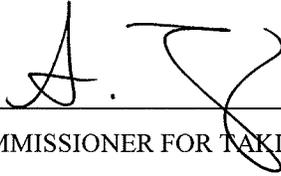


Andrew J. Hatnay
AJH/vdl
encl.

cc. SCRG
Mark Zigler, *Koskie Minsky LLP*

This is **Exhibit "G"**

referred to in the Affidavit of William Turner
sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, appearing to be "A. T. J.", written over a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

**KOSKIE
MINSKY** LLP
BARRISTERS & SOLICITORS

May 4, 2015

Via Email

Andrew J. Hatnay
Direct Dial: 416-595-2083
Direct Fax: 416-204-2872
ahatnay@kmlaw.ca

Financial Services Commission of Ontario
5160 Yonge Street, P.O. Box 85
Toronto, ON M2N 6L9

**Attention: Brian Mills, Interim CEO and Superintendent
Michael Doi, Director, Legal Services
Deborah McPhail, Senior Counsel
Penny McIlraith, Pension Officer
Gino Marandola, Senior Manager, Operations**

Dear Sirs and Mesdames:

**Re: Store and Catalogue Retiree Group ("SCRG")
The Sears Canada Inc. Registered Retirement Plan, Registration Number 360065
("Sears Canada Plan")**

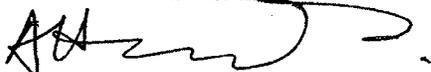
Further to our meeting of March 24, 2015, our e-mail to Mr. Marandola of April 14, 2015, and his response thereto of April 16, 2015, we enclose a summary of our client's analysis further explaining why Sears Canada Inc. is insolvent. This is provided to you with respect to our client's request in our letter of February 27, 2015 that the Superintendent proceed to order Sears to take steps to fully fund and/or to wind up the Sears Canada Plan at this time.

Secondly, we understand that Sears Canada's business arrangement with J.P. Morgan with respect to Sears Canada's credit card business has been terminated by J.P. Morgan. Sears Canada's credit card business generated substantial income to Sears Canada each year and its cancellation by J.P. Morgan will result in a further loss of significant cashflow to Sears, exacerbating Sears Canada's insolvency.

We look forward to discussing these issues further with you at the meeting tomorrow with a view to formulating meaningful next steps that will assist Sears Canada pension plan members.

Yours truly,

KOSKIE MINSKY LLP



Andrew J. Hatnay
AJH:vdl/encl.

cc. SCRG
Mark Zigler, Barbara Walancik, *Koskie Minsky LLP*

1654397v1

WITHOUT PREJUDICE**Why Sears Canada is Insolvent**

A Company is insolvent if it meets either of the following criteria:

1. Balance Sheet Insolvency, where liabilities exceed assets on a realizable value basis (rather than the values recorded in the Financial Statements).
2. Cash Flow Insolvency, where a Company is unable to pay debts as they come due.

For the purpose of this analysis, we will focus on Balance Sheet insolvency.

As at the end of 2014, Sears Canada's balance sheet shows total assets of \$1.774 billion and total liabilities of \$1.203 billion, resulting in Shareholder's Equity of \$570 million. In other words, total assets exceed liabilities by \$570 million. (In 2005 Shareholders' Equity was \$1.8 billion)

However, the test for Balance Sheet Insolvency does not rely on the values recorded on the balance sheet, but rather uses a realizable value basis.

Sears Canada has committed to long term lease obligations on most of its stores. The remaining term of these leases is 1 to 10 years. The minimum contractual commitment for future lease payments is \$428 million. This liability is not recorded on Sears balance sheet.

Taking these lease obligations into account reduces the amount that assets exceed liabilities from \$570 million to only \$142 million. This is a point-in-time value that is subject to seasonal fluctuation, and current trends indicate that it will turn negative during the course of 2015.

Even more significant than these lease obligations are the operating covenants that accompany many of these leases. As at January 31, 2015, Sears had operating covenants with landlords for approximately 99 Sears stores. These operating covenants generally require Sears, during normal operating hours to operate a store continuously as per the identified format in the lease agreement. The remaining term of these operating covenants ranges from less than 1 year to 21 years with an average remaining term of approximately five years.

While it is difficult to precisely quantify the liability related to these operating covenants, it is definitely very significant. The liability, which is not recorded on the balance sheet, is equal to the future operating losses that Sears will incur as a result of being required to continue to operate unprofitable stores as a result of these operating covenants. The purpose of these operating covenants is to provide assurance to landlords that they will have an anchor tenant for their mall. If Sears ceased operations in a store covered by an operating covenant they could be sued by the landlord for specific performance or for any resulting loss of business to

- 2 -

their mall. Through these leases and operating covenants, Sears is locked into its existing locations.

As a result of ten years of asset stripping, Sears has exited several stores in the best malls in Canada. As well, Sears has sold both its' highly profitable credit card operations and its' joint venture interests in shopping centers. The proceeds from these asset sales, which total \$3.8 billion on a pre-tax basis, have not been re-invested in the business. Instead, \$3.5 billion has been distributed to shareholders. These actions have stripped the Company of its most profitable assets and left it locked into a much diminished store base with no reasonable expectation of profitability.

Sears has recorded same-store sales decreases every year since 2005 for a total decrease of 34.5%, not counting inflation. Total revenues have decreased 45.0%, again not counting inflation. Sears has suffered increasing operated losses in each of the past four years totaling \$712 million. In addition, negative free cash flow in the past 4 years has totaled \$594 million. Continued operation of the remaining stores will most likely continue to burn cash.

Sears has no reasonable expectations of future profit as indicated by the fact that in 2014 they were required to write down their deferred tax losses.

Sears faces the choice of continuing to lose more money by operating its current store base, or exit unprofitable locations and face crippling lawsuits from its landlords.

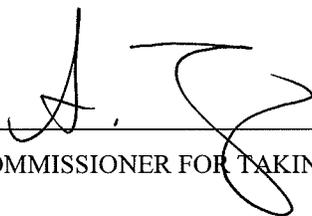
Any further sale of assets would likely worsen the situation by further increasing on-going operating losses and negative cash flow. It would also leave fewer assets to secure Sears obligations. One would assume that Sears will not attempt to pay further dividends in light of their financial performance. However, any cash generated from assets sales would likely be consumed by negative operating cash flow.

It is our view that Sears clearly meets the test for Balance Sheet Insolvency at this time.

To continue operating a Company with no reasonable expectation of profitability will simply consume all available cash.

This is **Exhibit "H"**

referred to in the Affidavit of William Turner
sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, appearing to be 'A. J.', written over a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

June 5, 2015

Via Email

Andrew J. Hatnay
Direct Dial: 416-595-2083
Direct Fax: 416-204-2872
ahatnay@kmlaw.ca

Financial Services Commission of Ontario
5160 Yonge Street, P.O. Box 85
Toronto, Ontario
M2N 6L9

**Attention: Brian Mills, Interim CEO and Superintendent
Michael Doi, Director, Legal Services
Gino Marandola, Senior Manager, Operations
Deborah McPhail, Senior Counsel
Sharon Polischuk, Pension Officer**

Dear Sirs and Mesdames:

**Re: Store and Catalogue Retiree Group ("SCRG")
The Sears Canada Inc. Registered Retirement Plan, Registration Number 360065
("Sears Canada Plan")**

We are writing further to our meeting on May 5, 2015 with your office and representatives of Sears Canada Inc.

As we have explained, Sears Canada Inc. is insolvent and its retail business continues to lose money. The Sears Canada Plan is underfunded. SCRG believes that in these circumstances the failure of Sears Canada is inevitable.

The enclosed memorandum from SCRG explains in detail that Sears Canada meets the test for Balance Sheet Insolvency and will not be able to rebound from the decline in its Canadian retail business.

SCRG repeats its request that the Superintendent of Financial Services of Ontario proceed to order the wind up of the Sears Canada Plan. Given Sears Canada's circumstances, a wind up at this time is critical so that the plan can be terminated in an orderly manner, the amounts owing to the plan on its wind up are paid, and that losses to the plan members' pension benefits can be prevented.

Moreover, as you are aware, if the plan is wound up later in an insolvency proceeding, there will be additional significant costs imposed on the plan by the administrator appointed by Superintendent to wind up the plan. The avoidance of such additional costs on the underfunded plan is another reason to proceed with a wind up at this time.

As we have discussed, there are at least two criteria in section 69 of the *Pension Benefits Act*, R.S.O. 1990, C.P.8 ("PBA") that warrant the Superintendent ordering a wind up at this time discussed further below.

a) Sears Canada is insolvent

First, Section 69(1) of the PBA identifies the insolvency of an employer as a basis for the Superintendent ordering a wind up:

69. (1) The Superintendent by order may require the wind up of a pension plan if,

...

(c) the employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada);

Section 69(1)(c) is not limited to an employer being a formal "bankrupt" under the BIA, and the intention of the subsection is to apply to situations where an employer is insolvent.¹

The test for insolvency was interpreted broadly in the CCAA proceedings of *Re Stelco Inc.*² In finding that Stelco was insolvent, the court held that a company's pension (and other employee benefit) obligations are to be taken into account when determining whether a company is insolvent:

[59] It seems to me that the phrase "accruing due" has been interpreted by the courts as broadly identifying obligations that will "become due".
...Again, I would refer to my conclusion above that every obligation of the corporation in the hypothetical or notional sale must be treated as

¹ As the Superintendent is aware, under Canada's dual-pronged insolvency system (the *Bankruptcy and Insolvency Act*, R.S.C. , 1985, c. B-3 ("BIA") and *Companies' Creditors Arrangement Act*, R.S.C. , 1985, c. C-36 ("CCAA")), many insolvent companies increasingly opt for liquidation proceedings under CCAA to liquidate their assets (known as the "liquidating CCAA") which permits a more flexible liquidation process than a formal bankruptcy. Nevertheless, a company subject to CCAA proceeding is insolvent.

² [2004] O.J. No. 1257 leave to appeal refused, [2004] O.J. No. 1903, leave to appeal to S.C.C. refused [2004] S.C.C.A. No. 336 [*Stelco*].

"accruing due" to avoid orphan obligations. In that context, it matters not that a wind-up pension liability may be discharged over 15 years;³

...

[66] On a wind-up basis, there would be a pension deficiency of \$1,252 million; ...Then there is the question of Employee Future Benefits. These have been calculated as at December 31, 2003 by the Mercer actuary as \$909.3 million but only \$684 million has been accrued and booked on the financial statements so that there has to be an increased provision of \$225.3 million. These off balance sheet adjustments total \$1,080 million.

Section 69(1) is readily engaged to warrant the Superintendent ordering a wind up of the Sears Canada Plan.

b) Increased Pension Benefit Guarantee Fund Liability

Section 69(1)(g) of the PBA states:

(g) the liability of the Guarantee Fund is likely to be substantially increased unless the pension plan is wound up;

The funded status of the Sears Canada Plan has been deteriorating. There is a strong possibility that its funded status will continue to worsen unless the plan is wound up at this time. The criterion in section 69(1) of the PBA is also applicable to warrant the Superintendent proceeding to order a wind up of the Sears Canada Plan.

SCRG's objection to FSCO's approval of full-value commuted value transfers

As we stated in our e-mail to Mr. Marandola of April 14, 2015, as of January 31, 2015, the Sears Canada Plan has experienced a substantial deterioration in the plan's transfer rate, from 10% to 21%.

We understand that despite the deterioration, Sears Canada requested that the Superintendent approve the pay out of commuted value transfers at full amounts without any reduction, and that FSCO has given its approval to Sears Canada to do so.

³ *Ibid* at para. 59.

SCRG reiterates its opposition to the Superintendent providing such approval in the circumstances of the underfunding in the Sears Canada Plan and the company's money-losing retail business, which we explained to you at the March 24, 2015 and May 5, 2015 meetings.

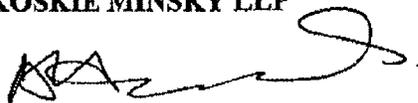
In order to protect the funds in the underfunded Sears Canada Plan for all plan members on an equitable basis, our clients request that the approval granted by the Superintendent to Sears Canada be revoked as soon as possible and that any commuted value transfers be required to be appropriately reduced to reflect the transfer rate in the Sears Canada Plan.

We request a meeting in June, 2015 with FSCO and Sears Canada to discuss next steps. Please let us know which dates are available for a meeting in June at your office.

Thank you for your attention to this matter.

Yours truly,

KOSKIE MINSKY LLP



Andrew J. Hatnay
AJH/vdl
encl.

cc. Mitch Frazer, *Torys LLP*, counsel to Sears Canada
SCRG
Mark Zigler, Barbara Walancik, *Koskie Minsky LLP*

MEMORANDUM

DATE: June 5, 2015

TO: Financial Services Commission of Ontario

- Brian Mills, Interim CEO and Superintendent
- Michael Doi, Director, Legal Services
- Gino Marandola, Senior Manager, Operations
- Deborah McPhail, Senior Counsel
- Sharon Polischuk, Pension Officer

CC: Andrew Hatnay, Barbara Walancik, *Koskie Minsky LLP*

FROM: Store and Catalogue Retiree Group ("SCRG")

FILE NO: 13/2022

SUBJECT: Why Sears Canada is Insolvent
The Sears Canada Inc. Registered Retirement Plan, Registration Number 360065
("Sears Canada Plan")

A Company is insolvent if it meets either of the following criteria:

1. Balance Sheet Insolvency: where liabilities exceed assets on a realizable value basis (rather than the values recorded in the Financial Statements).
2. Cash Flow Insolvency: where a Company is unable to pay debts as they come due.

For the purpose of this analysis, we will focus on Balance Sheet insolvency.

As at January 31, 2015 Sears Canada's balance sheet shows total assets of \$1.774 billion and total liabilities of \$1.203 billion, resulting in Shareholder's Equity of \$571 million. In other words, total assets exceed liabilities by \$571 million. (In 2005, Shareholders' Equity was \$1.8 billion)

However, the test for Balance Sheet Insolvency does not rely on the values recorded on the balance sheet, but rather uses a realizable value basis.

Sears Canada has committed to long term lease obligations on most of its stores. The remaining term of these leases is 1 to 10 years. The minimum contractual commitment for future lease payments is \$428 million. This liability is not recorded on Sears Canada's balance sheet.

According to the latest actuarial report, the Sears Registered Retirement Plan (SRRP) is underfunded on a wind up basis and its transfer rate as of January 31, 2015 was 21%. This equals an unfunded liability on a wind up basis of \$325 million. The unfunded liability shown

- 2 -

on Sears Canada's balance sheet as at January 31, 2015 was \$174 million. Therefore, there is an unrecorded liability of \$151 million related to SRRP.

Taking these lease obligations and pension liabilities into account means that *liabilities actually exceed assets* by \$8 million as at January 31, 2015.

There is an additional significant liability that is not recorded on the balance sheet of Sears Canada. As at January 31, 2015 Sears had operating covenants with landlords for approximately 99 Sears stores. These operating covenants generally require Sears, during normal operating hours, to operate a store continuously as per the identified format in the lease agreement. The remaining term of these operating covenants ranges from less than 1 year to 21 years with an average remaining term of approximately five years.

The purpose of these operating covenants is to provide assurance to landlords that they will have an anchor tenant for their mall. If Sears ceased operations in a store covered by an operating covenant they could be sued by the landlord for specific performance or for any resulting loss of business to their mall. Through these leases and operating covenants, Sears is locked into its existing locations.

The liability related to these operating covenants, which also is not recorded on the balance sheet, is equal to the future operating losses that Sears will incur as a result of being required to continue to operate unprofitable stores as a result of these operating covenants. While it is difficult to quantify this unrecorded liability, based on recent operating losses and negative cash flow, it is likely hundreds of millions of dollars.

As a result of ten years of asset-stripping by Sears Holdings, Sears has closed several stores in the best shopping malls in Canada. As well, Sears has sold both its' highly profitable credit card operations and its' joint venture interests in shopping centers. The proceeds from these asset sales, which total \$3.8 billion on a pre-tax basis, have not been re-invested in the business. In fact, in the past ten years, Sears capital expenditures have been equal to barely half of the depreciation of its assets. Instead, \$3.5 billion has been distributed to shareholders. These actions have stripped the Company of its most profitable assets and left it locked into a much diminished store base with no reasonable expectation of profitability.

Sears has recorded same-store sales decreases every year since 2005 for a total decrease of 34.5%, not counting inflation. After adjusting for inflation, the typical Sears store is generating only half of the revenue that it was ten years ago. Total revenues have decreased 45%, again not counting inflation. Sears has suffered increasing operating losses in each of the past four years totaling \$712 million. In addition, negative free cash flow in the past 4 years has totaled \$594 million. Continued operation of the remaining stores will most likely continue to consume considerable cash.

Sears has no reasonable expectations of future profit as indicated by the fact that in 2014 they were required to write down their deferred tax losses.

Sears faces the choice of continuing to lose more money by operating its current store base, or exiting unprofitable locations and facing crippling lawsuits from its landlords.

- 3 -

Any further sale of assets would likely worsen the situation by further increasing on-going operating losses and negative cash flow. It would also leave fewer assets to secure Sears obligations. One would assume that Sears will not attempt to pay further dividends in light of their poor financial performance. However, any cash generated from assets sales would likely be consumed by on-going negative operating cash flow.

It is our view that Sears clearly meets the test for Balance Sheet Insolvency at this time.

To continue operating a Company with no reasonable expectation of profitability will simply consume all available cash and company failure is inevitable.

1684731v1

This is **Exhibit "I"**

referred to in the Affidavit of William Turner
sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, appearing to be "A. R. Z.", written over a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

**Financial Services
Commission
of Ontario**

Pension Plans Branch

5160 Yonge Street
Box 85
Toronto ON M2N 6L9

Telephone: (416) 226-7776
Facsimile: (416) 226-7777

**Commission des
services financiers
de l'Ontario**

Direction des régimes de retraite

5160, rue Yonge
Boîte 85
Toronto ON M2N 6L9

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Télécopieur: (416) 226-7777



Ontario

June 11, 2015

Registration Number: 0360065

Mitch Frazer
Torys LLP
79 Wellington Street W
30th Floor, Box 270
TD South Tower
Toronto ON M5K 1N2

JUN 16 2015

Dear Mr. Frazer:

Re: Sears Canada Inc. Registered Retirement Plan (the Plan)

We have received a submission from Mr. Andrew J. Hatnay dated June 5, 2015, that you were copied on, in respect of SCRG's request for a wind up of the Plan and the revocation of the commuted value approval provided by our office dated March 17, 2015.

Please provide FSCO with any responding submissions by June 30, 2015, with a copy to Mr. Hatnay.

If at any time you have any questions or concerns, you may contact me either at the address above, or directly by telephone at (416) 226-7820, or Sharon Polischuk, Pension Officer, directly by telephone at (416) 590-7248, or toll free at 1-800-668-0128, extension 7248. Please quote the registration number shown at the top of this letter.

Yours truly,

Gino Marandola
Director, Pension Plans Branch (Interim)

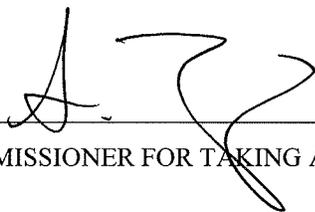
GM/sp

SP

Copy: Todd Dalglish, Vice-President, Treasury & Finance, Sears Canada Inc.
✓ Andrew J. Hatnay, Koskie Minsky LLP
Brian Mills, CEO and Superintendent of Financial Services (Interim), FSCO
Lester Wong, Deputy Superintendent, Pensions (Interim), FSCO
Sharon Polischuk, Pension Officer, FSCO

This is **Exhibit "J"**

referred to in the Affidavit of William Turner
sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a series of loops and a long horizontal stroke extending to the right.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

**Financial Services
Commission
of Ontario**

Pension Plans Branch

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Téléphone: (416) 226-7776
Télécopieur: (416) 226-7777



JUN 17 2015

June 11, 2015

Registration Number: 0360065

Andrew J. Hatnay
Koskie Minsky LLP
900-20 Queen Street
Box 52
Toronto ON M5H 3R3

Dear Mr. Hatnay:

Re: Sears Canada Inc. Registered Retirement Plan (the Plan)

Thank you for your letter of June 5, 2015, regarding your request for a wind up of the Plan and the revocation of the commuted value approval provided by our office dated March 17, 2015, of the above named pension plan.

Please note that FSCO is asking for responding submissions from Sears Canada Inc. We will respond to your letter and your request for a meeting once we receive a response from Sears Canada Inc.

If at any time you have any questions or concerns, you may contact me either at the address above, or directly by telephone at (416) 226-7820, or Sharon Polischuk, Pension Officer, directly by telephone at (416) 590-7248, or toll free at 1-800-668-0128, extension 7248. Please quote the registration number shown at the top of this letter.

Yours truly,

Gino Marandola
Director, Pension Plans Branch (Interim)

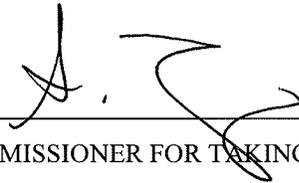
GM/sp

SP

Copy: Todd Dalglish, Vice-President, Treasury & Finance, Sears Canada Inc.
Mitch Frazer, counsel to Sears Canada Inc., Torys LLP
Brian Mills, CEO and Superintendent of Financial Services (Interim), FSCO
Lester Wong, Deputy Superintendent, Pensions (Interim), FSCO
Sharon Polischuk, Pension Officer, FSCO

This is **Exhibit "K"**

referred to in the Affidavit of William Turner
sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, appearing to be 'A. J.', is written over a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.



79 Wellington St. W., 30th Floor
 Box 270, TD South Tower
 Toronto, Ontario M5K 1N2 Canada
 P. 416.865.0040 | F. 416.865.7380
 www.torys.com

Mitch Frazer
 mfrazer@torys.com
 P. 416.865.8220

June 22, 2015

VIA EMAIL

Gino Marandola
 Director, Pension Plans Branch (Interim)
 Financial Services Commission of Ontario
 5160 Yonge Street
 P.O. Box 85
 Toronto, Ontario
 M2N 6L9

Dear Mr. Marandola:

**Re: Store and Catalogue Retiree Group (“SCRG”)
 The Sears Canada Inc., Registered Retirement Plan, Registration No.
 360065 (“Sears Canada Plan”)**

As counsel for Sears Canada Inc. (“Sears”), we write further to Koskie Minsky LLP’s letter to you dated June 5, 2015 (the “Koskie Letter”) and your letter to us dated June 11, 2015.

By this letter, we do not intend to (and do not think that it is necessary to) respond to the Koskie Letter point-by-point, though Sears reserves its right to do so at a later date. Suffice it to say, Sears wholly disputes the allegations set out therein, and strongly denies that there is any basis for the request made in the Koskie Letter. So that there is no doubt regarding Sears’ position on the Koskie Letter, we do wish to address certain points raised in that letter that misrepresent Sears’ financial position and that mischaracterize the provisions of the *Pension Benefits Act*, R.S. O. 1990, C.P.8 (the “PBA”).

First, Sears is not bankrupt. Any allegations to the contrary in the Koskie Letter cast unfounded aspersions on Sears that are irresponsible and misleading to this Commission.

Second, the Koskie Letter mischaracterizes section 69(1)(c) of the PBA in an attempt to expand its scope of application beyond what is provided for in the Act. That section provides that the Superintendent may require the wind up of a pension plan if “the employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act (Canada)*”.

The meaning of “bankrupt” under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “BIA”), is provided for at section 2 of that Act:

“bankrupt” means a person who has made an assignment or against whom a bankruptcy order has been made or the legal status of that person;

Sears is not bankrupt within the meaning of the BIA (or otherwise). It has not made an assignment in bankruptcy and no bankruptcy order has been issued against it, nor are there any pending motions seeking such relief. Accordingly, section 69(1)(c) of the PBA does not apply to Sears or the Sears Canada Plan. This interpretation of the section reflects the Legislature's intent and accords with the applicable rules of statutory interpretation. The Koskie Letter purports to expand the scope of this section by stating that section 69(1)(c) of the PBA is not limited to an employer being a "bankrupt" under the BIA and that the intention of the subsection is to apply to situations where an employer is "insolvent" as well, without reference to any legal or other authority for this interpretation. This despite the clearly-worded section.

The Koskie Letter conflates the terms "bankrupt" and "insolvent"¹, which latter term is not even used in the section 69(1)(c) of the PBA, in a manner that is misleading to this body with reference to the CCAA. The Koskie Letter omits reference to section 2 of the BIA that contains a definition of "insolvent person" set out below:

"insolvent person" means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

(a) who is for any reason unable to meet his obligations as they generally become due,

(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due; (emphasis added)

In summary, section 69(1)(c) of the PBA is not engaged in the case of Sears or the Sears Canada Plan. Sears is not a bankrupt, and there is no basis to conflate the terms "bankrupt" and "insolvent", as the Koskie Letter attempts to do. Therefore, the request that the Superintendent order the wind-up of the Sears Canada Plan is improper, as such a wind-up is not warranted.

Third, the Koskie Letter cites section 69(1)(g) of the PBA to support the position that the Superintendent should wind up the Sears Canada Plan. The Pension Benefits Guarantee Fund ("PBGF") provides protection, subject to specific maximums and specific exclusions, to Ontario

¹ The *Re Stelco Inc.*, decision cited in the Koskie Letter is not a case that involves any interpretation of the meaning of the word "bankrupt" as such term is used in the BIA. Rather, the Court was asked to determine whether Stelco qualified as a "debtor company" under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "CCAA"). The term "debtor company" is defined in section 2 of the CCAA to mean any company that: (a) is bankrupt or insolvent, (b) has committed an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* or is deemed insolvent within the meaning of the *Winding-up and Restructuring Act*, whether or not proceedings in respect of the company have been taken under either of those Acts, (c) has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act*, or (d) is in the course of being wound up under the *Winding-up and Restructuring Act* because the company is insolvent. In *Re Stelco Inc.*, the Court only examined the test for an "insolvent person" under section 2 of the CCAA and there was no examination of the term "bankrupt".

- 3 -

pension plan members and beneficiaries in the event of a pension plan wind up. As noted above, Sears Canada is not bankrupt, and an order to wind-up the Sears Canada Plan is not warranted at this time.

Further, a pension plan's funded status can and often does fluctuate over time, and whether and to what extent there are increases or decreases depends on a myriad of factors. Such factors include, but are not limited to: market fluctuations, return on investments, changes to interest and/or discount rates, the number of members, differences in mortality assumptions and plan experience, changes to legislative requirements, as well as financial contributions. The SCRG have presented no evidence in support of their claim that the funded status of the Sears Canada Plan will "continue to worsen unless the Plan is wound up at this time".

As of December 31, 2013, the Sears Canada Plan had a solvency deficiency of approximately \$76 million on solvency assets of approximately \$1.3 billion. This calculates to a solvency ratio of 95%. The funded status of the Sears Canada Plan actually **increased** since the previous actuarial valuation, and the solvency liability is not significant when compared to the overall Sears Canada Plan assets.

As of March 31, 2014, the PBGF had a \$375 million surplus. Hypothetically, even if the Sears Canada Plan were to be wound up, and the PBGF were to be held responsible to fund the entire solvency deficiency of the Sears Canada Plan, the PBGF would still be in a significant surplus position.

PBGF liability does not arise unless and until a pension plan is wound up. Not only is Sears Canada not bankrupt, the liability of the PBGF is not likely to be substantially increased if the Sears Canada Plan continues in existence. Accordingly, section 69(1)(g) of the PBA does not support the wind up of the Sears Canada Plan.

Please contact the undersigned should you have any questions about this letter.

Yours truly,



Mitch Frazer

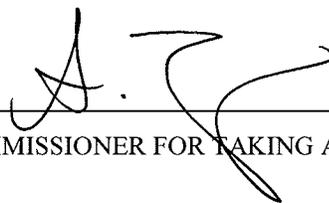
MF/SAB/cp

cc: Sears Canada Inc. - Franco Perugini, Todd Dalglish
FSCO - Brian Mills, Lester Wong, Sharon Polischuk
Koskie Minsky LLP - Andrew Hatnay, Mark Zigler, Barbara Walancik
Torys LLP - Scott Bomhof, Adam Slavens

98010-0982 19781645.3

This is **Exhibit "L"**

referred to in the Affidavit of William Turner
sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, appearing to be 'A. J.', written over a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

**Financial Services
Commission
of Ontario**

Pension Plans Branch

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Ontario

June 23, 2015

Registration Number: 0360065

Andrew J. Hatnay
Koskie Minsky LLP
900-20 Queen Street
Box 52
Toronto ON M5H 3R3

JUN 26 2015

Dear Mr. Hatnay:

Re: Sears Canada Inc. Registered Retirement Plan (the Plan)

FSCO has received responding submissions from Mr. Mitch Frazer dated June 22, 2015, which you were copied on, in response to your letter dated June 5, 2015. Your letter had a request for a wind up of the Plan and the revocation of the commuted value approval provided by our office dated March 17, 2015, of the above named pension plan.

Please provide FSCO with any reply submissions by July 7, 2015, with a copy to Mr. Frazer.

If at any time you have any questions or concerns, you may contact me either at the address above, or directly by telephone at (416) 226-7820, or Sharon Polischuk, Pension Officer, directly by telephone at (416) 590-7248, or toll free at 1-800-668-0128, extension 7248. Please quote the registration number shown at the top of this letter.

Yours truly,

A handwritten signature in black ink, appearing to read 'Gino Marandola'.

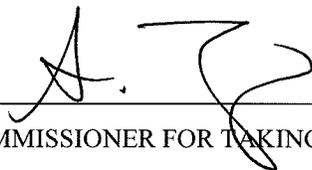
Gino Marandola
Director, Pension Plans Branch (Interim)

Copy: Todd Dalglish, Vice-President, Treasury & Finance, Sears Canada Inc.
Mitch Frazer, counsel to Sears Canada Inc., Torys LLP
Brian Mills, CEO and Superintendent of Financial Services (Interim), FSCO
Lester Wong, Deputy Superintendent, Pensions (Interim), FSCO
Sharon Polischuk, Pension Officer, FSCO

This is **Exhibit "M"**

referred to in the Affidavit of William Turner

sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, appearing to be "A. J." followed by a stylized flourish.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

July 7, 2015

Via Email

Andrew J. Hatnay
Direct Dial: 416-595-2083
Direct Fax: 416-204-2872
ahatnay@kmlaw.ca

Financial Services Commission of Ontario
5160 Yonge Street, P.O. Box 85
Toronto, ON M2N 6L9

Attention: **Brian Mills, CEO and Superintendent**
Michael Doi, Director, Legal Services
Gino Marandola, Senior Manager, Operations
Deborah McPhail, Senior Counsel
Sharon Polischuk, Pension Officer

Dear Sirs and Mesdames:

Re: Store and Catalogue Retiree Group (“SCRG”)
The Sears Canada Inc. Registered Retirement Plan, Registration Number 360065
(“Sears Canada Plan”)

We are writing further to the letter from counsel to Sears Canada Inc. dated June 22, 2015 to FSCO and the letter from FSCO to our firm dated June 23, 2015

In our letter to FSCO of June 5, 2015, we enclosed a memorandum from a former Chief Financial Officer of Sears Canada who analyzed the financial situation of Sears Canada and its money-losing retail business to conclude that Sears Canada will fail. Since our letter, there have been further media reports, including an analysis performed by Desjardins Capital Markets dated June 27, 2015, which predicts that a turnaround of Sears Canada is “unlikely”.

There is ample evidence before FSCO to demonstrate that Sears Canada will not continue as a viable entity (see for example, the enclosed article dated July 3, 2015 “Liquidation Situation: The slow dismantling of Sears Canada”). A typical outcome for such a company, as FSCO is aware from its involvement in other insolvency matters, is for the company to eventually seek protection from its creditors under the *Companies’ Creditors Arrangement Act*, R.S.C., 1985, c. C-36 (“CCAA”), or alternatively assign itself into bankruptcy or be subject to an application for a bankruptcy order brought by a creditor(s).

The *Pension Benefits Act*, R.S.O. 1990, c. P.8 (“PBA”) is minimum standards legislation and one of its paramount purposes is to protect pension plan members. As part of the PBA pension regulatory regime, the PBA authorizes the Ontario Superintendent of Financial Services to order a wind up of a pension plan in certain circumstances.

We do not agree with Tory's technical interpretation of section 69(1)(c) of the PBA. The substance of section 69(1)(c) was added to the PBA by amendment on December 12, 1980. We enclose a copy of the *The Pension Benefits Amendment Act, 1980*, section 6 of which amends the PBA to add the criteria of an employer becoming bankrupt to allow the Superintendent to order a plan wind up.

At the time of the 1980 amendment, the CCAA was not in significant use as an insolvency statute. In the years after the 1980 amendment, and in particular in the 1990's and 2000's following various amendments to the CCAA, the CCAA became increasingly resorted to by insolvent companies instead of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 ("BIA"), primarily because the CCAA allows an insolvent company to pursue more flexible arrangements, whether by restructuring or a bankruptcy-style liquidation, in contrast to the more formal BIA (which replaced the previous *Bankruptcy Act*) that among other things, mandates the appointment of a trustee in bankruptcy to take possession of all the debtor's assets. Nevertheless, a criteria of the CCAA is that a company be insolvent in order to obtain an order from the court granting it CCAA protection.

FSCO is well acquainted with many CCAA cases that have proceeded before the courts and FSCO counsel have appeared on many CCAA files. Given that the CCAA permits the liquidation of an insolvent company akin to a bankruptcy (known as a "liquidating CCAA"), the commercial reality following the 1980 amendment that FSCO must recognize is that many insolvent companies never resort to the BIA and are therefore never declared a "bankrupt", despite their insolvency and despite their failure while under CCAA protection, which is currently more often the case for a debtor under CCAA protection than a true restructuring. The most obvious current example is Nortel, where the company failed and liquidated its assets, all done while the company is in CCAA proceedings. Nortel will likely never be declared a "bankrupt" under the BIA, yet there is no debate that the company was insolvent and failed and in turn caused significant pension benefit losses in the range of 25%-43% to the Nortel pension plan members.

Accordingly, in the face of Sears Canada's current financial circumstances and the mounting evidence of its inevitable failure, it is inappropriate for Sears Canada to rely on a technical interpretation of the term "bankrupt" from a 1980 amendment to the PBA when the CCAA was not in significant use, in an effort to deflect the legitimate concerns of the Sears pension plan members for future pension benefit losses as the members (and FSCO) watch Sears Canada slide further towards failure. As we explained in prior correspondence, and as FSCO is well aware, a wind up of the Sears Canada Plan in its underfunded state will result in pension benefit losses to the plan members. The Sears Canada plan members do not wish to be the next group of Canadian retirees who have to endure such losses due to the predictable failure of Sears Canada. Accordingly, our communications to the company and FSCO over the past several months are intended to alert FSCO to the financial crisis that Sears Canada is in so that preventative steps can be taken now to prevent a sudden Nortel-esque liquidation that will result in pension benefit losses.

In the United States, it has been publicly reported that the U.S. pension plan regulator, the Pension Benefits Guaranty Corporation (“PBGC”) is involved against Sears Canada’s ultimate parent, Sears Holdings Corp., to address its underfunded U.S. pension plans. In a Morgan Stanley press release dated April 30, 2015 (copy enclosed), it states:

Sears may be required to make additional contributions to its pension plan

The analysts believe that the PBGC may require Sears Holdings to make additional contribution to its under-funded pension plan to be able to move forward with its planned REIT.

In addition, the agency may also require Sears Holdings to obtain guarantees, a letter of credit or pledge security interests to the plan.

According to the analysts, the PBGC required an 80% asset-obligation funding level in its previous negotiations, which is the ERISA statutory level to prevent an “at-risk” status.

The Morgan Stanley report indicates that PBGC has identified that the Sears U.S. pension plan is an “at risk” pension plan, and it is understood that PBGC has taken steps to compel Sears to meaningfully address the U.S. pension plan underfunding as a preventative step prior to a company failure. Similarly, in Canada, Sears Canada is an unquestionably “at risk” company and there are ample warning signs that it will fail. We urge FSCO to take steps now to prevent otherwise inevitable losses to the Sears Canada retirees.

We propose a further meeting to discuss these issues and to discuss a meaningful future course of action. Please let us know your availability.

Thank you for your attention to this matter.

Yours truly,

KOSKIE MINSKY LLP



Andrew J. Hatnay
AJH:vdl/encl.

cc. Mitch Frazer, *Torys LLP*, counsel to Sears Canada
SCRG
Mark Zigler, Barbara Walancik, *Koskie Minsky LLP*

Desjardins: Now or never for Sears Canada

Laura Woodward, BNN.ca staff
 7:29 PM, E.T. | June 27, 2015
 Retail
 Tags: Sears Canada

20

The time for Sears Canada to turnaround its business is now or never, according to Keith Howlett, Desjardins Capital Markets analyst.

"With Target's exit from the Canadian market, the next seven quarters are to make it or break it for Sears Canada," said Howlett in a note to clients on Friday.

Howlett expects Sears Canada to post operating losses of \$150-million by the end of 2015.

Sears Canada has struggled in comparison to other North American department stores. Sales declined 9.7 percent in the first quarter of 2015, putting it among the worst performers by that metric.

Walmart Canada, on the other hand, was amongst top performers with 3.7 percent sales growth.

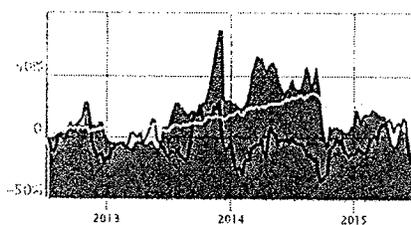
For Sears Canada to breakeven, the company would need a \$750-million increase in sales, a 4.72 percent increase in profit margins and to reduce expenses by \$150 million – an unlikely operating turnaround, which is why Howlett recommends investors sell.

"While it still has a solid balance sheet and owned real estate which it can sell, our view is that its under-market leases have lost considerable value over the last two years," said Howlett, who has a \$8.50 price target on Sears Canada shares. "As asset value declines,

SEARS CANADA

Stock data delayed up to 20 minutes

\$7.58 \$0.05 0.66%



■ SCC.TO — SHLD.O ··· GSPTSE

chart type: 3year, Comparative

See Full Stock Page »

the need for a near-term operating turnaround at Sears Canada becomes greater. It is, however, unlikely, in our view."



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Liquidation Situation: The slow dismantling of Sears Canada

BNN.ca staff
7:31 AM, E.T. | July 3, 2015
Retail
Tags: Retail, Sears Canada, Sears Holdings

13

Sears Canada Inc. ([SCC.TO](#) 0.66%) is looking for a chief executive officer – again.

The struggling retailer – which posted a net loss of \$59.1-million for the first quarter to go along with six straight years of falling sales – announced Thursday that Ronald Boire will depart at the end of the summer.

Boire lasted less than a year in the job after replacing Douglas Campbell, who left in September 2014. Campbell succeeded Calvin McDonald, who quit in September 2013 just two years after replacing Dene Rogers.

SEARS CANADA

Stock data delayed up to 20 minutes

\$7.58 \$0.05 0.66%

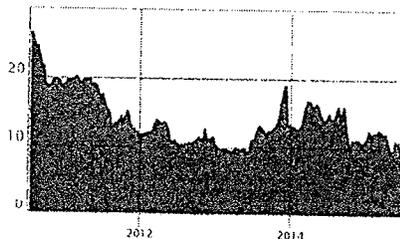
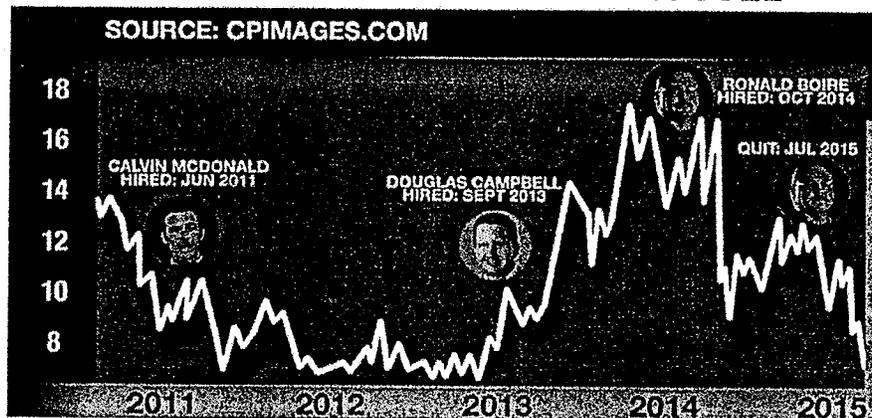


chart type: 5year

[See Full Stock Page »](#)

SEARS CANADA'S C-SUITE CAROUSEL

SOURCE: CPIMAGES.COM



Retail consultant Mark Satov believes Sears Canada's many CEOs were qualified retailers that have been hamstrung by hedge fund manager Eddie Lampert – who owns a controlling stake in Sears Canada and parent company Sears Holdings.

"I can't say he's doing a bad job as a hedge fund manager because he's actually taken a lot of cash out of this thing," Satov told BNN. "Who are you going to attract now? Because everybody keeps leaving."

After years of asset sales, special dividends and CEO departures, Satov says the department store retailer has failed and the only remaining option is to sell what's left – noting Sears Canada owns a travel business, eye care business, the Corbeil Appliance chain and a profitable e-commerce platform.

THE LIQUIDATION OF SEARS CANADA

Hedge fund manager Eddie Lampert took control of Sears Holdings in 2005 by engineering the merger of K-Mart and Sears. Since then, Sears Canada has sold everything from credit card receivables to real estate - and paid the money out to shareholders as sales have declined.

August 31, 2005: Sears Canada sells its credit card division to JPMorgan Chase & Co. for \$2.2-billion.

December 9, 2005: With shares trading above \$30, Sears Canada pays out a special dividend of \$4.38.

May 27, 2010: Sears Canada pays out a special dividend of \$3.50.

September 20, 2010: Sears Canada pays out a second special dividend of \$3.50.

April 20, 2012: Sears Canada receives \$170-million as it sells three leases back to landlord Cadillac Fairview, closing its stores at Vancouver Pacific Centre, Calgary Chinook Centre and Ottawa Rideau Centre.

July 18, 2012: Sears Canada announces it will receive "financial consideration" from landlord Shape Properties for exiting its Deerfoot Mall location in Calgary ahead of schedule.

December 12, 2012: Sears Canada announces the sale of its 40-percent ownership of the leasehold interest in Medicine Hat Mall to the Company's joint venture partner, Sleeping Bay Building Corp., for \$43 million.

December 20, 2012: Sears Canada pays out a special dividend of \$1.

June 14, 2013: Sears Canada sells its leases at Yorkdale Mall in Toronto and Mississauga's Square One Shopping Centre back to the property owners for \$191-million.

October 29, 2013: Sears Canada receives \$400-million in exchange for giving up leases at Toronto's Eaton Centre and Sherway Gardens, along with three other locations.

November 11, 2013: Sears Canada announces the sale of its 50-percent joint venture interest in eight properties in a deal valued at approximately \$315-million.

November 26, 2013: Sears Canada announces almost 800 job losses as it restructures its head office, automotive and services businesses.

November 28, 2013: Sears Canada pays out a special dividend of \$5.

December 9, 2013: Sears Canada pays out a second special dividend of \$5.

May 16, 2014: Sears Canada sells its 15 percent interest in a shopping mall in Trois-Rivieres, Que. for \$33.5 million.

August 6, 2014: H&R REIT buys the Kildonan Place Shopping Centre in Winnipeg for \$138.5 million from co-owners Ivanhoé Cambridge and Sears Canada.

March 11, 2015: Sears Canada signs a deal with the Concord Pacific Group of Companies to sell and lease back three of its properties for \$140-million.

Sears Holdings Corp (SHLD) Pension Woes Could Hurt REIT Plans: Morgan Stanley

valuewalk.com/2015/04/sears-holdings-corp-shld-pension-woes-could-delay-reit/

Marie Cabural

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Exhibit 2: Recent Examples of Protection Sought by PBGC in Relation to Corporate Transactions

Company	Year	Transaction	Protection sought by PBGC
Saint-Gobain Containers, Inc	2014	Sale of a Subsidiary	PBGC initiated the proceedings to involuntarily terminate the plan when the company did not actively engage in a dialog with the agency. Later, sought additional cash contributions of \$207.5 mn
Safeway Inc	2014	LBO	Secured additional cash contributions of \$212 mn from the PE firm Cerberus Capital Management
Daimler Chrysler	(a) 2007 (b) 2009	(a) Sale of a controlling interest (b) Sale of remaining ownership stake	(a) Sought termination guarantee of \$1 bn (b) Negotiated additional cash contributions of \$200 mn and an extension of the guarantee
Motorola Solutions	2011	Spin off	Secured additional cash contributions of \$100 mn over five years above and beyond legal requirements
Belo Corp.	2011	Spin off	Reserved right to come back at the previous (the more profitable) plan sponsor, if spun off entity declares bankruptcy or otherwise defaults Sought additional cash contributions of \$30 mn

Source: Company data, Morgan Stanley Research, National Retiree Legislative Network

Exhibit 2: Recent Examples of Protection Sought by PBGC in Relation to Corporate Transactions

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Source: Company data, Morgan Stanley Research, National Retiree Legislative Network

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Source: Company data, Morgan Stanley Research, National Retiree Legislative Network

Analysts at Morgan Stanley suggested that the pension obligations of Sears Holdings Corp (NASDAQ:SHLD) could cause problems to its planned real estate investment trust (REIT).

Sears Holdings plans to form a REIT to raise \$2.5 billion. The REIT will buy 254 Sears and Kmart stores, and it will lease-back to the retailers

Morgan Stanley (NYSE:MS) analyst Todd Castagno and his colleagues noted the report that Sears Holdings Corp (SHLD) is engaged in active discussions with the Pension Benefit Guarantee Corporation (PBGC) with its under-funded pension and a planned sale-lease-back transaction with an associated pension.

The analysts emphasized that PBGC is a government guarantor of corporate pensions. It has limited but powerful authority to seek a court-imposed involuntary termination of a company's plan when it expects long-term losses to the agency.

"The PBGC has an immediate joint and several claims against the company in an amount equal to the asset-obligation funding gap," explained Castagno and his fellow analysts. They noted that the agency has a history of executing its authority to pursue compromises for pension funding before significant transactions are made.

Exhibit 2: Recent Examples of Protection Sought by PBGC in Relation to Corporate Transactions

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Source: Company data, Morgan Stanley Research, National Retiree Legislative Network

Sears may be required to make additional contributions to its pension plan

The analysts believe that the PBGC may require Sears Holdings to make additional contributions to its under-funded

pension plan to be able to move forward with its planned REIT.

In addition, the agency may also require Sears Holdings to obtain guarantees, a letter of credit or pledge security interests to the plan.

According to the analysts, the PBGC required an 80% asset-obligation funding level in its previous negotiations, which is the ERISA statutory level to prevent an "at-risk" status.

Sears Holdings reported a GAAP funded status of 62% with a \$5.9 billion obligation funded by \$3.6 billion in assets as of 2014. The analysts estimated that the company's pension plan needed \$1.1 billion in additional assets to reach the 80% asset-obligation funding level. They used GAAP as a proxy in their estimate.

PBGC and its involvement in strategic corporate transactions

The analysts explained that PBGC monitors companies with under-funded defined benefit pension plans. It identifies corporate transactions that could undermine the solvency of the pension plan and expose the insurance program to a risk of economic loss.

The PBGC seeks to negotiate protections with the pension plan sponsor through a Risk Mitigation Program to prevent expected losses.

The agency is expected to contact a company with a below-investment grade bond rating, sponsors a pension plan with a current liability of more than \$25 million, and an unfunded liability of more than \$5 million. The PBGC will request for further information about a company's transaction, and express concerns regarding its consequences for the pension plan.

The PBGC will negotiate to obtain protections for the pension insurance program if it concludes that a company's strategic transaction may increase the risk of a long-run loss. Given the agency's negotiation with Sears Holdings, it shows that the agency is concerned with the company's planned REIT transaction.

Below are the protections sought by the PBGC in the past.

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Exhibit 2: Recent Examples of Protection Sought by PBGC in Relation to Corporate Transactions

Company	Year	Transaction	Protection Sought by PBGC
Home-Global Corrections, Inc.	2014	Sale of a subsidiary	PBGC obtained the proceeds to involuntarily provide to the plan when the company did not actually agree to a deal with the agency.
Safeway Inc.	2014	R.O.	100% additional cash contribution of \$500 million secured additional cash contributions of \$211 million from the PBGC through Capital Management.
Quaker Chrysler	(a) 2007 (b) 2009	(a) Sale of a controlling interest (b) Sale of remaining ownership stake	(a) Negotiated additional cash contributions of \$208 million and an extension of the guarantee (b) Secured additional cash contributions of \$300 million
National Services	2011	Sale of	five years above and beyond legal requirements
Solo Corp.	2011	Sale of	Reserved right to come back at the previous (five more profitable) plan sponsor, if sponsor ever declares bankruptcy or otherwise defaults 100% additional cash contribution of \$18 million

Source: Company news, Morgan Stanley Research, National Business Negotiation Services

CHAPTER 80

An Act to amend The Pension Benefits Act

Assented to December 12th, 1980

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Subsection 1 of section 1 of The Pension Benefits Act, being chapter 342 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following clause:

(da) "Fund" means the Pension Benefits Guarantee Fund established by section 25b.

(2) Subclause iv of clause h of subsection 1 of the said section 1 is repealed and the following substituted therefor:

(iv) a deferred profit sharing pension plan other than an employee's profit sharing plan or a deferred profit sharing plan as defined in sections 144 and 147 of the Income Tax Act (Canada).

R.S.C. 1952, c. 148

2. Clause b of subsection 3 of section 21 of the said Act is amended by striking out "\$10" in the fifth line and inserting in lieu thereof "\$25".

s. 21 (3) (b), amended

3. Section 23a of the said Act, as enacted by the Statutes of Ontario, 1973, chapter 113, section 6, is repealed and the following substituted therefor:

s. 23a, re-enacted

23a.—(1) Where a sum is received by an employer from an employee under an arrangement for the payment of the sum by the employer into a pension plan as the employee's contribution thereto, the employer shall be deemed to hold the sum in trust for the employee until the sum is paid into the pension plan whether or not the sum has in fact been kept separate and apart by the employer and the employee has a lien upon the assets of the employer for such amount that in the ordinary course of business would be entered in books of account whether so entered or not.

Employee contribution to pension fund is trust fund in hands of employer

(2) For the purposes of subsection 1, any sum withheld by an employer, whether by payroll deduction or otherwise, from

Idem: payroll deductions

Notice period included in calculating pension benefits 1974, c. 112

(6) For the purposes of calculating pension benefits on the wind up of a pension plan, the period of notice required to be given to a terminated employee under Part XII of *The Employment Standards Act, 1974* shall be included in computing the employee's length of service with his employer or his time in the plan, as the case may be.

s. 25, amended

6.—(1) Section 25 of the said Act is amended by adding thereto the following subsections:

Idem

(1a) The Commission may declare that a defined benefit pension plan is wound up in whole or in part for the purposes of this Act on such date as the Commission in its discretion considers appropriate, where,

R.S.C. 1970, c. B-3

- (a) the employer providing the plan is bankrupt within the meaning of the *Bankruptcy Act* (Canada);
- (b) the plan has been terminated in whole or in part and the employer has failed to meet the funding requirements prescribed;
- (c) the plan has been terminated in whole or in part and the Commission is of the opinion that because of his insolvency the employer will not be able to meet the funding obligations prescribed by regulation;
- (d) the Commission has reason to believe that the amount of payments that the Fund may be required to guarantee may be expected to increase unreasonably if the plan is not wound up; or
- (e) such other event as is prescribed by regulation occurs,

Commission as administrator

(4) Where a defined benefit pension plan is declared to be wound up in whole or in part by the Commission, the Commission, where it has reason to believe that the assets of the plan are not sufficient to provide full payment of the contributions and pension benefits set out in section 25c, may take control of the assets of the pension plan and act as administrator of the plan for the purpose of the wind up.

s. 25 (2), amended

(2) Subsection 2 of the said section 25 is amended by adding at the end thereof "or 1a".

s. 25 (3), amended

(3) Subsection 3 of the said section 25 is amended by inserting after "subsection 1" in the second line "or 1a".

7. The said Act is further amended by adding the following sections:

25b.—(1) There is established the Pension Benefits Guarantee Commission.

(2) The purpose of the Commission is to ensure that defined benefit pension plans are wound up in accordance with section 25 subject to the regulations.

(3) If, at any time the Fund is insufficient to meet the obligations under this Act, the Lieutenant Governor in Council may require the Treasurer of Ontario to contribute to the Revenue Fund to the amount necessary to meet the obligations of the Lieutenant Governor.

25c.—(1) The pension benefits of a plan that is wound up are guaranteed by the following:

(a) all pension benefits payable under clause (a) of section 25 with respect to the date of winding up of the plan by the employer if the member has attained the age of 65 years;

(b) all pension benefits payable under clause (b) of section 25 to a person who has been employed by the employer for a period of not less than 10 years immediately preceding the date of winding up of the plan;

(c) all pension benefits payable under clause (c) of section 25 to a person who has been employed by the employer for a period of not less than 5 years immediately preceding the date of winding up of the plan;

(d) the value of the pension benefits in respect of the period of not less than 5 years immediately preceding the date of winding up of the plan.

1980

1980

PENSION BENEFITS

Chap. 80

475

dures to be followed by the pension plan in the distri-
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on the occurrence of which
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by the Statutes of Ontario,
amended by adding thereto

(4) No proceeding under this section shall be commenced more than two years after the time when the subject-matter of the proceeding arose. Time limit for commencing proceedings

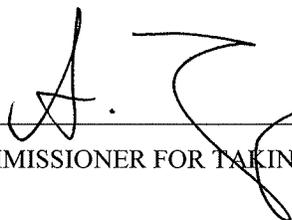
11. This Act shall be deemed to have come into force on the 4th day of December, 1980. Commencement

12. The short title of this Act is *The Pension Benefits Amendment Act, 1980*. Short title

This is **Exhibit "N"**

referred to in the Affidavit of William Turner

sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, appearing to be "A. J." followed by a stylized flourish.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

**Financial Services
Commission
of Ontario**

Pension Plans Branch

5160 Yonge Street
Box 85
Toronto ON M2N 6L9

Telephone: (416) 226-7776
Facsimile: (416) 226-7777

**Commission des
services financiers
de l'Ontario**

Direction des régimes de retraite

5160, rue Yonge
Boîte 85
Toronto ON M2N 6L9

Téléphone: (416) 226-7776
Télécopieur: (416) 226-7777



July 30, 2015

Registration Number: 0360065

AUG 16 2015

Andrew J. Hatnay
Koskie Minsky LLP
900-20 Queen Street
Box 52
Toronto ON M5H 3R3

Dear Mr. Hatnay:

Re: Sears Canada Inc. Registered Retirement Plan (the Plan)

We have reviewed your submissions dated June 5 and July 7, 2015, as well as the submission from Mr. Mitch Frazer dated June 22, 2015, that you were copied on.

We are prepared to meet with you on a without prejudice basis along with additional representatives from SCRG and Sears Canada Inc. in August 2015. We will be in contact with you by telephone and/or email to arrange this meeting.

If at any time you have any questions or concerns, you may contact me either at the address above, or directly by telephone at (416) 226-7820, or Sharon Polischuk, Pension Officer, directly by telephone at (416) 590-7248, or toll free at 1-800-668-0128, extension 7248. Please quote the registration number shown at the top of this letter.

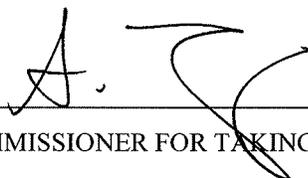
Yours truly,

Gino Marandola
Director, Pension Plans Branch (Interim)

Copy: Todd Dalglish, Vice-President, Treasury & Finance, Sears Canada Inc.
Mitch Frazer, counsel to Sears Canada Inc., Torys LLP
Brian Mills, CEO and Superintendent of Financial Services (Interim), FSCO
Lester Wong, Deputy Superintendent, Pensions (Interim), FSCO
Sharon Polischuk, Pension Officer, FSCO

This is **Exhibit "O"**

referred to in the Affidavit of William Turner
sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, appearing to be "A. J. C.", written over a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

KOSKIE MINSKY

November 3, 2015

VIA EMAIL

Andrew J. Hatnay
Direct Dial: 416-595-2083
Direct Fax: 416-204-2872
ahatnay@kmlaw.ca

Financial Services Commission of Ontario
5160 Yonge Street, P.O. Box 85
Toronto, ON M2N 6L9

Attention: Gino Marandola, Director, Pension Plans Branch (Interim)
Deborah McPhail, Senior Counsel
Sharon Polischuk, Pension Officer

Dear Sir and Mesdames:

Re: Store and Catalogue Retiree Group ("SCRG")
The Sears Canada Inc. Registered Retirement Plan, Registration Number
360065 ("Sears Canada Plan")
Our File No.: 13/2022

We are writing further to our meeting of September 11, 2015 at your offices with representatives of Sears Canada Inc.

At the conclusion of that meeting, we understood that FSCO would be sending a letter to Sears Canada requesting certain information and we discussed reconvening a meeting with FSCO and Sears Canada around October 15, 2015. We have since exchanged voicemail messages with Ms. McPhail who indicated on October 23, 2015 that the letter from FSCO remains under internal review and is expected to be sent to Sears Canada shortly.

The deteriorating financial situation of Sears Canada continues to be of great concern to our clients, the members of the Sears Canada Plan. We ask that you proceed to schedule the next meeting with FSCO and Sears Canada as soon as possible. Please let us know suggested dates for that meeting at your earliest convenience.

Yours truly,

KOSKIE MINSKY LLP



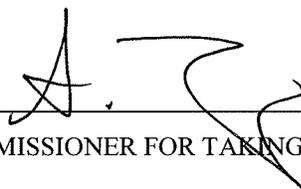
Andrew J. Hatnay
AJH:vdl

c. Clients
Barbara Walancik, *Koskie Minsky LLP*

This is **Exhibit "P"**

referred to in the Affidavit of William Turner

sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, consisting of a stylized 'A' followed by a large, sweeping flourish that extends to the right and then curves back down.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

**Financial Services
Commission
of Ontario**

Pension Plans Branch

5160 Yonge Street
Box 85
Toronto ON M2N 6L9

Telephone: (416) 226-7776
Facsimile: (416) 226-7777

**Commission des
services financiers
de l'Ontario**

Direction des régimes de retraite

5160, rue Yonge
Boîte 85
Toronto ON M2N 6L9

Téléphone: (416) 226-7776
Télécopieur: (416) 226-7777



November 6, 2015

Registration Number: 0360065

Mitch Frazer
Torys LLP
79 Wellington Street W
30th Floor
Box 270, TD South Tower
Toronto ON M5K 1N2

Dear Mr. Frazer:

Re: Sears Canada Inc. Registered Retirement Plan (Plan)

This letter is further to the meeting on September 11, 2015, with Sears Canada Inc. (Sears), SCRG (a Sears Canada Inc. retiree association) and the Financial Services Commission of Ontario (FSCO).

As discussed at the meeting, this letter sets out some additional information that FSCO requires to make a determination as to whether there are grounds for partial wind up(s) of the Plan prior to July 1, 2012, or to fully wind up the Plan now.

Information to determine grounds for partial wind ups prior to July 1, 2012

We note that the total active Plan membership declined from 23,034 at December 31, 2002, to 10,866 at December 31, 2012.

If certain conditions are met, the Superintendent of Financial Services (Superintendent) may order the partial wind up of a pension plan pursuant to his authority under section 77.3 of the Pension Benefits Act (PBA). The following clauses of section 77.3(1) of the PBA may be of particular relevance in determining whether grounds exist for a partial wind up of the Plan:

- (a) if a significant number of members of the pension plan cease to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer;
- (b) if all or a significant portion of the business carried on by the employer at a specific location is discontinued;

- (c) if part of the employer's business or part of the assets of the business are sold, assigned or otherwise disposed of and the person or entity who acquires the business or assets does not provide a pension plan for the members of the employer's pension plan who become employees of the person or entity.

Please provide us with detailed information regarding the events leading to the drop in Plan membership described above, including the timing of those events. This information is being requested to determine if any of the conditions under section 77.3 of the PBA for the Superintendent to exercise his authority to order a partial wind up of the Plan have been satisfied. Please ensure that the information you provide is sufficient to make such a determination.

Please note that after receipt of the above information, we may require further detailed information on the affected members, including their location of employment, the date and reason for their termination, and their vested status.

Information to determine grounds for full wind up

Please provide us with the following information in order to allow us to assess whether there are grounds under section 69(1)(g) of the PBA to wind up the Plan in full.

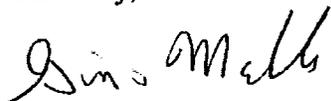
1. Financial Information (see Appendix).
2. An actuarial funding valuation report for the Plan with an effective date as at September 30, 2015, containing information for the defined benefit portion of the Plan that is identical to that shown in the Plan's filed December 31, 2013, valuation report.
3. Additional information - please provide:
 - a) a breakdown of the Plan membership and liabilities by jurisdiction and membership category;
 - b) the aggregate of transfer deficiencies, if applicable, made pursuant to section 19(6)(b) of Regulation 909 made under the PBA and the amount of any further transfer deficiencies that can be made under this section of Regulation 909;
 - c) the total amount of defined contribution (DC) account balances under the Plan as at September 30, 2015, and the required DC contributions for the next 12 months; and,
 - d) copies of the Statement of Investment Policies and Procedures for the Plan in effect for the past three years.

We look forward to receiving your response by December 9, 2015. A meeting will be scheduled with Sears, SCRG and FSCO after we receive your response to this letter and have had an opportunity to review it.

Registration Number: 0360065
November 6, 2015
Page 3

If at any time you have any questions or concerns, you may contact me either at the address above, or directly by telephone at (416) 226-7820, or Sharon Polischuk, Pension Officer, directly by telephone at (416) 590-7248, or toll free at 1-800-668-0128, extension 7248. Please quote the registration number shown at the top of this letter.

Yours truly,



Gino Marandola
Director, Pension Plans Branch (Interim)

Copy: Andrew J. Hatnay, Koskie Minsky LLP
Sharon Polischuk, FSCO

Appendix Information Request/Questions

General

- a copy of the three year Strategic Business Plan, supporting documents including budgets, financial projections and amendments
- minutes of all Board of Directors meetings
- minutes of all Pension Committee meetings, if any
- corporate structure and management organizational structure
- listing of all merchandising operation locations by retail channel
- copies of auditor's management reports, if any

Financial statements

- copies of the Sears Canada Inc. Annual Reports including audited financial statements for the past three years
- copies of all interim quarterly financial statements and management discussion & analysis since the last audited financial statements
- copy of a CICA Section 5970 report on internal controls (if available)
- copies of any assessment or credit report available
- cash flow projections going forward

Receivables

- detailed aged accounts receivables listing
- summary aged accounts receivables listing
- please identify any doubtful or bad debts

Secured lenders

- identify all banks and secured lenders
- copy of any Bank Credit Agreement
- details of any personal guarantees to lenders or otherwise
- any shareholder loans with an indication of whether they are secured
- latest copy of borrowing base and availability from operating (line of credit) lender
- breakdown of secured obligations by priority level

Payables

- detailed aged payables listing
- schedule of accrued liabilities
- details of all secured debt (amounts, terms and interest rates)
- status of priority payables (ETD, HST/GST, vacation pay, wages and EHT)

Appendix Information Request/Questions

Inventory

- estimated value of inventory
- estimated salvage value of inventory

Fixed Assets

- details of land and buildings
- copy of appraisal of land and buildings
- copy of latest appraisal of Property and Equipment
- estimated salvage value of Property and Equipment
- copy of mortgages
- list of equipment and other fixed assets (if available)
- listing of leased assets

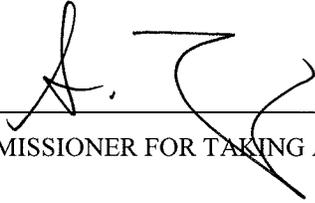
Pension and related

- summary of the breakdown of the investments of pension assets by asset class and investment manager levels
- copies of investment service agreements entered into with external investment managers
- copies of periodic reports/reviews from external investment managers

Other

- details of any outstanding litigation and regulatory action against the company (and of any contemplated litigation or regulatory action of which the Sears Canada Inc. is aware) including the potential cost to Sears Canada Inc.
- any other material facts

This is **Exhibit "Q"**
referred to in the Affidavit of William Turner
sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, appearing to be 'A. J.', is written over a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.



79 Wellington St. W., 30th Floor
 Box 270, TD South Tower
 Toronto, Ontario M5K 1N2 Canada
 P. 416.865.0040 | F. 416.865.7380
 www.torys.com

Mitch Frazer
 mfrazer@torys.com
 P. 416.865.8220

December 9, 2015

VIA EMAIL

Gino Marandola
 Director, Pension Plans Branch (Interim)
 Financial Services Commission of Ontario
 5160 Yonge Street
 P.O. Box 85
 Toronto, ON M2N 6L9

Dear Mr. Marandola:

Re: Sears Canada Inc. Registered Retirement Plan (the "Plan")

This letter responds to your letter of November 6, 2015, which followed up on our meeting in respect of the Plan on September 11, 2015 (the "Letter").

On the basis of our discussion at the September 11 meeting we anticipated that the Financial Services Commission of Ontario ("FSCO") would be requesting additional information in respect of the Plan and FSCO's analysis regarding a potential wind up or partial wind up of the Plan. However, the number and scope of the requests contained in the appendix to the Letter go well beyond what we anticipated. These requests are extremely broad and, in our experience, unprecedented in the degree to which complying with them will require our client to:

- (i) disclose commercially sensitive information about the business of Sears Canada Inc. ("Sears"); and
- (ii) review and analyze the records of Sears and, in some cases, create documents or cause others to create documents that respond to the specific requests set out in the Letter.

Despite these challenges Sears wishes to be appropriately responsive to these requests from FSCO. Sears is therefore providing the documents outlined in Appendix "A", which are the documents that Sears is able to provide at this time. Sears continues to work diligently to address several of the other requests set out in the Letter and, in part for that purpose, respectfully requests a private meeting with you and FSCO staff, including the acting Deputy Superintendent, so that Sears and Sears's counsel can fully understand the nature of each of the many outstanding requests set out in the Letter. Sears also wishes to better understand the basis for each of these requests and, in some cases, to explore whether the concerns underlying these requests can be more effectively and/or efficiently addressed by refining those requests or better understanding them. In our view, the meeting we propose would help to ensure that Sears's response to the Letter will be appropriately responsive to FSCO's concerns.

- 2 -

In addition to the requests set out in the appendix to the Letter, we note that in the body of the Letter you have requested "detailed information regarding the events leading to the drop in Plan membership" over a 10-year period. In light of this very broad request we would also like to use the proposed meeting as an opportunity to address any concerns that you may have regarding the recent history of membership in the Plan. In order to make the discussion of this issue as informative as possible, we propose that Susan Himmelman of Aon Hewitt, the Plan actuary, also attend the meeting.

Thank you in advance for your consideration of this request and please do not hesitate to contact me should you wish to discuss it.

Yours truly,



Mitch Frazer

MF

cc: Sears Canada Inc. - Franco Perugini (with attachments)
FSCO - Sharon Polischuk (with attachments)
Susan Himmelman - Aon Hewitt (with attachments)
Koskie Minsky LLP - Andrew Hatnay (without attachments)

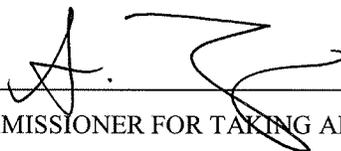
**Appendix “A”
Responses to Information Requests**

The following documents are included as attachments to this email:

- 2012 Annual Report
- 2013 Annual Report
- 2014 Annual Report
- 2012 Audited Annual Financial Statements
- 2013 Audited Annual Financial Statements
- 2014 Audited Annual Financial Statements
- June 2015 Interim Financial Statements
- September 2015 Interim Financial Statements
- March 2015 Management’s Discussion and Analysis
- June 2015 Management’s Discussion and Analysis
- September 2015 Management’s Discussion and Analysis
- 2012 Statement of Investment Policies and Procedures
- 2014 Statement of Investment Policies and Procedures
- 2015 Statement of Investment Policies and Procedures
- Summary of Headcount by Year (AIR Membership Movement)
- 5% Threshold Monitoring
- Progression of Hypothetical Wind-Up

This is **Exhibit "R"**

referred to in the Affidavit of William Turner
sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a series of loops and a long horizontal stroke extending to the right.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

**Financial Services
Commission
of Ontario**

Pension Plans Branch

5160 Yonge Street
Box 85
Toronto ON M2N 6L9

Telephone: (416) 226-7776
Facsimile: (416) 226-7777

**Commission des
services financiers
de l'Ontario**

Direction des régimes de retraite

5160, rue Yonge
Boîte 85
Toronto ON M2N 6L9

Téléphone: (416) 226-7776
Télécopieur: (416) 226-7777



January 15, 2016

Registration Number: 0360065

Mitch Frazer
Torys LLP
79 Wellington Street W
30th Floor
Box 270, TD South Tower
Toronto ON M5K 1N2

Dear Mr. Frazer:

Re: Sears Canada Inc. Registered Retirement Plan (Plan)

Thank you for your letter dated December 9, 2015, in response to our letter dated November 6, 2015, regarding the Plan.

Further to our letter dated November 6, 2015, we require the following information and documents in order to determine whether or not there are grounds under clause 77.3(1)(a) or (b) of the Pension Benefits Act ("PBA") for the Superintendent of Financial Services (the "Superintendent") to exercise his discretion to order a partial wind up of the Plan as a result of the termination of membership of approximately 12,168 members of the Plan between December 31, 2002, and December 31, 2012:

- (a) a detailed breakdown of the individuals who terminated membership in the Plan during the period noted above together with the reasons for each termination;
- (b) a detailed explanation of the reasons for the terminations referred to above; and
- (c) any annual reports, press releases, speeches, announcements, employee bulletins, letters or other communications or statements, internal or public, relevant to or evidencing the terminations or the reasons therefor.

Furthermore, we require the information and documents contained in the Appendix to our letter of November 6, 2015, in order to determine whether or not there are grounds under clause 69(1)(c) or (g) of the PBA for the Superintendent to exercise his discretion to order a full wind up of the Plan.

Registration Number: 0360065
January 15, 2016
Page 2

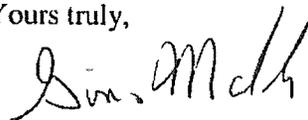
Information and documents provided to us in response to the above requests will be kept confidential and will not be disclosed to any person, except in the following circumstances:

- the disclosure is necessary for the purposes of obtaining advice with respect to the decisions set out above, and the advice is obtained on a confidential basis;
- the disclosure is required under the Freedom of Information and Protection of Privacy Act; or
- the disclosure is required by order of a court or tribunal.

We look forward to receiving your response by February 15, 2016. A meeting will be scheduled with all parties after we receive your response to this letter and we have had an opportunity to review it. After the meeting, we will determine the appropriate regulatory action to be taken in respect of the Plan.

If at any time you have any questions or concerns, you may contact me either at the address above, or directly by telephone at (416) 226-7820, or Sharon Polischuk, Pension Officer, directly by telephone at (416) 590-7248, or toll free at 1-800-668-0128, extension 7248. Please quote the registration number shown at the top of this letter.

Yours truly,

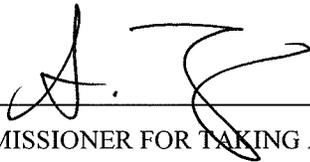


Gino Marandola
Director, Pension Plans Branch (Interim)

Copy: Andrew J. Hatnay, Koskie Minsky LLP
Sharon Polischuk, FSCO

This is **Exhibit "S"**

referred to in the Affidavit of William Turner
sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, appearing to be "A. J." followed by a stylized flourish.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

TORYS
LLP

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Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada
P. 416.865.0040 | F. 416.865.7380
www.torys.com

FEB 16 2016

February 16, 2016

VIA MAIL

Gino Marandola
Director, Pension Plans Branch (Interim)
Financial Services Commission of Ontario
5160 Yonge Street
P.O. Box 85
Toronto, ON M2N 6L9

Dear Mr. Marandola:

Re: Sears Canada Inc. Registered Retirement Plan (the "Plan")

Thank you for your letter dated January 15, 2016 (the "Letter").

In response to your request for additional documentation and information in respect of the Plan as set out in the Letter, Sears Canada Inc. ("Sears") wishes to be appropriately responsive and is therefore providing the documents and information outlined in Appendix "A", which are the documents and information that Sears is able to provide at this time.

Sears respectfully requests a private meeting with you and your team, so that representatives of Sears can meet with you to discuss the various funding alternatives for the Plan. In our view, the meeting we propose would help to ensure that Sears' actions will be appropriately responsive to your concerns. Subject to your availability, we'd like to schedule the meeting as soon as practicable.

We also note that the broad range of documents requested by the Financial Services Commission of Ontario ("FSCO") contain a significant amount of commercially sensitive information related to various aspects of Sears' business. Given the broad scope of FSCO's request, and given that the scope of what is commercially sensitive can and does change with changing business conditions, Sears does not propose to pinpoint the information contained in what Sears is providing to FSCO that Sears currently considers commercially sensitive. Among other things, doing so now would slow the rate at which Sears could produce to FSCO the documents and information that FSCO has requested. Sears expects that FSCO would see the resulting delay in responding to its request as undesirable.

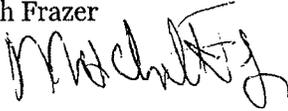
Accordingly, Sears would be grateful if FSCO could advise at this time of the procedure and timelines regarding notice to Sears in the event that a request for disclosure is made in respect of these documents or any information contained in these documents under the *Freedom of Information and Protection of Privacy Act* ("FIPPA"). FSCO is no doubt aware that it is essential for Sears to have an adequate opportunity to carefully review any documents that FSCO may consider producing pursuant to a FIPPA request to ensure that all of Sears' commercially sensitive information is protected, as contemplated by s. 28 of FIPPA.

- 2 -

Please do not hesitate to contact me should you have any further requests.

Yours truly,

Mitch Frazer

A handwritten signature in black ink, appearing to read "Mitch Frazer", written in a cursive style.

MF

cc: Sears Canada Inc. - Franco Perugini (with attachments)
FSCO - Sharon Polishuk (with attachments)
Susan Himmelman - Aon Hewitt (with attachments)
Koskie Minsky LLP - Andrew Hatnay (without attachments)

Appendix "A"
Responses to Information Requests

The following documents and information are included as attachments to this letter (see USB key):

A. Documents and information requested in the Letter:

1. a detailed breakdown of the individuals who terminated membership in the Plan during the period noted above together with the reasons for each termination;
2. a detailed explanation of the reasons for the terminations referred to above; and
3. any annual reports, press releases, speeches, announcements, employee bulletins, letters or other communications or statements, internal or public, relevant to or evidencing the terminations or the reasons therefor.

B. Documents and information requested in FSCO's letter dated November 6, 2015:

B.1. General

1. a copy of the three year Strategic Business Plan, supporting documents including budgets, financial projections and amendments;
2. minutes of all 2015 Board of Directors meetings;
3. corporate structure and management organizational structure;
4. listing of all merchandising operation locations by retail channel;

B.2. Financial Statements

1. copies of the Sears Canada Inc. Annual Reports including audited financial statements for the past three years;
2. copies of all interim quarterly financial statements and management discussions & analysis since the last audited financial statements;
3. copy of a similar report to the CICA Section 5970 report on internal controls;
4. cash flow projections going forward;

B.3. Receivables

1. detailed aged accounts receivables listing;
2. summary aged accounts receivables listing;
3. please identify any doubtful or bad debts;

B.4. Secured Lenders

1. identify all banks and secured lenders;
2. copy of any Bank Credit Agreement;
3. latest copy of borrowing base and availability from operating (line of credit) lender;

B.5. Payables

1. detailed aged payables listing;
2. schedule of accrued liabilities;
3. details of all secured debt (amounts, terms and interest rates);
4. status of priority payables (ETD, HST/GST. vacation pay, wages and EHT);

B.6. Inventory

1. estimated value of inventory;
2. estimated salvage value of inventory.

B.7. Fixed Assets

1. details of land and buildings;
2. copy of mortgages;
3. listing of leased assets;

B.8. Pension & Related

1. summary of the breakdown of the investments of pension assets by asset class and investment manager levels;
2. copies of investment service agreements entered into with external investment managers; and
3. copies of periodic reports/reviews from external investment managers.

B.9. Other

1. details of any outstanding litigation and regulatory action against the company (and of any contemplated litigation or regulatory action of which Sears Canada Inc. is aware) including the potential cost to Sears Canada Inc..

C. Documents and information requested by FSCO but that are not applicable to Sears:

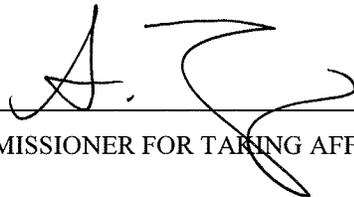
- 5 -

1. minutes of all Pension Committee meetings;
2. copies of auditor's management reports;
3. copies of an assessment or credit report;
4. details of any personal guarantees to lenders or otherwise; and
5. any shareholders loans with an indication of whether they are secured.

20796393.3

This is **Exhibit "T"**

referred to in the Affidavit of William Turner
sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, appearing to be "A. J." followed by a stylized flourish.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

KOSKIE MINSKY

JUSTICE MATTERS

March 1, 2016

Andrew J. Hatnay
Direct Dial: 416-595-2083
Direct Fax: 416-204-2872
ahatnay@kmlaw.ca

Via Email

Financial Services Commission of Ontario
5160 Yonge Street, P.O. Box 85
Toronto, ON M2N 6L9

Attention: Gino Marandola, Director, Pension Plans Branch (Interim)

Dear Mr. Marandola:

**Re: Store and Catalogue Retiree Group ("SCRG")
The Sears Canada Inc. Registered Retirement Plan, Registration Number 360065
("Sears Canada Plan")**

We are writing with respect to the letter dated February 16, 2016 to you from counsel to Sears Canada Inc. which enclosed some of the documentation that had been requested by FSCO in its letters to Sears Canada of November 6, 2015 and January 15, 2016.

We have the following comments:

1. Since the meeting at your office on September 11, 2015 with our clients and Sears Canada representatives, it has been reported that the financial situation for Sears Canada continues to deteriorate. The members of the Sears Canada Plan are gravely worried that Sears Canada and its ultimate corporate parent, Sears Holdings Inc., will both fail¹, and that the Sears Canada Plan will be wound up in an underfunded state resulting in reductions to monthly pension benefits. Accordingly, we request copies of all the documentation provided to your office by Sears Canada. Please provide those to us at your earliest convenience.
2. We note that Sears Canada has not provided all the information requested by FSCO in its letters of November 6, 2015 and January 15, 2016. In particular, in addition to the documents requested above, our clients require the documents that had been requested in paragraphs 1, 2 and 3 of the FSCO letter dated November 6, 2015, i.e., the Financial Information, an Actuarial Valuation Report as at September 30, 2015, and the other requested pension plan documentation.

¹ See, for example, the enclosed article, *Sears Holdings: Retailing's Headless Horseman*, Forbes, February 29, 2016

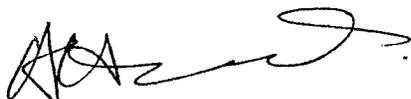
3. We request to be present at any meetings between Sears Canada representatives and FSCO. The issues we have raised with FSCO and Sears Canada in prior correspondence and at the meeting of September 11, 2015 pertain to the provision of our clients' earned pension benefits, and it is appropriate and fair that they be part of any discussions with FSCO and Sears Canada that pertain directly or indirectly to their pension benefits.
4. We request a meeting with FSCO and Sears Canada to discuss next steps. The last such meeting took place several months ago on September 11, 2015. Sears Canada continues to financially deteriorate and is not restructuring, and the risk of pension benefit (and other) losses to our clients continues to increase.

We ask that you schedule a meeting at your earliest convenience.

We look forward to hearing from you.

Yours truly,

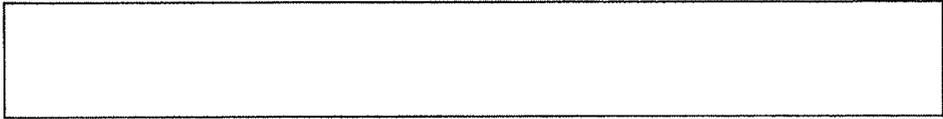
KOSKIE MINSKY LLP



Andrew J. Hatnay
AJH:vdl

cc. SCRG
Mitch Frazer, *Torys LLP*
Mark Zigler, Barbara Walancik, *Koskie Minsky LLP*

KM-2079704v2



Mark CohenContributor

I cover retail through the lens of a CEO.

Opinions expressed by Forbes Contributors are their own.

RETAIL 2/29/2016 @ 7:00AM | 1,686 views

Sears Holdings: Retailing's Headless Horseman

Like the Headless Horseman of myth, Sears Holdings rides aimlessly through the night desperately looking for its missing body part. Unfortunately Sears' head, long gone, will never be found.

As a result, we should all stop talking about this Eddie Lampert driven travesty and begin to focus on why this tragedy occurred and how the retail landscape will change when Sears Holdings disappears. The hard and cold reality is that Sears Holdings will disappear. The only question yet to be answered is when.

The dirty little secret behind Eddie Lampert's self described transformational strategy is that there never was one, there certainly isn't one now, and there won't be one anytime soon. The coffin nails that came into view the day Alan Lacy became CEO of Sears Roebuck in 2000 have been pounded in ever since by Lampert, who took control of the company with Lacy's help in 2005 and combined it with Kmart.



Alan J. Lacy, vice chairman and CEO of Sears Holdings; Edward S. Lampert, chairman, Sears Holdings; and Aylwin B. Lewis, president of Sears Holdings and CEO of Kmart and Sears Retail, answers following

approval of the merger of Sears, Roebuck and Co. and Kmart Holding Corporation by shareholders of both companies March 24, 2005, in Hoffman Estates, Illinois. (Photo by PRNewsFoto via Getty Images)

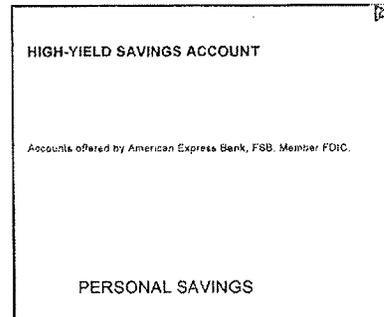
Lampert would like us to believe that he and Sears Holdings are being treated unfairly. That he and his company's strategy are misunderstood. That Amazon and Tesla and Uber are being given undue credit and support from the investment community because, after all, like Sears Holdings, they too are operating at a loss. Really? You think you belong in the same conversation as these companies?

Sorry Eddie, your complaints and the analogies you cite are pathetically inadequate. You took control of a viable retail enterprise, and in the process of turning it into a private ATM machine, you have destroyed it. The new companies you mention in your most recent investment letter are investing cash to build out their business, not harvesting and withdrawing that cash as you have done at Sears Holdings since you took control. Further, legacy companies, like yours, in the process of transformation, reinvest in themselves and in their future. They don't repeatedly dividend out the proceeds of asset sales for the purpose of lining the pockets of shareholders.

Question: What could the Sears Roebuck Board of Directors have been thinking when, in 2005, they handed the company over to a hedge fund operator? Answer: They had no earthly idea what they were doing. Maybe they were just trying to rid themselves of their feckless CEO, Alan Lacy?

It's now evident, that by the time the Sears Holdings coffin is lowered into the ground, the box will be almost empty. Lampert's mismanaged initiatives have amounted to nothing more than a long running sell off of the company's valuable body parts. First, to enrich himself, and then, more recently, to keep the enterprise alive. Valuable real estate – mostly gone. Intellectual property rights to Kenmore, Craftsman and Die Hard – gone. Free cash flow generated from normal ongoing operations, long gone. Cash flow, when there was any, reinvested in derivatives, rather than stores, people, products and marketing.

Whereas Alan Lacy had no clue how to manage Sears Roebuck's performance, or, to position the company for the future, Lampert's tenure falls into a category all by itself. Whether grossly incompetent, disingenuous, delusional or intellectually deficient, who knows? Read his



shareholder letters and try to find a scintilla of realistic or rational thinking in what he has written and you come up completely short. Try to connect what he has written with real performance? Not possible.

Question: If you are one of the few who have aligned yourself with Lampert's various investment theses over the past 11 years, what investment returns will you have earned? Answer: Maybe nothing. Think the remaining Sears Holdings real estate portfolio has significant value? Think again. Are there any buyers out there willing to pay a premium for large numbers of tired outmoded and poorly located stores? I don't think so.

Was this insidious liquidation of a \$50 billion company Eddie Lampert's plan all along? We may never know. There is some evidence to suggest that, at the outset, he actually expected to run this company as a legitimate retailer, albeit, in his own unorthodox way. If that's true, his strategy didn't work and didn't last very long. We may discover, when all is said and done, that this unwarranted, disruptive and destructive saga will be revealed as a failed investment play. That Lampert, himself, will have lost a fortune in all of this – not just in opportunity losses, but in hard dollars as well.

Lampert is leading the company into its final hours. He and his hired gun PR team have no credible explanation to offer to the contrary. Is there anyone out there looking to stick up for him? Not customers. Not employees. Not investors. Not suppliers. No one. Even members of the business media, who in the past have attempted to describe Lampert and the company's behavior in a positive light, have disappeared. How could they not?

Just a few years ago, Lampert was heralded as the next Warren Buffett. Nothing could be further from the truth. Warren Buffett's success has come from careful investments in companies and their management teams with an intent to aid and abet those company's ongoing success and growth. Any comparison between Warren Buffett and Eddie Lampert is complete nonsense.

Most legitimately managed retailers have by now reported their 2015 fall and holiday performance. They have revealed their shortfalls in sales and profits to expectations and in some cases to the

prior year. Lampert is trying to use those poor peer results, as air cover to hide his own ongoing and catastrophic losses. He has fooled no one.

Sears Holdings eventual demise will bring with it the closure of almost 2000 mall and off mall stores. Though some locations may be successfully repurposed by either Lampert's Seritage Real Estate Trust, or other involved landlords, most may very well go dark and stay dark. Coupled with store closings at Macy's, JC Penney, other mall anchors and specialty tenants, Sears' closures may signal the eventual death rattle of many of the B, C and D level malls throughout the US.

The major appliance market share that Sears still holds, though drastically diminished under Lampert's watch, will become a significant windfall for Home Depot, Lowe's, Best Buy, and super regionals such as H.H. Gregg and P.C. Richards. JC Penney's ill advised attempt to re enter this business will not succeed in my opinion, but they will continue to benefit from the ongoing and now near complete collapse of Sears' apparel, accessories, footwear, housewares and soft home businesses. Kohl's will benefit in that regard as well. Sears' hardware and lawn and garden businesses will be an ongoing source of opportunity for DIY and discount retailers, both national, regional and local. Walmart and Target, along with various dollar stores will also see market share opportunities coming to them when Kmart ceases to exist.

I have heard various pundits and so-called industry experts say that the collapse of Sears was inevitable. That's nonsense. Sears' failure is a catastrophic failure of governance and leadership. The customer hasn't walked away because Sears and Kmart were no longer brands they wanted to be associated with. They've walked away because Sears and Kmart have been grossly incapable of satisfying their needs and wants.

It's time for us to stop looking for the Headless Horseman's head, and, instead, start picking out his headstone.

RECOMMENDED BY FORBES

[The World's Highest-Paid Actors 2015](#)

This is **Exhibit "U"**

referred to in the Affidavit of William Turner
sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, appearing to be 'A. J.', written over a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

From: Andrew J. Hatnay
Sent: March-10-16 10:28 AM
To: Gino Marandola
Cc: Ken Eady; Barbara Walancik
Subject: Sears Canada - FSCO meeting with Sears Canada re partial plan wind-up

Gino, we have spoken with our clients with respect to your request that FSCO proceed with a meeting with Sears Canada and its advisers at this time without our clients present, in order to raise the issue of a partial plan wind up being ordered by FSCO and possible settlement discussions.

Our clients can agree to such a meeting with two provisos.

First, if any funding or other settlement is discussed with Sears Canada at the meeting, our clients will have the ability to review, provide input, and approve any settlement or other arrangement before it is finalized.

Second, we request that the meeting occur within the next ten business days. As you know, the last meeting with FSCO, Sears Canada, and our clients took place on September 11, 2015. We are concerned with the delays caused by Sears Canada in its response times to the information requests since that meeting. Sears Canada's business is failing and we believe there is a high possibility that it could enter insolvency proceedings at any time and without notice. Accordingly, please convene the meeting occur as soon as possible.

Finally, we would like copies of all the documentation provided by Sears Canada, as indicated in our last letter.

Thank you for your attention to this matter.

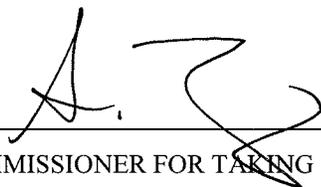
Regards,
AJH

Sent from my BlackBerry 10 smartphone on the Rogers network.

This is **Exhibit "V"**

referred to in the Affidavit of William Turner

sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, appearing to be 'A. J.', written over a horizontal line.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

KOSKIE MINSKY

OF ALL THINGS

September 12, 2016

Via Email

Andrew J. Hatnay
Direct Dial: 416-595-2083
Direct Fax: 416-204-2872
ahatnay@kmlaw.ca

Financial Services Commission of Ontario
5160 Yonge Street, P.O. Box 85
Toronto, ON M2N 6L9

Attention: Gino Marandola, Director, Pension Plans Branch (Interim)

Dear Mr. Marandola:

**Re: Store and Catalogue Retiree Group ("SCRG")
The Sears Canada Inc. Registered Retirement Plan, Registration Number 360065
("Sears Canada Plan")**

We are writing further to our discussions and the discussions you have had with our client, Ken Eady of SCRG.

As you know, our clients are gravely concerned that Sears Canada's retail business is failing and that the company is insolvent. We have provided you in the past with numerous media reports and memoranda prepared by our clients setting out the deteriorating financial situation at Sears Canada which continues to this day. Last week, Sears Canada released its quarterly results for the second quarter ending July 31, 2016 reporting that total retail revenues have fallen by a further 15.6%. That loss is on top of the \$1 billion in operating losses that Sears has reported over the past five years.

The evidence is overwhelming that Sears Canada will not survive as a retailer. We believe that it is only a matter of time before it seeks protection from its creditors in an insolvency proceeding.

The Sears Canada Plan remains underfunded, and as we have articulated to your office on many occasions and as you are aware, in the event the plan is wound up in its underfunded state in an insolvency proceeding, there is a high likelihood that pension benefit losses will be imposed on elderly retirees.

In the circumstances, and considering the duty of a pension plan administrator to act in the best interest of pension plan members, our clients requested several months ago that the Sears Canada Plan be wound up. As your office is aware, we have communicated this request to Sears. Sears is opposed to winding up the plan because of the crystallization of wind up liability that Sears Canada wishes to avoid paying. A wind up of the plan is also expected to generate a significant PBGF payment obligation. Nevertheless, in the context of Sears Canada's financial situation, our

clients position is that the wind up of the plan is both highly appropriate and legally necessary for the protection of the plan members' earned pension benefits, which are their deferred wages.

You will recall that we attended a meeting at your office with Sears Canada representatives on September 11, 2015, which is now over a year ago. At that time we put forward the wind up demand. We are aware that your office has engaged in discussions with Sears Canada flowing from the wind up demand. Our clients have been prepared to engage Sears to see if a satisfactory arrangement can be achieved which would involve the company making additional contribution(s) to the pension plan at this time. However, our clients are now very concerned that the discussions with Sears Canada over the past several months have not produced any tangible or credible proposal by Sears Canada. Instead, Sears Canada's conduct has been to take inappropriately long periods of time to respond, cancel or reschedule meetings, and only respond after numerous follow ups. This in our view reveals a deliberate plan to stall and delay dealing with the pension plan and the wind up demand. A recent example of another delay is the meeting that had been scheduled between your office and Sears Canada for September 7, 2016, which Sears abruptly rescheduled to September 28, 2016.

There are numerous other instances of delay and obfuscation by Sears Canada in the course of our dealings with the company over the past 24 months. We do not believe that Sears Canada is dealing with us, nor FSCO, in good faith and is instead orchestrating a series of delays in order to avoid dealing with the underfunded pension plan, its insolvency, and evade a wind up order.

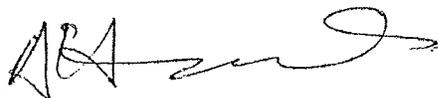
Accordingly, we request that the Superintendent proceed with the issuance of a Notice of Proposal to Wind Up the Sears Canada Plan under section 69 of the PBA. We have discussed the various categories in that section that we say apply, and we believe there is no debate with respect to the applicability of section 69(1)(g), which we understand FSCO is also considering for other pension plans situations.

We appreciate the efforts of your office over the past months. However, as set out herein, we do not believe that Sears Canada is dealing in good faith. Accordingly, our clients wish to press forward with the wind up of the Sears Canada Plan as soon as possible.

We look forward to hearing from you.

Yours truly,

KOSKIE MINSKY LLP

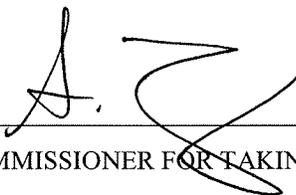


Andrew J. Hatnay
AJH:vd1

cc. SCRG
Mark Zigler, Barbara Walancik, *Koskie Minsky LLP*

This is **Exhibit "W"**

referred to in the Affidavit of William Turner
sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, consisting of a stylized 'A' followed by a large, sweeping flourish that loops back under the signature line.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

KOSKIE MINSKY

JUSTICE MATTERS

October 20, 2016

Via Email

Andrew J. Hatnay
Direct Dial: 416-595-2083
Direct Fax: 416-204-2872
ahatnay@kmlaw.ca

Financial Services Commission of Ontario
5160 Yonge Street, P.O. Box 85
Toronto, ON M2N 6L9

Attention: Gino Marandola, Director, Pension Plans Branch (Interim)

Dear Mr. Marandola:

**Re: Store and Catalogue Retiree Group ("SCRG")
The Sears Canada Inc. Registered Retirement Plan, Registration Number 360065
("Sears Canada Plan")**

We are writing further to our letter of September 12, 2016 and your subsequent discussions with our client, Ken Eady of SCRG.

Our clients are increasingly concerned about Sears Canada's delays and lack of good faith in addressing the underfunded Sears Canada Plan as their retail business continues to deteriorate. They are particularly concerned about Sears Canada's failure to deliver a proposal for additional funding for the Sears Canada Plan that they undertook to provide several months ago.

Our clients request a meeting with FSCO prior to any further meetings or discussions with Sears Canada so that they can obtain an understanding of the status of the discussions about the proposal that was promised by Sears and any other relevant information that impacts the provision and security of their earned pension benefits. To be clear, our clients need to be closely involved and part of any future discussions or negotiations between FSCO and Sears Canada.

Our clients maintain their request to FSCO that the Sears Canada Plan should be ordered to be wound up by the Superintendent at this time. The wind up is growing more urgent given the steady deterioration of Sears Canada's retail business and its worsening financial situation, which we have explained in prior correspondence. The strong potential for pension losses that is facing the members of Sears Canada Plan is compounded by Sears Canada's lack of good faith in its dealings with our clients.

Page 2

Please let us know if you are able to meet in the week of October 31, 2016 at your earliest convenience.

Thank you for your attention to this matter.

Yours truly,

KOSKIE MINSKY LLP

A handwritten signature in black ink, appearing to read "Andrew J. Hatnay". The signature is stylized and includes a large flourish at the end.

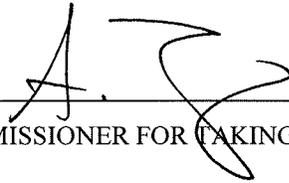
Andrew J. Hatnay
AJH/vd;

cc. SCRG
Mark Zigler, Barbara Walancik, *Koskie Minsky LLP*

KM-2400154v1

This is **Exhibit "X"**

referred to in the Affidavit of William Turner
sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a series of loops and a long horizontal stroke extending to the right.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

KOSKIE MINSKY

May 19, 2017

Via Email and Mail

Marc Wasserman
Osler, Hoskin & Harcourt LLP
100 King Street West
1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto ON M5X 1B8

Andrew J. Hatnay
Direct Dial: 416-595-2083
Direct Fax: 416-204-2872
ahatnay@kmlaw.ca

Dear Mr. Wasserman:

**Re: Store and Catalogue Retiree Group ("SCRG")
The Sears Canada Inc. Registered Retirement Plan, Registration Number 0360065
("Sears Canada Plan")**

As you are aware, we represent SCRG, an organization comprised of over 6,000 retirees of Sears Canada Inc. ("**Sears Canada**") who have performed work and earned entitlements to pension benefits from Sears Canada.

We understand that in addition to its on-going retainer of Torys, Sears Canada has recently retained Osler as "insolvency counsel" with respect to the possibility of the company filing for protection from its creditors under the *Companies' Creditors Arrangement Act* ("CCAA") or another insolvency process. In the event the company proceeds in that direction, we hereby request that the company wind up the Sears Canada Plan prior to it applying for CCAA protection or becoming involved in any other insolvency proceeding.

As you and the company are aware, the Sears Canada Plan is underfunded. If the plan is wound up in its underfunded state, it will result in losses to the monthly pension benefits being paid to the retirees. A large number of the Sears retirees receive modest pension benefits the receipt of which they rely for their daily livelihoods. Any losses to such benefits have a material and prejudicial impact on the retirees' standard of living, and create hardships for them and their families.

We are also requesting that you contact us to make arrangements for the court appointment of suitable individuals from SCRG to be the representatives of all retirees of Sears Canada in any insolvency proceeding, our firm as Representative Counsel to the retirees, and that the legal costs of the retirees be paid by the company, and that these arrangements be put in place and confirmed prior to any insolvency filing.

**KOSKIE
MINSKY**

Page 2

The pension plan beneficiaries have statutory deemed trust priorities in their favour under the Ontario *Pension Benefits Act* (PBA) and the Ontario *Personal Property Security Act* (PPSA) for amounts owing to the Sears Canada Plan with respect to going-concern payments, special payments, and wind up payments, which they intend to advance for first priority recovery in any insolvency proceeding involving Sears Canada.

The law is well-established that Sears Canada, as the administrator of the Sears Canada Plan, owes fiduciary duties under both the PBA and the common law to act in the best interests of the pension plan members. This duty includes that Sears Canada, and its directors and officers, take all steps to protect the pension plan members from pension benefit losses.

As we expect you are aware, there has been some debate over whether the PBA wind-up deemed trust remains effective if the pension plan wind-up occurs after the issuance of a CCAA initial court order. In order to protect the pension plan members in the context of Sears Canada's contemplation of a CCAA application or other insolvency proceeding, and to avoid any debate over the significance, if any, of the "timing" of the wind up that could be prejudicial to the pension plan members, we direct Sears Canada to ensure that the Sears Canada Plan be wound up prior to any CCAA or other insolvency filing.

We are required to put Sears Canada, its directors, and its officers on notice that the failure to wind up the Sears Canada Plan, and any resulting loss of priority recovery for the pension plan members in a CCAA or other proceeding, will lead to claims for damages against Sears Canada directors and officers in their personal capacities for any losses suffered by the pension plan members and beneficiaries.

If you do not represent the Sears Canada directors and officers, please advise and we will send a copy of this letter to them directly.

If you wish to discuss this further, please do not hesitate to contact the undersigned.

Yours truly,

KOSKIE MINSKY LLP

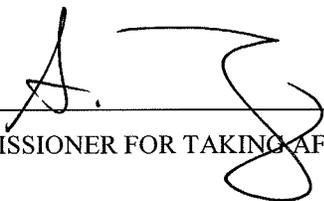


Andrew J. Hatnay
AJH/vdl

cc. Mitch Frazer, *Torys LLP*
Clients
Amy Tang, *Koskie Minsky LLP*

This is **Exhibit "Y"**

referred to in the Affidavit of William Turner
sworn before me this 11th day of August, 2017.

A handwritten signature in black ink, consisting of a stylized 'A' followed by a large, looping flourish.

A COMMISSIONER FOR TAKING AFFIDAVITS, ETC.

OSLER

June 5, 2017

Marc S. Wasserman
Direct Dial: 416.862.4908
MWasserman@osler.com
Our Matter Number: 1179649

Confidential

Sent By Electronic Mail

Andrew Hatnay
Koskie Minsky LLP
Suite 900
20 Queen Street West
Toronto, ON M5H 3R3

Dear Mr. Hatnay:

**Re: Store and Catalogue Retiree Group (“SCRG”)
The Sears Canada Inc. Registered Retirement Plan, Registration No. 0360065 (the
“Plan”)**

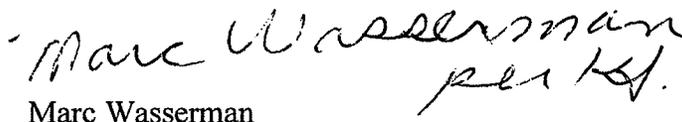
Thank you for your letter of May 19, 2017.

As you know, the Plan is a combination defined benefit and defined contribution plan that provides benefits to active employees of Sears Canada Inc. (the “Company”) as well as to pensioners and those with a deferred vested pension entitlement.

Any decision by the employer to wind-up a pension plan impacts all plan members, not just retirees. The Company is also conscious of the obligations of pension plan administrators to all pension plan members (including active plan members and retirees) whether the plan is an ongoing plan or a wound-up plan.

The Company appreciates you drawing attention to the concerns of retirees under the Plan. We look forward to discussing these matters with you in the near term.

Yours very truly,


Marc Wasserman

MSW:krs

c: M. Frazer, Torys LLP

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

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

**ONTARIO
SUPERIOR COURT OF JUSTICE -
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**AFFIDAVIT OF WILLIAM TURNER
(SWORN ON AUGUST 11, 2017)**

KOSKIE MINSKY LLP

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

Andrew J. Hatnay – LSUC No. 31885W

Tel: 416-595-2083 / Fax: 416-204-2872
Email: ahatnay@kmlaw.ca

Mark Zigler – LSUC No. 19757B

Tel: 416-595-2090 / Fax: 416-204-2877
Email: mzigler@kmlaw.ca

Representative Counsel for the Non-Unionized
Retirees and Non-Unionized Active and Former
Employees of the Sears Canada Entities

TAB 5

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

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

THE HONOURABLE MR.)	THURSDAY, THE 15 th
)	
JUSTICE HAINEY)	DAY OF FEBRUARY, 2018

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., CORBEIL
ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC.,
SEARS CONTACT SERVICES INC., INITIUM LOGISTICS
SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM
TRADING AND SOURCING CORP., SEARS FLOOR
COVERING CENTRES INC., 173470 CANADA INC., 2497089
ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA
INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD.,
4201531 CANADA INC., 168886 CANADA INC., AND 3339611
CANADA INC.

(each, an “**Applicant**”, and collectively, the “**Applicants**”)

LITIGATION TRUSTEE ORDER

THIS MOTION, made by Representative Counsel to the court-appointed Representatives of employees and retirees with respect to pensions and post-retirement benefits of the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “**CCAA**”), for an order appointing a litigation trustee to identify and report on certain rights and claims of the Applicants and SearsConnect or any of their creditors (collectively, the “**Sears Canada Entities**”) was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of Representative Counsel for the Non-Unionized Retirees and Non-Unionized Active and Former Employees of the Sears Canada Entities, the Affidavit of William Turner sworn on February 12, 2018 including the exhibits thereto, the Affidavit of William Turner sworn on August 11, 2017, including the exhibits thereto, the Consent of Mr. Frank Newbould, Q.C. dated February 9, 2018, filed, and on hearing the submissions of Representative Counsel, counsel for the Monitor, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of Veronica de Leoz, sworn February 12, 2018:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that the Honourable Frank J.C. Newbould, Q.C. is hereby appointed as litigation trustee (the “**Litigation Trustee**”) in these CCAA proceedings for the benefit of the creditors of the Sears Canada Entities. The Litigation Trustee shall be an officer of this Court, and is appointed for the purpose of investigating, considering, and reporting to the Court and the Committee (defined below) regarding any rights or claims (whether legal, equitable, statutory or otherwise) that the Sears Canada Entities, or any Litigation Trustee acting on behalf of creditors of any of the Sears Canada Entities, may have as against any parties, including but not limited to, current and former directors, officers, shareholders and advisors of any of the Sears Canada Entities (the “**Mandate**”). For greater certainty, the Mandate shall not include, and the Litigation Trustee shall have no role in determining, advising on, opposing, supporting, or articulating any claim of any creditor or stakeholder filed in this proceeding as

part of any claims process or for distribution purposes from the estates of the Sears Canada Entities.

Litigation Trustee Report

3. **THIS COURT ORDERS** that the Litigation Trustee's Mandate shall include preparing and delivering as soon as practicable a report (the "**Report**") to this Court and to the Committee with such details as the Litigation Trustee considers advisable, taking into account privilege and confidentiality, and subject to any request that may be made to the Court by the Litigation Trustee for a sealing order as to any aspects of its Report, and with recommendations, regarding a proposed litigation plan that includes, but is not limited to:

- (a) Those potential rights or claims of the Sears Canada Entities that should be pursued (if any); and
- (b) Describing how such rights or claims (if any) can best be pursued or continued, including, but not limited to:
 - (i) How to coordinate the prosecution of such rights or claims with similar or related rights or other claims that may be asserted by different parties;
 - (ii) A proposed governance structure for an Instructing Committee to be formed, which may include a subset of the members of the Committee, for the purpose of providing instructions to the Litigation Trustee in the prosecution of such rights or claims; and
 - (iii) Options available for funding the prosecution of such rights or claims.

4. **THIS COURT ORDERS** that following delivery of his Report, the Litigation Trustee shall not take any further steps without a subsequent Order of the Court.

The Committee

5. **THIS COURT ORDERS** that the Litigation Trustee shall fulfil his Mandate in consultation with a committee (the "**Committee**") comprised of no more than [7] people at any one time appointed by, or on behalf of the following stakeholder groups of the Sears Canada Entities: (i) Representative Counsel to the retirees of Sears Canada Inc.; (ii) Representative Counsel for employees of Sears Canada Inc.; (iii) landlords; (iv) class action plaintiffs; and (v) such other unsecured creditors of the Sears Canada Entities as the Litigation Trustee and the Committee may agree be included, or as may be directed by the Court. A representative of the Monitor shall also be a member of the Committee.

6. **THIS COURT ORDERS** that each member of the Committee (including any alternates or replacements from the same stakeholder group as may be appointed by an existing member) may be a creditor itself or counsel/advisor representing that stakeholder interest, but in either case each member shall execute a Confidentiality Agreement in a form acceptable to the Litigation Trustee prior to being entitled to participate in any meetings of the Committee, or to receive the Report. The Litigation Trustee will meet with the Committee at least monthly, or such other times as may be agreed by the Litigation Trustee and the Committee. Meetings may be conducted in person or by conference call.

7. **THIS COURT ORDERS** that, to prevent duplication and unnecessary costs, the Monitor is hereby directed to disclose and deliver to the Litigation Trustee and the Committee the results of all the Monitor's investigations and research on the "Transactions of Interest" as

defined and reported in the 11th Monitor's Report (para. 50-54), subject to appropriate arrangements for privileged communications and confidential information, and to cooperate with the Litigation Trustee in its review of such information. The delivery of such information by the Monitor to the Litigation Trustee and the Committee shall be subject to privilege and not be subject to disclosure to any party or person other than the Litigation Trustee or Committee without further order of the Court.

8. **THIS COURT ORDERS** that the Monitor and the Sears Canada Entities and all persons acting on behalf of the Sears Canada Entities at any time shall cooperate fully with the Litigation Trustee in the fulfillment of the Mandate.

9. **THIS COURT ORDERS** that, for greater certainty, any right, claim or cause of action identified by the Litigation Trustee as capable of being advanced by any party, whether the Litigation Trustee or otherwise, is an "Excluded Claim" under the Claim Procedure Order issued by this Court dated December 8, 2017 (the "**Claims Procedure Order**").

10. **THIS COURT ORDERS** that the Claims Procedure Order is hereby amended as follows:

- (i) the definition of "Monitor Claim" is hereby amended by adding at the end thereto: "or the Litigation Trustee or such other party as the Court may permit or direct";
- (ii) subparagraph (vii) in the definition of "Excluded Claim" is hereby amended to read as follows: "Claim that may be asserted by any of the Sears Canada Entities or the Litigation Trustee (as may be permitted or directed by the Court by further court Order), against any Directors and/or Officers".

Litigation Trustee Costs

11. **THIS COURT ORDERS** that the Litigation Trustee shall be paid its reasonable fees and disbursements, including the fees of any counsel retained by the Litigation Trustee in respect of the Mandate, the amount of which is not to exceed a budget approved by the Committee prior to the Litigation Trustee commencing work in respect of fulfilling its Mandate in accordance with this Order, forthwith upon rendering his accounts to the Monitor and subject to such redactions to the invoices as are necessary to maintain privilege and protect confidentiality. In the event of any disagreement with respect to a proposed budget, any requested increased to such budget or any accounts rendered by the Litigation Trustee, such disagreement may be remitted to this Court for determination.

12. **THIS COURT ORDERS** that the Litigation Trustee shall be entitled to the benefit of the Administrative Charge, as defined in the Initial Order issued by the Court dated June 22, 2017, as amended for the Litigation Trustee's costs, as security for his professional fees, taxes, and disbursements reasonably incurred.

13. **THIS COURT ORDERS** that the Litigation Trustee is hereby authorized to take all steps and do all acts necessary or desirable to carry out the terms of this Order.

14. **THIS COURT ORDERS** that the Litigation Trustee shall be at liberty, and is hereby authorized, at any time, to apply to this Court for advice and directions in respect of its appointment or the fulfillment of its duties in carrying out the provisions of this Order or any variation of the powers and duties of the Litigation Trustee, which shall be brought on notice to the Service List in these CCAA proceedings, unless this Court orders otherwise.

15. **THIS COURT ORDERS** that the Litigation Trustee shall have no personal liability or obligations as a result of the performance of its duties in carrying out the provisions of this Order or any subsequent Orders in these CCAA proceedings, save and except for liability arising out of gross negligence or wilful misconduct.

16. **THIS COURT ORDERS** that no action or proceeding may be commenced against the Litigation Trustee in respect of the performance of its duties under this Order without leave of this Court on seven (7) business days' notice to the Litigation Trustee and the Committee.

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

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") in respect of any of the Applicants and any bankruptcy order issued pursuant to such applications; or
- (c) any assignment in bankruptcy made in respect of any of the Applicants;

the provisions of this Order shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of any of the Applicants and any payments of fees and disbursements made to the Litigation Trustee shall not be void or voidable by creditors of any of the Applicants, nor shall any such payments constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or any reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

18. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Sears Canada Entities, the Monitor, the Litigation Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Sears Canada Entities, to the Monitor and to the Litigation Trustee (the latter two parties as officers of this Court), as may be necessary or desirable to give effect to this Order, or to assist the Sears Canada Entities, the Monitor, the Litigation Trustee and their respective agents in carrying out the terms of this Order.

HAINY, J.

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041, ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

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

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

Proceeding commenced at Toronto

LITIGATION TRUSTEE ORDER

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Sears Canada Entities

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SEARS CANADA INC., CORBEIL ÉLECTRIQUE INC., S.L.H. TRANSPORT INC., THE CUT INC., SEARS CONTACT SERVICES INC., INITIUM LOGISTICS SERVICES INC., INITIUM COMMERCE LABS INC., INITIUM TRADING AND SOURCING CORP., SEARS FLOOR COVERING CENTRES INC., 173470 CANADA INC., 2497089 ONTARIO INC., 6988741 CANADA INC., 10011711 CANADA INC., 1592580 ONTARIO LIMITED, 955041 ALBERTA LTD., 4201531 CANADA INC., 168886 CANADA INC., AND 3339611 CANADA INC.

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

**ONTARIO
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MOTION RECORD

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